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

ORDER

In the matter of Application dated January 22, 2015 filed by Alchemist Infra Realty Limited

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1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), vide Order dated June 21, 2013 ("the **SEBI Order**") found that the schemes/arrangements/operations of **Alchemist Infra Realty Limited** (hereinafter referred to as "the **Company**") were in the nature of collective investment schemes in terms of section 11AA of the SEBI Act, 1992 and that the Company launched the collective investment schemes without obtaining a registration certificate from SEBI. The Company was found to have contravened the provisions of section 12(1B) of the SEBI Act, 1992 and regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 ("the CIS Regulations"). Accordingly, the SEBI Order issued the following directions in respect of the Company and its directors:

".....

50. *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 regulations 65 and 73 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby issue the following directions to safeguard the interest of the investors :*

a) *Alchemist Infra Realty Limited 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) *Alchemist Infra Realty Limited and its directors including Mr. Brij Mohan Mahajan, Mr. Sunil Kanti Kar and Mr. Narayan Madhav Kumar 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 Alchemist Infra Realty and its directors ;*

(ii) *SEBI would make a reference to the State Government/Local Police to register a civil/criminal case against Alchemist Infra Realty 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, Alchemist Infra Realty Limited.*

c) *Alchemist Infra Realty Limited and its directors Mr. Brij Mohan Mahajan, Mr. Narayan Madhav Kumar, Mr. Balvir Singh, Mr. Chandra Shekhar Chauhan and Mr. Sunil Kanti Kar 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.*

51. *The above directions shall come into force with immediate effect*".

2. The Company and two of its directors, Mr. N. Madhav Kumar and Mr. Brij Mohan Mahajan, filed an appeal (in Appeal no. 124/2013) before the Hon'ble Securities Appellate Tribunal ("the Hon'ble SAT") challenging therein the SEBI Order. The Hon'ble SAT disposed of the appeal by way of a common order dated July 23, 2013, wherein the following directions/observations were made:

".....

25. In light of the above, we have no hesitation in upholding the impugned order dated June 21, 2013 finding no legal infirmity with the same. Now, keeping in view the large number of investors involved, i.e., around one and a half million, and the long and tedious process of implementing the scheme of repayment involved which would entail a number of steps before money is finally received by the investors, including going through more than one and a half applications; ascertaining the amount / money to be paid in each and every case; disposing off the property; writing and dispatching cheques to the investors etc., we are inclined to grant them a longer period of time than that provided by SEBI. However, we feel that the time frame of five years sought by Appellants would be unnecessarily long, and in the facts and circumstances of the case, a period of eighteen months would duly suffice, with a rider that the Appellants shall submit a report to SEBI every six months giving accurate details regarding the progress made while executing the scheme of repayment in question. In case any eventuality arises in future for the Appellants to seek further extension of time to implement SEBI's order in question, the Appellants may approach SEBI for extension of time and SEBI will consider the same and pass appropriate order depending upon progress made by Appellants in respect of implementation of impugned order. To this extent, the impugned order dated June 21, 2013 stands modified. With the aforesaid directions the Appeal is, accordingly, dismissed. Misc. Application No. 67 of 2013 preferred by the Appellants also, therefore, stands disposed of. No costs".

{Emphasis supplied}

3. The further appeals (in Appeal Nos.7924 and 7925 of 2013) filed by the Company before the Hon'ble Supreme Court of India were dismissed vide Order dated September 05, 2014, with liberty to '*work out the remedy elsewhere*'.

4. The Company filed its Application dated January 22, 2015 (*after a period of more than 4 months from the date of Order of Hon'ble Supreme Court*) with SEBI *inter alia* making the following submissions:

a. Hon'ble SAT vide Order dated July 23, 2013 had disposed of the appeals filed by the Company while extending the period to refund from 3 months to 18 months. Hon'ble SAT also observed that the appellants may approach SEBI for extension of time and SEBI will consider the same and pass appropriate order depending upon the progress made by appellants in respect of implementation of impugned order.

b. The Hon'ble SAT had also made a finding that regulation 73 of the CIS Regulations was applicable to the scheme run by the Company.

c. Aggrieved by the common order dated July 23, 2013, the Company preferred two statutory appeals being CA No. 7924/2013 and CA No. 7925/2013 before the Hon'ble Supreme Court. The Hon'ble Supreme Court had ordered the issuance of notice in the said appeals. After entering appearance, SEBI filed its counter affidavit in both the appeals and contended therein "*I further say and submit that the directions in question have also been passed by the Respondent-SEBI under regulation 73 of the CIS Regulations and the appellant company has to follow the procedure as prescribed thereunder and the Respondent has not restrained the Appellant Company from issuing any information memorandum*".

