

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

Directions under Sections 11(1), 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 read with Regulations 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 in respect of Insure Life Infrastructure (India) Limited (CIN: U70101RJ2009PLC029925) and its Directors viz., Mr. Jagdish Prasad Sharma (PAN: BDSPS8933A), Ms. Laxmi Khandelwal (PAN: ARTPK0675M), Mr. Jagdish Prasad Khandelwal (PAN: AIAPK3910H), Mr. Abhishek Khandelwal (PAN: AVMPK0092M) and Mr. Dinesh Kumar Sharma (PAN: BTATS2294E).

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- (1) Securities and Exchange Board of India (hereinafter referred to as "SEBI") received information in June, 2013 about the fund raising activity of Insure Life Infrastructure India Limited ("**ILIIL**" or "**the Company**") through its various investment schemes.
- (2) As a matter of preliminary examination into whether or not ILIIL is carrying on activities of '*collective investment scheme*' in terms of Section 11AA of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**"), SEBI vide letter dated December 16, 2013, *inter alia*, sought the following information from ILIIL and its Directors regarding its business activities viz., :
- a. Memorandum and Articles of Associations of the Company as filed with the Registrar of Companies ("RoC").
 - b. Details of the past and present directors of the company. Details should contain name, address, PAN and contact details (Email/fax/contact no.) of the directors.
 - c. Brochures pertaining to the schemes/ offers which were made available to the public.
 - d. Copies of application forms that are required to be submitted by investors/applicants to participate in the schemes of the company.
 - e. Sample copies of the registration letter and allotment letter issued to the investors who subscribed to the schemes of the company.
 - f. Sample copies of the agreement letter/contract required to be entered into by investor/applicant under the schemes of the company.

- g. Details of the scheme wise amount mobilized till date along with the number of investors under the schemes of the company.
 - h. Name, address of each investor and amount deposited by them.
 - i. Address of all the branches operating in India.
 - j. Certified copy of audited financial statement for the financial years 2009-10, 2010-11, 2011-12 and 2012-13. Trial Balance for 2013-14 (upto the date of submission of information).
 - k. Copy of Income Tax Return filed by the company for the last three years.
 - l. Details of the regulatory approvals obtained by the company, if any, for provision of accidental death/disability benefits to investor, under the schemes of the company.
 - m. Details of any other similar scheme(s), if any, floated by the company or its group/associated company.
- (3) In response thereto, ILIIL vide letter dated nil (received by SEBI on July 07, 2014) submitted the following documents:-
- a. Details of the past and present directors of the company.
 - b. Brochures pertaining to the schemes/offers which were made available to the public.
 - c. Copies of application forms required to be submitted by investors/applicants to participate in their schemes. Copy of the Agreement is not readable.
 - d. Copy of allotment letter issued to the investors who subscribed to the schemes.
 - e. Details of the scheme wise amount mobilized and number of investors.
 - f. Copies of audited financial statement for the FY 2010-11, 2011-12 and 2012-13.
 - g. Copy of Income Tax Returns filed by the company for the last three years.
- (4) The material available on record i.e. correspondences exchanged between SEBI and ILIIL, along with the documents contained therein, submissions made by ILIIL, and the documents furnished by the investors, information available on *MCA21 portal*, etc. have been considered. In this context, the issue for determination is whether the mobilization of funds by ILIIL through its "*Plans*" offered to public fall under the ambit of '*collective investment scheme*' provided in Section 11AA of the SEBI Act.
- (5) On an examination of the same, it is *prima facie* observed as under:

- (I) ILIIL (CIN: U70101RJ2009PLC029925) was incorporated on September 22, 2009 having registered office at B-4 Raghuraj Enclave, G-7 Krishna Marg, C-Scheme, Jaipur (Raj) – 302001. However, the address of the company on MCA portal is given as F-6 NITCO, Opposite Transport Nagar, Jaipur -303003, Rajasthan.
- (II) The present directors of the company are Shri Jagdish Prasad Khandelwal (PAN AIAPK3910H) R/o Didwana, Th Talsot, Dausa, Rajasthan-303511, Shri Abhishek Khandelwal (PAN: AVMPK0092M) R/o Didwana, Th Talsot, Dausa, Rajasthan-303511, Shri Dinesh Kumar Sharma (PAN: BTATS2294E), R/o Chandpur, Th Sikri, Dausa, Rajasthan -303303. Mr. Jagdish Prasad Sharma (PAN: BDSPS8933A) and Ms. Laxmi Khandelwal (PAN: ARTPK0675M) were its past Directors.
- (III) As per Memorandum and Articles of Association, the main objects of ILIIL is to carry out the business activities as developers of land, colonies, sheds, buildings and to develop the sites and plots to carry on the business activities of builders, contractors, erectors, construction of buildings, houses, business acquirer, purchaser etc.
- (IV) ILIIL collects funds from the public for the scheme of '*sale of plots and its development*'. The amounts are collected for the scheme by offering '*Cash Down Payment Plan*' and '*Installment Payment Plans*'. As per the details furnished by the investor, one of the installment payment plans is as under:

INSTALLMENT PAYMENT PLAN “A” TYPE

Time	3yr	4 yr	5 yr	6 yr	7 yr	8 yr	9 yr	10 yr
Rate of Int	9.5%	9.75%	10%	10.25%	10.50%	10.75	11.50%	11.75%
Developed cost of land (per Sq yd)	2400	3200	4000	4200	4400	4900	5200	5600
Installment per month	Estimated Realizable Value at the end of Term							
50	2309	2944.69	3904	4937	5216	7625	9242	11111
100	4179	6369	7804	9975	12437	15251	18443	22223

* The above figures are nearest tangible figures as the document is not legible for elaborate reading.

- (V) ILIIL is having four projects: (1) Vinayak Vihar, (2) Balaji Vihar, (3) Indira Gandhi Nagar and (4) Aryan City where it is selling residential plots and shops. The average size

of the plots/shops (i.e. total size of the scheme divided by the number of plots being sold) are as under:

- (1) Vinayak Vihar. 108 sq yard
- (2) Balaji Vihar. 136 sq yard
- (3) Indira Gandhi Nagar. 151 sq yard and
- (4) Aryan City (Not available)

(VI) The number of investors and the amount mobilized from them in various schemes is as under:

Sl. No.	Name of scheme	Number of investors	Amount mobilized(Rs. Lakh)
1	Vinayak Vihar	59	18.17
2	Balaji Vihar	114	17.27
3	Indira Gandhi Nagar	48	62.07
4	Aryan City	22	74.49
Total		243	172.00

(VII) ILIIL has solicited money for investment from the public by offering the abovementioned plans. An investor who is desirous of investing in the above schemes has to execute an '*Application form and Agreement*' with ILIIL and subsequently the company issues an '*Allotment-cum-possession letter*'.

(VIII) It is noted from the audited financial statements for the years 2011, 2012 and 2013 that the '*plot booking receipts*' under the head "*Other Current liabilities*" had increased from ₹2,42,73,967/-(2011) to ₹3,24,20,084/- (2012) and further increased to ₹4,33,78,274/- (2013).

(IX) A perusal of the documents provided by the complainant shows as below:-

- (a) It is noted that the investor has to initially submit an application form containing the details of plan opted viz., Plan No., Name of plan, Number of plots, Area, Term of plan, date of expiry, total consideration, payment details etc. The application form

mentions the Risk factors and General Terms and conditions that applicant is expected to agree upon.

- (b) It is noted that there is a booklet containing the agreement between the company and the applicant containing various clauses to be signed by both the parties in respect of sale of plot of land and its development.
- (c) The brochures of the company contain details of various plans including the location maps and various facilities available in various projects of the company.

(X) It is noted that ILIIL has failed to furnish the following information sought by SEBI till date:

- i. Complete Brochures of the schemes/ offers which were made available to the public.
- ii. Clear copies of applications forms and Agreements that are required to be submitted by investors/applicants to participate in the schemes.
- iii. Sample copies of the registration letter and allotment letter/ agreement/ contract required to be entered by the investors who subscribed to the schemes.
- iv. Details of the scheme wise amounts mobilized by the company along with the number of investors under the schemes.
- v. Addresses of each investor.
- vi. Addresses of their branches operating in India or in other countries.
- vii. The company has also not provided copies of its annual reports as filed with Registrar of Companies.
- viii. ILIIL has not furnished any details of Sale deeds executed with local authorities in favour of customers till now.