d. In these circumstances, upon hearing the Company's submissions, the Hon'ble Supreme Court by its Order dated September 05, 2014 was pleased to permit withdrawal of the appeals with liberty to the Company to work out its remedy elsewhere, in as much as SEBI contended that the Company was not restrained from issuing any Information memorandum and take steps as contemplated under regulation 73 of the CIS Regulations.

e. It is pertinent to note that SEBI contended that regulation 73 is applicable to the business of the Company and has in fact relied on the same from time to time in the aforesaid proceedings including in the Order dated June 21, 2013.

f. It is also pertinent to note that in its counter affidavit filed before the Hon'ble Supreme Court, SEBI *inter alia* stated that regulation 73 of the CIS Regulations was required to be followed by the Company and was free to do so inasmuch as SEBI has not stopped it from doing so.

g. Although, subsequent to September 05,2014, the Company was desirous of sending the Information memorandum to the investors as contemplated under regulation 73 of the CIS Regulations, no such Memorandum could be sent as no intimation was received from SEBI as provided under regulation 73(2). The Company was further advised that such Information Memorandum could not be issued until such intimation was received from SEBI. While the Company was in the process of finalizing the steps to be taken for obtaining the intimation/approval vis-a-vis issuance of the Information Memorandum, it became necessary for the Company to *inter alia* apply for extension of time to comply with the directions as contained in the Order dated June 21, 2013.

h. Consequently, the Company is making a composite application to SEBI for necessary order to comply with the provisions of regulation 73 of the CIS Regulations as well as for extension of time to implement the direction contained in the SEBI Order dated June 21, 2013.

i. The Company and its directors never acted in contravention of regulation 73 of the CIS Regulations. However, despite the provisions of regulation 73 being repeatedly held to be applicable to the Company, the procedure prescribed under the same has not been followed. It is relevant to bear in mind that regulation 73 of the CIS Regulations deals with repayment of investors and thus no prejudice or harm or loss will be caused to any party if the procedure prescribed under regulation 73 of the CIS Regulations is followed by the Company.

j. Notwithstanding the same, in terms of the SEBI Order dated June 21, 2013 and the SAT Order dated July 23, 2013, the Company had made refund of an aggregate sum of Rs.1077,02,90,561/- out of a sum of Rs.1916,39,43,857/- as on March 21, 2013. The Company has submitted reports on February 21, 2014 and September 12, 2014. A sum of Rs.839,36,53,296/- is only outstanding in terms of the aforesaid orders.

k. The Company owns several properties in many States in India and for the purpose of implementing the directions contained in the Order dated June 21, 2013 is in the process of developing such lands and/or dispose the same at the best possible terms. On account of overall slump in the real estate prices, despite its best efforts the Company is not able to crystallize any agreement either for disposal or for development of such lands. The development and/or disposal of such lands, in due course of time is likely to yield a sum far in excess of the amount presently outstanding. To ensure

this, the Company has to wait for some time so that there is correction in the real estate market and the properties are able to fetch their just and reasonable value.

l. There is every possibility of most of the investors consenting to the continuation of the scheme of the Company in order to reap maximum benefit in the appreciation of the value of the real estate which is likely to increase in next few months.

m. In these circumstances and in view of the aforesaid liberty granted to the Company by the Hon'ble Supreme Court of India vide its Order dated September 05, 2014 the Company submitted that an Order be passed by SEBI directing the Company to submit an Information Memorandum to SEBI in terms of regulation 73 of the CIS Regulations within a period of four weeks from the date of such Order for approval and upon such approval, to send the same to the investors within a period of one week thereafter and act in accordance with the provisions of regulation 73 of the CIS Regulations. It was further submitted that the Company be permitted not to make any further payment to its investors until the process of circulating the information memorandum is completed and the views of the investors to continue or not with the scheme are ascertained in terms of regulation 73 of the said regulations.

n. The Company submitted that staying the process of refund until the process of circulation of information memorandum and obtaining views of the investors is imperative to give effect to SEBI's Order dated June 21, 2013 read with SAT's Order dated July 23, 2013 and Order dated September 05, 2014 passed by the Hon'ble Supreme Court. It was further submitted that continuing the process of refund even without going through the procedure prescribed under regulation 73 would deny the investors of the Company their right to decide whether to continue or discontinue with the scheme which may have implications for both the Company and SEBI whether or not the process of circulation is completed and whether or not eventually positive consent is obtained from investors representing 25% or more of the total investors.

o. The Company further submitted that the direction contained in clause (c) of SEBI's Order dated June 21, 2013 restraining the Company from accessing the securities market and prohibiting it from buying, selling or otherwise dealing in securities until all the schemes are wound up and the monies are refunded to investors, is a major obstacle to the Company's efforts to refund money in as much as the said direction has effectively stymied the efforts of the Company to generate funds for refund from the securities market. It was submitted that such direction militates against the principle of effectiveness and is contrary to the order of refund itself.

p. The Company further submitted that for the reasons beyond its control and particularly on account of the immensity and magnitude of the task at hand as recognized by the Hon'ble SAT in its Order dated July 23, 2013 the Company has not been able to complete the process of refund despite its best efforts. In the circumstances, the Company was left with no option but to exercise the liberty granted to it by the Hon'ble SAT vide its Order dated July 23, 2013 and requested SEBI to grant an extension of 24 months in completing the process of implementation of the directions contained in the SEBI Order dated June 21, 2013. The Company further requested SEBI to modify the Order dated June 21, 2013 to the extent of recalling direction (c) so as to enable the Company to use its generated funds from the securities market.

q. **The Company requested the following** :

(i) to extend the time to implement the Order dated June 21, 2013 by a further period of 24 months from the date of such order;

(ii) to issue suitable orders and/or directions with regard to submission and circulation of Information Memorandum as contemplated under regulation 73 of the CIS Regulations, in such manner as may be deemed appropriate in the facts and circumstances of the case;

(iii) to suspend the implementation of the directions contained in the SEBI Order dated June 21, 2013 until the provisions of regulation 73 of the CIS Regulations are complied with on such terms and conditions as may be deemed fit and proper in the facts and circumstances of the case;

(iv) to modify SEBI Order dated June 21, 2013 to the extent of recalling direction (c) of the said order on such terms and conditions as may be deemed fit and proper in the facts and circumstances of the case.

The Company also requested an opportunity of personal hearing in the matter.

5. The Company was afforded an opportunity of personal hearing in the matter on March 17, 2015. The date of hearing was rescheduled to March 26, 2015 as per the request for adjournment made by the Company. Hearing was rescheduled to April 08, 2015 as per another request for adjournment made by the Company. In the personal hearing held on April 08, 2015, the Company was represented by Ms. Sonia Dube and Mr. Shatadru Chakraborty, Advocates, who made submissions on the lines of those made in the application dated January 22, 2015 filed by the Company. As requested by the representatives, liberty was granted to file additional written submissions within a period of 7 days.

6. Thereafter, on April 17, 2015, the Company filed written submissions reiterating its earlier submissions and requesting the following :

(i) Time to implement the order dated June 21, 2013 as modified by order dated July 23, 2013 passed by Hon'ble SAT, be extended for a period of 24 months in order to enable the Company to complete the refund, as directed.

(ii) In the meantime appropriate directions be given with regard to the steps to be taken by the Company for complying with the Regulation 73 of CIS Regulations in such manner and/or on such terms as may be thought fit and appropriate in the facts and circumstances of the case.

(iii) Direction (c) of the Order dated June 21, 2013 be suitably varied and / or modified so as to enable the Company to sell the securities held by it for the purpose of obtaining sale proceedings thereof and utilize the same for payment to the investors in terms of the Order dated June 21, 2013.

(iv) If necessary, in order to ensure compliance with regulation 73 of CIS Regulations, directions with regard to payment to the investors be suspended until compliance thereof inter-alia, on such terms and conditions as may be deemed fit and proper.

(v) The Company is ready and willing to abide by and to comply with such other conditions and/or restrictions and/or directions as may be thought fit and appropriate in the facts and circumstances of the case so that justice is dispensed to all concerned.

7. I have considered the submissions made by the Company in its application dated January 22, 2015 and written submissions received on April 17, 2015. Before I proceed to deal with the Application, it is necessary to note the following:

a) The SEBI Order dated June 21, 2013 held that the Company was operating collective investment schemes in violation of section 12(1B) of the SEBI Act, 1992 and regulation 3 of the CIS Regulations.

b) The SEBI Order had *inter alia* directed the Company and its directors to *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.*

c) In appeal, the Hon'ble SAT had upheld the SEBI Order and extended the time from 3 months (as directed in the SEBI Order) to 18 months for making the refunds. Hon'ble SAT had granted liberty to the Company to approach SEBI in case eventuality arises for it to seek further extension of time. The following observations from the Order July 23, 2013 of Hon'ble SAT are relevant to note:

"25. In light of the above, we have no hesitation in upholding the impugned order dated June 21, 2013 finding no legal infirmity with the same ..... and in the facts and circumstances of the case, a period of eighteen months would duly suffice, with a rider that the Appellants shall submit a report to SEBI every six months giving accurate details regarding the progress made while executing the scheme of repayment in question. In case any eventuality arises in future for the Appellants to seek further extension of time to implement SEBI's order in question, the Appellants may approach SEBI for extension of time and SEBI will consider the same and pass appropriate order depending upon progress made by Appellants in respect of implementation of impugned order. To this extent, the impugned order dated June 21, 2013 stands modified.

d) The SEBI Order as upheld by the Hon'ble SAT (subject to the extension of time from 3 months of 18 months) is in force as the same has not been quashed by the Hon'ble Supreme Court. The Hon'ble Supreme Court has dismissed the appeals filed by the Company and others as withdrawn with liberty to *'work out the remedy elsewhere'*.

e) The period of 18 months (considering the Order dated July 23, 2013 of the Hon'ble SAT) has already expired on January 22, 2015. The application has been made on the last date of expiry of the time period granted by the Hon'ble SAT.

8. The Company has requested for extension of time for making refunds by a further period of 24 months from the date of such order. The ground stated by the Company for such request is that it owns several properties in many States in India and for the purpose of implementing the directions contained in the SEBI Order is in the process of developing such lands and/or dispose the same at the best possible terms. It was submitted that on account of overall slump in the real estate prices, the Company is not able to crystallize any agreement either for disposal or for development of such lands and that the development and/or disposal of such lands, in due course of time is likely to yield a sum far in excess of the amount presently outstanding. The Company also contended that it has to wait for some time so that there is correction in the real estate market and the properties are able to fetch their just and reasonable value.

The above submission indicates that the Company wants to 'time' the market so that it can sell the properties at a desired higher price for its assets. As per the Order of Hon'ble SAT, the Company could

approach SEBI only in case of any *'eventuality arising in future'* for seeking further extension of time to implement SEBI's Order. Timing the market or waiting for price correction of real estate cannot be termed as an 'eventuality'. The Company was well aware of the timeframe to make refunds in terms of the Order passed by the Hon'ble SAT. Further, the interest of investors cannot be prejudiced by allowing the Company to wait for a price which matches with its liking.

The non-compliance in making payments to investors is committed by the Company despite the long period of 18 months available in terms of the Order of Hon'ble SAT. It is almost close to two years from the date of the Order passed by Hon'ble SAT directing the Company to make refunds. Still substantial amounts (*to the tune of around Rs.800 crore even as per the Company*) remain outstanding and due to investors. It can therefore be concluded that the Company was lax and callous when it came to repaying investors within the time frame as directed by the Hon'ble SAT and the conduct of the Company in making the request are nothing but a ploy to further delay the repayment.

The Company has not been able to cite any eventuality that would have entitled it to seek further extension of time from SEBI.

In view of the above observations and considering the investors' whose interest was sought to be protected by the Orders passed by SEBI and Hon'ble SAT, there is no reason for SEBI to accept the request of the Company for further extension of 24 months to make the refunds. Accordingly, the said request needs to be rejected.

9. The Company has also requested SEBI to issue suitable orders with regard to submission and circulation of Information Memorandum as contemplated under regulation 73 of the CIS Regulations. The Company submitted that there is a possibility that investors would consent for continuing with the 'scheme'. The Company further contended that regulation 73 was available to it as (i) the same was mentioned in the SEBI Order and that (ii) in SEBI's counter affidavit filed before the Hon'ble Supreme Court, SEBI had stated that regulation 73 was required to be followed by the Company and that SEBI has not stopped it from doing so. However, as no extension of time to make refunds is being granted, the above submissions/request of the Company becomes redundant. Further, the request made by the Company to suspend the implementation of the SEBI Order until the provisions of regulation 73 are complied with, also becomes infructuous.

10. The Company, in its application, has also requested SEBI to modify the SEBI Order dated June 21, 2013 to the extent of recalling the direction (c) of the said Order. I note that the SEBI Order in paragraph 50 (c) had directed "*Alchemist Infra Realty Limited and its directors Mr. Brij Mohan Mahajan, Mr. Narayan Madhav Kumar, Mr. Balvir Singh, Mr. Chandra Shekhar Chauhan and Mr. Sunil Kanti Kar 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*". The Company has submitted that this direction was a major obstacle to its efforts to refund money in as much as the said direction has stymied the efforts to generate funds for refund from the securities market. It was contended that such direction militates against the principle of effectiveness and is contrary to the order of refund itself.

In this regard, it has to be appreciated that the SEBI Order was upheld by the Hon'ble SAT with a modification only with respect to the time period for making refunds and the liberty granted to the Company to approach SEBI for further extension of time in case of an eventuality. The following portion from the SAT Order needs to be referred again:

" In light of the above, we have no hesitation in upholding the impugned order dated June 21, 2013 finding no legal infirmity with the same ..... However, we feel that the time frame of five years sought by Appellants would be unnecessarily long, and in the facts and circumstances of the case, a period of eighteen months would duly suffice, with a rider that the Appellants shall submit a report to SEBI every six months giving accurate details regarding the progress made while executing the scheme of repayment in question. In case any eventuality arises in future for the Appellants to seek further extension of time to implement SEBI's order in question, the Appellants may approach SEBI for extension of time and SEBI will consider the same and pass appropriate order depending upon progress made by Appellants in respect of implementation of impugned order. To this extent, the impugned order dated June 21, 2013 stands modified. With the aforesaid directions the Appeal is, accordingly, dismissed".

In view of the above, it is very clear that all the findings, violations and directions passed by SEBI in its Order dated June 21, 2013 are upheld subject to the modification by Hon'ble SAT. The direction made by SEBI in clause (c) of paragraph 50 of the SEBI Order, which restrained the company and its directors from accessing the securities market and prohibited them 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, is also upheld by the Hon'ble SAT. The Hon'ble Supreme Court did not interfere with the Orders of SEBI and SAT. Accordingly, such direction has attained finality by virtue of the Order of Hon'ble SAT. In such circumstances, any modification to the direction made at clause (c) by SEBI is not possible.

11. I also note that the Hon'ble SAT while granting time of 18 months to make refunds has also directed the Company to *submit a report to SEBI every six months giving accurate details regarding the progress made while executing the scheme of repayment.* In this regard, I note that -

a) the Company has, vide its reports dated February 21, 2014, September 12, 2014 and March 17, 2015 submitted copies of bank certificates giving details of the amount (approx. Rs.1126 crore) repaid. The Company has submitted a Compact Disc (C.D.) giving details of repayment which includes name of the investor, cheque number, the name of the bank and date of issuance of cheque.
b) SEBI vide letter dated December 09, 2014, had advised the Company to submit by December 16, 2014, the registration number and address of the investors to whom repayments were made . The Company failed to provide such details till date despite issuance of a reminder on March 20, 2015.

12. In view of the foregoing, the request made by the Company for extension of time by further period of 24 months for making refunds to investors is hereby rejected. As the company, Alchemist Infra Realty Limited and its promoters/directors have not repaid its investors within the time allowed, SEBI shall as contemplated in its Order dated June 21, 2013 which has been upheld with modification (of the period for making refunds) by Hon'ble SAT, initiate the following action:

(i) Prosecution proceedings under section 24 and Adjudication proceedings under Chapter VI of the Securities and Exchange Board of India Act, 1992 against the Company and its directors for the violations as found in the SEBI Order dated June 21, 2013 (as upheld with modification by Hon'ble SAT) and their failure to refund the investors within the period allowed by the Hon'ble SAT;
(ii) Refer the case to the State Government/Local Police to register a civil/criminal case against the Company, 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 ;
(iii) Refer the matter to the Ministry of Corporate Affairs, Government of India, with a request to initiate the process of winding up of the company, Alchemist Infra Realty Limited.

Further, in view of the default committed in repaying investors within the period granted to the Company and its promoters/directors, SEBI shall also initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder.

13. The Company and its promoters/directors including Mr. Brij Mohan Mahajan, Mr. Sunil Kanti Kar and Mr. Narayan Madhav Kumar are directed to provide a full inventory of all their assets, properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form, within a period of 10 days.

14. The Application dated January 22, 2015 filed by the company, Alchemist Infra Realty Limited is accordingly disposed of.

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date : May 27th, 2015
Place : Mumbai