(h) It is pertinent to mention that the company has sent the reply to SEBI communications after long delays. They have also not submitted the complete information as desired.

(12) The details of the '*Plans/Scheme*' towards the sale and development of plot/land offered by ILIIL have to be considered in light of Section 11AA of the SEBI Act. The aforesaid Section 11AA, which provides for the conditions to determine whether a scheme or arrangement is a '*collective investment scheme*', reads as follows:

“(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) or subsection (2A) shall be a collective investment scheme.

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

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

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

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

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

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

- (13) In the context of the abovementioned Section 11AA of the SEBI Act, the “Plans/Schemes” offered by ILIIL, is examined as under:

(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.

ILIIL collects funds from the public for the scheme of 'sale of plots and its development'. The amounts are collected for the scheme by offering 'Cash Down Payment Plan' and 'Installment Payment Plans'. An investor/buyer who is desirous of investing in the said scheme has to execute an 'Application form cum Plot Agreement' with ILIIL. After the execution of the 'Application Form cum Agreement', the company issues an 'Allotment-cum-possession letter'. It is noted from a sample application form furnished by ILIIL that a customer applies for a specific scheme offered by the company but not for a specific plot of land. There is no identified/demarcated plot/land. Though the 'Allotment cum possession letter' states that site plan of the land scheme is enclosed, however, no such plan is furnished by the company. As per ILIIL's reply, the company had collected ₹ 1.72 Crores from 243 investors under its

various projects viz., Vinayak Vihar, Balaji Vihar, Indira Gandhi Nagar and Aryan City. It is noted from the audited financial statements for the years 2011, 2012 and 2013 that the 'plot booking receipts' under the head "Other Current liabilities" had increased from ₹2,42,73,967/-(2011) to ₹3,24,20,084/- (2012) and further increased to ₹4,33,78,274/- (2013). It is also noted from the 'Agreement' that the funds raised from investors under the schemes of ILIIL which are pooled and used for the procurement and development of the land/plots. In view of the aforesaid it is evident that the instant Schemes/Plans of ILIIL satisfy the first condition stipulated in Section 11AA(2) of the SEBI Act.

(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.

It is noted from the various payment plans offered by ILIIL that the company is assuring 'estimated realizable value at the end of the term' to its investors. For instance, in the case of 'Installment Payment Plan "A" Type' for 3 years, if an investor opts for monthly instalment of ₹ 100/-, he/she is offered an 'estimated realizable value of ₹ 4179/-(approx.) at the end of the agreement period. The scheme also offers Personal Accident insurance for the investors. In view of above, it is apparent that contributions by customers (whether by installments or lump sum payment) are made to such scheme or arrangement with a view to receive expected land agreed upon or estimated cost of land as promised. Therefore, it is clear that the contributions or investments are made by the investor/customer under the scheme with a view to receive profits or returns, produce or property. Hence, I find that the instant scheme offered by ILIIL satisfies the second condition stipulated in Section 11AA(2) of the SEBI Act.

(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.

It is apparent from brochure and application form that contributions by customers/investors (whether by instalment or lump sum payment) are given to the company who in turn manage these funds on behalf of investors as per agreed terms of the plan. As per the '*Agreement*' furnished by an investor, there is no mention of precise details/specification of land/plot to be allotted to the investor at the time of executing the agreement. Furthermore, the company has failed to furnish till date any details of the ownership of plots transferred to investors.

It is noted from the '*Agreement*' that the customer shall be the owner on vacant physical possession of the flat/plot only after it is handed over to him, after execution of registered sale deed. The overall possession of the same shall be the responsibility of the company till the development period of plan is over. Normally, the plot cannot in any manner be sold, assigned, mortgaged, pledged or alienated without obtaining No Due Certificate from the company till payment of full consideration attributable to the cost of land and execution of registered sale deed. From the '*Agreement*' entered into with the investor, it is noted that ILIIL make arrangements for purchasing/procuring the land and undertakes to develop the land, irrigate it, plant saplings, crops, trees and use fertilizers, pesticides on the crops and plants. It also undertakes to arrange for the sale of the produce from such land on behalf of customers. ILIIL decides where to sell the produce and the price at which the same is to be done depending upon the grade of the produce and thereafter give the customer the '*net sale proceeds*'. As per the said agreement, the customer has no role to play and has to merely accept whatever proceeds are given and shall raise no dispute.

In light of these facts and circumstances, it is clear that the property, contribution or investment forming part of the Plans are managed by ILIIL on behalf of buyers/investors and the investors do not have any say whatsoever in the day-to-day management of the Plans. In view of the above, I find that the instant scheme/Plans satisfies third and fourth conditions stipulated in Section 11AA (2) of the SEBI Act.

- (14) The features of the *Schemes/Plans* offered by ILIIL, as discussed in the preceding paragraphs, shows that the activity of fund mobilization by ILIIL under its '*scheme(s)/ plan(s)*' with a promise of returns, *prima facie* falls within the ambit of '*collective investment scheme*' as defined under Section 11AA of the SEBI Act.

(15) In this context, it is relevant to refer to the observations of the Hon'ble Supreme Court of India in the matter of **P.G.F Limited &Ors. vs. UOI &Anr. (MANU/SC/0247/2013)**, wherein the Hon'ble Court has 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...”

(16) 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 ("**CIS Regulations**") also prohibits carrying on CIS activities without obtaining registration from SEBI. 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. It is noted that ILIIL has not obtained any certificate of registration under the CIS Regulations for its fund mobilizing activity from the public, under the schemes offered by it. Considering the above, I am of the view that ILIIL is *prima facie* engaged in fund mobilizing activity from the public, by 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.

(17) Further, the activity of illegal mobilization of funds by ILIIL through its schemes, *prima facie*, amounts to a fraudulent practice in terms of Regulation 4(2)(t) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market), 2003 ("**PFUTP Regulations**").

(18) It is noted that ILIIL was advised to submit complete details regarding the schemes, details of total number of investors, details of the amount collected and the amounts repaid/ land registered in the names of investors since the schemes came into operation. However, ILIIL

has not furnished the said information to SEBI till date. When considered in the context of the abovementioned *prima facie* finding, the inescapable conclusion is that non-submission of the information with respect to its schemes to SEBI is nothing but an attempt by ILIIL to conceal the true nature and operation of its fund mobilizing activity. As ILIIL has not furnished relevant information mentioned above, facts and circumstances of the case warrant urgent measures to protect the interests of the investors otherwise irreparable injury may be caused to the investors.

(19) In view of the foregoing, I, in exercise of powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act read with CIS regulations and PFUTP Regulations, hereby direct Insure Life Infrastructure Limited (CIN: U70101RJ2009PLC029925) and its past and present Directors viz., Mr. Jagdish Prasad Sharma (PAN: BDSPTS8933A) and Ms. Laxmi Khandelwal (PAN: ARTPK0675M), Mr. Jagdish Prasad Khandelwal (PAN: AIAPK3910H), Mr. Abhishek Khandelwal (PAN: AVMPK0092M)and Mr. Dinesh Kumar Sharma (PAN: BTATS2294E):-

- i. not to collect any fresh money from investors under its existing schemes;*
- ii. not to launch any new schemes or plans or float any new companies to raise fresh moneys;*
- iii. to immediately submit the full inventory of the assets including land acquired through money raised by ILIIL;*
- iv. not to dispose of or alienate any of the properties/ assets obtained directly or indirectly through money raised by ILIIL;*
- v. not to divert any funds raised from public at large which are kept in bank account(s) and/ or in the custody of ILIIL;*
- vi. to furnish all the information/ details sought by SEBI vide letter dated December 16, 2013 within 15 days from the date of receipt of this order, including,*
 - Details of amount mobilized till date,*
 - Scheme wise list of investors and their contact numbers and addresses,*
 - Details of investors repaid if any, with full addresses and telephone numbers etc.,*
 - Details of charges created on its assets by the company,*
 - Details of commission paid on amounts mobilized above,*
 - Details of agents along with their addresses, etc.,*
 - Audited Accounts for FY 2013-14 and FY 2014-15.*

- (20) The above directions shall take effect immediately and shall be in force until further orders.
- (21) This order shall be treated as a show cause notice and ILIIL and its abovementioned Directors may show cause as to why the plans/ schemes identified in this order should not be held as a '*collective investment scheme*' in terms of the Section 11AA of the SEBI Act and the CIS Regulations and 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 issued against them.
- (22) ILIIL and its Directors may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

Place: Mumbai

Date: May 08, 2015

S. RAMAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA