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

ORDER

In the matter of 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 **Final 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 accordingly 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"). The following directions were issued in the Final Order 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 challenged the Final Order by way of an appeal (in Appeal no. 124/2013) before the Hon'ble Securities Appellate Tribunal ("the Hon'ble SAT"). The Hon'ble SAT disposed of the appeal vide an 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 period of 18 months granted by the Hon'ble SAT expired on January 22, 2015. However, 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 and on the last day of time period allowed by Hon'ble SAT*) 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) of the CIS Regulations. 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.8,39,36,53,296/- 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 on April 08, 2015, when it 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. 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.

6. SEBI, on consideration of the application, the submissions of the Company and the facts and circumstances of the case, *inter alia* observed the following in the Order dated May 27, 2015:

(a) The Company did not cite any eventuality for seeking further extension of time and that it wanted to 'time the market' for selling its properties for purposes of making refunds. Interest of investors cannot be prejudiced by allowing the Company to wait for a price which matched with its liking.

(b) The Company did not complete making refunds despite the 18 month period allowed by Hon'ble SAT for the purpose.

(c) Direction debarring the Company and directors from accessing the securities market cannot be recalled as the Final Order attained finality (with only an extension of time granted by Hon'ble SAT for making refunds).

(d) The Company failed to provide the registration number and address of investors to whom repayments were claimed to be made.

(e) Request made for circulation of information memorandum in terms of regulation 73 became redundant as no extension was granted for making refunds.

Accordingly, the application was disposed off with the following decision:

"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."

The above Order also directed the Company and its promoters/directors including Mr. Brij Mohan Mahajan, Mr. Sunil Kanti Kar and Mr. Narayan Madhav Kumar 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.

7. The Company thereafter filed an appeal (in Appeal no. 298/2015) before the Hon'ble SAT challenging the SEBI Order dated May 27, 2015. This appeal (including Misc. Appln. No.200/2015) was disposed of by Hon'ble SAT vide Order dated June 15, 2015 with the following observations:

> *"5. Admittedly, the requisite particulars called for have not been furnished till date. Without verifying the claim made by the Appellant, the WTM of SEBI could not have granted extension of time. Failure on part of the Appellant to comply with the direction of WTM of SEBI without any reason is highly unjustified. However, looking to the fact that the Appellant claims to have paid Rs.1127,05,80,926 to the investors by relying on bank statements and Counsel for Appellant states that requisite particulars would be furnished*

within a period of two weeks from today, in the interest of justice, we set aside the impugned order dated 27/5/2015 subject to payment of cost of Rs.1 lac to be paid by Appellant to SEBI within a period of one week from today. Appellant is further directed to furnish the particulars demanded by SEBI vide letters dated 9/12/2014 and 20/3/2015 as also the particulars set out in para 13 of the impugned order within a period of two weeks from today. If the requisite particulars are furnished within the time stipulated herein, then the WTM of SEBI shall verify the same and pass appropriate order on the application filed by the Appellant in accordance with law, after giving an opportunity of hearing to the Appellant. If the Appellant fails to furnish requisite particulars within the time stipulated herein, the order passed on 27/5/2015 shall stand revived."

8. Pursuant to the above Order of the Hon'ble SAT, the Company, vide letter dated June 29, 2015 submitted voluminous information/documents viz., 27 spiral bound files containing details such as cheque numbers, cheque issued in favour of, amount, allotment number and address of the investor to whom Company claimed to have made repayments from August 01, 2013 to July 31, 2014. The Company also submitted an inventory of its assets/properties/bank accounts, etc., and also that of its Directors.

9. It is the case of the Company that it had refunded an aggregate of Rs.1077 crore as on March 21, 2013 out of Rs.1916 crore. In order to verify the claim regarding payments made by the Company, SEBI had engaged M/s. T. R. Chadha & Co., Auditors, on August 06, 2015. SEBI vide letter dated August 06, 2015 informed the Company that SEBI would be appointing an auditor and that the Company would bear the fees for the auditing. The Company was also directed to appoint a nodal officer for all future communication with SEBI and the auditor and to ensure that all documents related to repayments are made available to the auditor in hard copy as well as in soft copy.

10. In response, the Company, vide letter dated August 13, 2015, informed that it would not be able to bear the audit fee as it was facing severe financial crisis and that it had already incurred expenses and provided SEBI with Certificates of their auditors and hence unable to appreciate the justification of appointing an independent auditor by SEBI. The Company also said that appointment of nodal officer is not required as this would reduce their expense. In addition, the

Company informed that soft copy of documents was not readily available and preparing the same would take time and would be submitted at the earliest. Vide email dated August 13, 2015, the auditor informed that the audit team has been continuously following up with the Company to schedule a meeting. On visiting the office premise, after long discussions with Mr. Sushil Sharma, Senior manager and Mr. Jairaj, VP Corporate Affairs, they agreed to schedule a meeting on August 18, 2015. The time and place was not confirmed during the discussion. The auditor, vide letter dated August 27, 2015 again informed SEBI *inter alia* that no time or place was confirmed for the meeting on August 18, 2015. In the absence of any meeting with the Company, the auditor informed that they were unable to estimate the time required to complete the audit assignment nor able to commence the audit as the Company did not show any interest in having a meeting for the discussion to get the assignment started. On receipt of the letter from the auditor, SEBI vide letter dated August 31, 2015 advised the Company to extend full co-operation to the auditor as per directions of Hon'ble SAT for verification of repayments. Though the Company assured SEBI of extending full co-operation to the auditors, it is noted that inspite of repeated efforts from the auditor vide letters dated September 02, 2015, October 06, 2015, October 20, 2015 and November 02, 2015 to the Company requesting for a meeting to be scheduled and to confirm a place and time, even after a lapse of three months, the Company had not scheduled a meeting with the auditor nor extended co-operation to commence the audit assignment.

11. It is noted from the chronology of events that the Company did not properly and diligently co-operate with the auditor in respect of the verification exercise. Considering that even after a lapse of three months since the appointment of Auditor, the Company did not co-operate with the auditor and schedule a meeting to discuss the verification process, SEBI on a random basis, wrote letters to investors (whose names were taken from the list submitted by the Company vide letter dated June 29, 2015) enquiring whether they have received repayments of principal amount and assured return as promised by Company. During September 02, 2015 to November 17, 2015, SEBI wrote to a total of 378 investors spread mainly across West Bengal, Uttar Pradesh, Jharkhand, Tripura, Bihar, etc.,). The response from investors to such SEBI letter is tabulated below:

State	Total letters sent	Letters undelivered	Replies received confirming receipt of refunds	Reply received about non-refund
West Bengal	197	14	4	10
Uttar Pradesh	93	9	1	1
Jharkhand	31	3	-	0
Bihar	24	7	-	0
Tripura	20	3	-	0
Maharashtra	8	4	1	0
Andhra Pradesh	4	1	-	0
Punjab	1	0	-	0
Total	**378**	**41**	**6**	**11**

12. It is important to note that only 6 out of 378 investors confirmed having received payments. Further, of the total letters sent to investors (*address of investors as provided by the Company*), 41 letters returned undelivered due to incomplete or insufficient address. SEBI received replies (by email and through post) from 11 investors informing that they have not received refund from Company. These are investors to whom Company has claimed to have made repayments through cheques issued in favour of them. The Company had submitted to SEBI the cheque number of each cheque issued to investor to indicate that money has been debited from the account of Company. However, the investors have stated that they have not received the money in their bank accounts. Therefore, the claim of refund/repayment becomes incorrect.

13. SEBI had also received a report vide letter dated April 22, 2015 (*the date was inadvertently mentioned as December 22, 2014 in the notice dated November 20, 2015 discussed in the next paragraph*) from the Office of the Joint Director of Income Tax stating that during their survey operations conducted at the office premise of the Alchemist Group, approximately 12,900 cheques issued by Alchemist Infra Realty Limited in the names of various depositors were found and seized. Almost all of the 12,900 cheques were found to be endorsed in favour of Alchemist Township India Ltd (hereinafter referred to as "ATIL"). The Income Tax report indicated that the funds

which are being refunded by Company are being routed to a group company namely Alchemist Township India Limited.

14. SEBI therefore issued a notice dated November 20, 2015 to the Company and its directors, informing them about the report of the Income Tax Dept and verification exercise carried out by SEBI. The notice *inter alia* also stated the following and alleged as follows:

> "…..
> 16. *Investors to whom Noticee No.1 has alleged to have made repayments through cheques issued in favour of them have replied to SEBI informing that that they have not received refund of their principal amount and assured return. It is therefore alleged that that there is no veracity in the claim of Noticee No.1 that the repayments have been made. Noticee No.1 has submitted cheque number issued to each investor to indicate that money has been debited from the account of Noticee No.1. However, since the investors have not received the money in their bank accounts, it suggests that money has been credited to a different beneficiary.*
>
> 17. *Income Tax office has given a copy of an endorsed cheque dated September 12, 2013 issued to an investor Mr.Rishikesh Singh from PNB account of Noticee No.1. On the back side of the cheque, the entity has signed and has endorsed it in favour of ATIL. From the endorsed cheques, it is alleged that the investors' money which AIRL claims to be refunding is actually being routed into another group company ATIL. Examination of Bank accounts of AIRL and ATIL for the month of August 2013 show that money from AIRL has been credited to ATIL through these endorsed cheques.*
>
> 18. *Thus, it is claimed that there is circulation of funds taking place between Noticee No.1 and ATIL and no actual refunding of funds to investors of Noticee No.1 is taking place. It appears that funds have not been refunded to investors but rather it is claimed that money has changed hands from Noticee No.1 to ATIL. Therefore, it is alleged that Noticee No.1 has made false representations regarding repayments made to investors and in reality, it is alleged that the investors have not received refund of their principal amount and assured return.*
>
> 19. *In view of the above, Noticee no. 1 to 4, i.e., the company and its directors, are advised to Show Cause as to why the application dated January 22, 2015 requesting, inter-alia, for extension of time by 24 months should not be rejected by SEBI and the SEBI Order dated May 27, 2015 should not be revived.…*"

The above said notice advised the Company and its directors to file their response by December 04, 2015 and appear in a personal hearing fixed on December 10, 2015.

15. The Company, vide letter dated December 07, 2015, made the following submissions:

a. "*We are not carrying on any Collective Investment Scheme*

b. By an order dated 15.06.2015, SAT had set aside the order dated 27.05.2015 and directed SEBI inter alia to pass appropriate order on the application filed by us after giving an opportunity of hearing to us.

c. The above application directed to be heard by you inter-alia included a prayer for issuance of suitable order and/or directions with regard to submission and circulation of Information memorandum as contemplated under Regulation 73 of CIS Regulations in such manner as may be deemed in the facts and circumstances of the case.

d. Subsequently, after complying with the directions contained in the order dated 15.06.2015, by letter dated 07.08.2015, we had requested you to grant necessary approval to the Information Memorandum. However, in the absence of any response, on 19.10.2015, we filed an application before SAT praying inter alia for an order directing you to consider and grant necessary approval for issuance of the said Information Memorandum. Such application was heard on 27.10.2015 and adjourned to 18.12.2015, in view of time obtained by you for filing reply.

e. No reply to the said application has been filed as directed.

f. *We have been advised that in the aforesaid background, the Show Cause Notice dated 20.11.2015 is without jurisdiction and not in accordance with law*".

16. The Company further requested for inspection of documents relied upon in the notice dated November 20, 2015 issued by SEBI. Accordingly, the request was acceded to and Company was informed vide letter dated December 11, 2015 that inspection of documents was scheduled on December 17, 2015 and the personal hearing was fixed on January 15, 2016. The Company and Directors were advised to file their submissions to the notice dated November 20, 2015 on or before the date of personal hearing. During inspection of documents, Company contended that they need to be shown the entire Income Tax report and not the extract relied upon in the SCN. The request was declined as the relevant extract was already shared and the entire report has confidential matters.

17. On the date of personal hearing i.e. January 15, 2016, the Company was represented by its Advocates. Senior Advocate Mr. Rajiv Nayar tendered preliminary reply dated January 15, 2016 to the SEBI notice and requested time of 4 weeks for filing detailed response. The Company was granted 4 weeks' time for filing its reply and the further hearing was fixed on

February 18, 2016. The following are the submissions made by the Company in the reply dated January 15, 2016:

1. Pursuant to Order dated June 15, 2015 of the Hon'ble SAT, the Company vide letter dated August 07, 2015 submitted a draft information memorandum. As there was no response from SEBI, the Company filed an application before Hon'ble SAT. The Company requested SEBI to await the directions of Hon'ble SAT before disposing off the SEBI notice dated November 20, 2015.
2. SEBI may consider and pass necessary directions for circulation of the Information Memorandum as contemplated under regulation 73.
3. Verification process as directed by SAT was still going on. SEBI had appointed M/s.T R Chadda & Co. as independent auditors on August 06, 2015 and the Company has been corresponding with the said independent auditors. As a matter of fact, by its letter dated 07.11.2015, the Company had requested the auditors to fix a meeting on 16.11.2015 or at any other convenient time. The Company is ready and willing to render every assistance and co-operation to the auditors. The process of refund is ongoing and requisite details in this regard will be furnished.
4. The reliance on the Report of the Income Tax Department dated 22.12.2014 is bad in law in as much as the said report was not relied upon in the order dated 27.05.2015 or before SAT during hearing of Appeal No.298 of 2015 wherein the order dated 15.06.2015 was passed. As such the allegations made in the report are extraneous and not relevant to the question of repayment. In any event, inspection of the entire report has not been granted to the Company despite request.
5. SEBI in its email dated 01.01.2016 stated that Income Tax report, except for the extracted portion disclosed in the SCN, is not pertaining to the present matter and is not relevant to the Company. But both the report dated 22.12.2014 and the said extract refers to the Alchemist Group. In the circumstances, the distinction sought to be drawn by SEBI which makes the extract alone and not the rest of the report relevant to Company is not clear. The distinction sought to be drawn is all the more confounding for the reason that report as enclosed with the SCN, itself in paragraphs 3 and 4 refer to the Company.

6. In the SCN, SEBI has mentioned about 41 letters addressed to investors having come back undelivered. The Company is willing to render any assistance required by SEBI to ascertain the present/complete addresses of the said investors so as to effect delivery of said letters.
7. SEBI has alleged in the SCN that 11 investors have claimed that they have not received the refunded amount. It was submitted that a mere claim by such investor does not constitute proof of their not having received refund. Their claim that they have not received refunds need to be verified in accordance with law by issuing summons to the said persons under Section 11 (3) of SEBI Act, 1992 to examine/cross-examine them to ascertain their truthfulness.
8. Company is in possession of the original certificates of property surrendered by the said investors at the time of accepting refund and is ready and willing to furnish the same.
9. The Company requested for inspection of the entire report referred to in paragraph 4 of the letter of the Income Tax dated 22.12.2014.
10. The Company requested SEBI to withdraw the notice dated November 20, 2015 and requested for directions to schedule a meeting with the auditors so as to carry forward the process of verification and to further expedite such process.
11. The Company is ready and willing to assist in the verification process and towards this end seeks time to submit documents.

18. In the personal hearing held on February 18, 2016, the learned Senior Advocate submitted that the Company is co-operating with the SEBI appointed Auditor for verification of claims regarding repayments. The learned counsel also submitted that the Auditor vide letter dated February 16, 2016 has sought for more information, which the Company would be submitting at the earliest. The learned counsel sought for time to submit the information/records. Considering the time already taken by the Company in assisting the Auditor with respect to the verification exercise, the Company was afforded time of one month, as a last and final opportunity, to submit all records/information to the Auditor and that the Final Report shall be submitted by the Auditor within the said period. The learned counsel was then advised to make submissions with respect to the Application including their request made for invoking

regulation 73 of the CIS Regulations. However, the learned counsel requested another hearing after submission of the Report to make his comprehensive submissions. As requested by the learned counsel, the Company was afforded a last and final opportunity of personal hearing on March 28, 2016 to make its submissions. It was also advised that written submissions, if any, shall also be filed on the date of hearing.

19. The hearing scheduled on March 28, 2016 was rescheduled on the request of the Senior Advocate to April 06, 2016. In the personal hearing held on April 06, 2016, the learned senior advocate appeared for the Company and made oral submissions. Written submissions was also filed. Liberty was granted to file further written submissions, if any, within a period of 5 weeks. Personal hearing was concluded. Company made its submissions which is as given below:

1. By an Application dated 22.01.2015, the Company had inter-alia requested an extension of 24 months for implementation of the order dated 21.06.2013 passed by SEBI (read with SAT order dated 23.07.2013 in Appeal no.124/2013 and order dated 05.09.2014 passed by the Hon'ble Supreme Court of India in Civil Appeal No.725/2013) as well as suitable orders and directions under Regulation 73 of SEBI CIS Regulations.
2. The said application was rejected by the WTM vide order dated 27.05.2015 holding that there was no reason for SEBI to accept the request of the Company for extension of time. In view of such rejection, the submission of the Company regarding implementation of Regulation 73 was also stated to have 'become redundant'. By an order dated 15.06.2015, the Tribunal set aside the said order dated 27.05.2015 and directed the Company to furnish certain particulars within two weeks therefrom. Upon furnishing of the particulars, it was directed that the WTM shall verify the same and pass appropriate order on the application filed by the Company in accordance with law after giving opportunity of hearing to the company. The company made a further representation dated 07.08.2015 to SEBI inter-alia circulating a draft information memorandum (IM) and requesting intimation as required under Regulation 73. The Company also filed MA 309/2015 before the tribunal for necessary directions regarding issuance of IM.

The said application was disposed of by the Tribunal vide order dated 02.02.2016 recording the statement of the counsel for SEBI that the application dated 22.01.2015 followed by reminder letter dated 07.08.2015 is being heard by SEBI and appropriate order would be passed as expeditiously as possible.

3. The Company submitted that SEBI should commence the mandatory process contemplated under Regulation 73 of the CIS Regulations, so that the option of the investors can be ascertained. In this connection, the Company submitted as follows:

    i. By its order dated 21.06.2013, SEBI had found that the Company's business constituted a CIS and passed directions, inter alia, under regulation 73 of the CIS Regulations.

    ii. In the Company's Appeal (Appeal No.124/2013), the Hon'ble SAT in its order dated 23.07.2013 rendered a finding that regulation 73 was applicable to the facts and circumstances of the case.

    iii. The Company filed Civil Appeal No.7924/2013 and Civil Appeal No.7925/2013 against the said order of the Tribunal before the Hon'ble Supreme Court of India. In Civil Appeal No. 7925/2013 SEBI filed Counter Affidavit dated 10.03.2014 where in para 13, it was stated as follows:

> *"13. I Submit that the respondent has passed Directions against the Appellant No.1 Company under Section 11 and 11(b) of SEBI Act read with Regulation 65 and 73 of SEBI CIS Regulations, 1999 for operating an unregistered CIS thereby, violating Section 12 (1)(B) of the SEBI Act and Regulation, 1999. I further say and submit that the directions in question have also been passed by the Respondent – SEBI under Section 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."*

iv. By its order dated 05.09.2014, the Hon'ble Supreme Court of India permitted the Company to withdraw its appeals with liberty to work out its remedy elsewhere.

4. In the said circumstances, SEBI was bound to implement regulation 73 in respect of the Company's business. Regulation 73 contemplates an option being exercised by investors as to whether they wish to continue with the scheme at their risk and responsibility and permits continuance of the scheme if positive consent is received from more than 25% of the total number of existing investors. The procedure of regulation 73 contemplates issuance of an IM by the Company, after receiving intimation in this regard from SEBI. The Company has submitted a draft IM to SEBI vide letter dated 07.08.2015 and requested SEBI to issue the necessary intimation under regulation 73 with regard thereto.
5. The procedure under regulation 73 cannot be made contingent on any verification exercise being undertaken by SEBI, in view of the mandate of regulation 73 of CIS Regulations and in view of SEBI's own contention in the counter affidavit filed before the Hon'ble Supreme Court.
6. Without prejudice to the above, the Company made the following submissions with regard to the verification exercise:
    i. SEBI appointed independent auditors on 06.08.2015 to verify the Company's claim of repayment to investors. The said process is already under way. The auditors have finalized the modalities of verification, and communicated the same vide letter dated 25.02.2016. Without prejudice to disputes with regard to the scope of work and fees of the auditor to be borne by the Company, the Company has made an initial payment of Rs.10 lakhs (less TDS) to the auditor vide letter dated 18.03.2016 and the auditors have recommenced the audit on 21.03.2016, as stated in their email dated 22.03.2016. Any decision on grant or rejection of extension of time can be made by SEBI only after the process of verification is complete and the independent auditors have submitted the report. The Company undertakes to co-operate with the requirements of the independent auditor in terms of the order of the

Tribunal dated 15.06.2015 and the directions of SEBI from time to time.

ii. However, even though independent auditors have been appointed by SEBI as stated above, SEBI also issued SCN dated 20.11.2015 regarding repayments stated to have been made by the Company. The said SCN requires the Company to show cause as to why application dated 22.01.2015 for extension of time by 24 months should not be rejected by SEBI and order dated 27.05.2015 should not be revived.

iii. In this connection and without prejudice to its submissions above, the Company submitted that revival of order dated 27.05.2015 does not arise in the present case in terms of the Tribunals' order dated 15.06.2015. By the said order, the Tribunal had directed revival of order dated 27.05.2015 only in the event that the Company did not supply the information referred to therein within the stipulated time. It is clear from para 7 of the SCN itself that the information required was furnished by the Company. The said fact was also stated in para 8(e) of the affidavit in reply dated 18.01.2016 filed by SEBI before the SAT in MA No.309/2015.

7. In the circumstances, the Company submits that the SCN dated 21.11.2015 is illegal and invalid, being premature and ultra vires the directions of tribunal dated 15.06.2015. The Company has submitted a reply thereto, dated 15.01.2016 and seeks to rely on the same. As on March 17, 2015 (date of last repayment report submitted to SEBI and as further recorded in Tribunals' order dated 15.06.2015), the Company had undertaken repayment of amount of Rs.1127,05,80,926/- to the investors. In particular, without prejudice to its contentions regarding maintainability of the SCN, the Company reiterated its submissions filed vide reply dated January 15, 2016.

In view of the above, the Company requested SEBI to withdraw the SCN. The Company also stated that in the alternative, the said SCN may be kept in abeyance pending completion of the process of audit by the independent auditors appointed by SEBI.

20. Though, in the personal hearing (held on April 06, 2016), the Company was granted liberty to file written submissions within a period of 5 weeks, it did not file any submissions till date. The Auditor too had forwarded a copy of their Report dated May 20, 2016 (*discussed in a later portion of this decision*) to the Company. The Company did not file submissions in respect of the contents of the Report also. From the above, it appears that the Company has no further submissions to make in the matter.

21. I have considered the submissions of the Company, the report of the auditor and other material available on record. 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 to 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.

f) The Hon'ble SAT has directed SEBI to consider the application dated January 22, 2015 and also the request made to permit the Company to circulate the information memorandum in terms of regulation 73 of the CIS Regulations.

22. I note that the Company has primarily made the following submissions/request:

a. the procedure under regulation 73 of the CIS Regulations should be made available to it and the Company should be allowed to circulate an Information Memorandum to its investors to seek positive consent,
b. the verification exercise by the auditor is in progress and
c. time of 24 months to be given to make refunds as directed in the Final Order.

23. Regarding the applicability of regulation 73 of the CIS Regulations to the case of the Company, I note that:

(a) The Final Order had conclusively established that the Company had launched and operated unregistered CISs in violation of the SEBI Act and the CIS Regulations. This Final Order was also upheld by the Hon'ble SAT with only a modification regarding the time period for making refunds (3 months as per the Final Order, which was extended to 18 months by the Hon'ble SAT).

(b) The Hon'ble Supreme Court had also not interfered with the SEBI's Final Order and gave liberty to the Company to workout remedy elsewhere.

(c) Therefore, the Final Order has attained finality.

(d) The main submissions of the Company to stress that regulation 73 was available to it were the following:

i. Hon'ble SAT, while disposing off the appeal (challenging the Final Order) of the Company had observed that regulation 73 was applicable to all CIS which were existing at the time when the CIS Regulations were introduced as also to the CIS which may have been launched at any point in time thereafter.

ii. SEBI, in its affidavit filed before the Hon'ble Supreme Court had stated that the Company has to 'follow the procedure as prescribed thereunder and the Respondent has not restrained the Company from issuing any information memorandum'.

iii. SEBI should therefore allow the Company to implement regulation 73 as it has submitted a draft information memorandum.

iv. Procedure of regulation 73 cannot be made contingent on any verification exercise undertaken by SEBI.

(e) I have perused the submissions. It is to be noted that regulation 73 of the CIS regulations comes under Chapter IX of the CIS Regulations dealing with "**Existing Collective Investment Schemes**". In terms of regulation 68, **any person who has been operating a collective investment scheme at the time of commencement of the regulations shall be deemed to be an existing collective investment scheme** and shall also comply with the provisions of this Chapter. Regulation 73(1) prescribes that an existing collective investment scheme which has failed to make an application for registration to SEBI or has not been granted provisional registration by SEBI or having obtained provisional registration fails to comply with the provisions of regulation 71 shall wind up the existing collective investment scheme. It is an admitted position that the Company was incorporated in the year 2008 and could have commenced its activities only thereafter. Therefore, it cannot be said that the schemes of the Company were existing collective investment schemes in terms of Chapter IX of the CIS Regulations {*'existing' means those CIS which existed as on 15.10.1999 when the CIS Regulations came into force*}.

Therefore, the provisions of regulation 73 are not applicable to the schemes of the Company. The Company has also referred to the observations made by the Hon'ble SAT. However, in a more recent case pertaining PACL, the Hon'ble SAT has clearly laid down that regulation 73 cannot be applied to a CIS floated after the CIS Regulations came into force and has also clarified its observations made in its earlier order made in the matter of Alchemist Infra Realty Limited. (the Company herein).

The following observations made by the Hon'ble SAT vide its Order dated August 12, 2015 in PACL Limited vs. SEBI (Appeal no. 368/2014) are referred to and relied upon:

"42. *Strong reliance was placed by counsel for appellants on decision of this Tribunal in case of Alchemist Infra Reality Ltd. (supra). In that case, the scheme floated by Alchemist, after the CIS Regulations came into force was held to be CIS and since the said CIS was carried on without obtaining registration from SEBI, the CIS was ordered to be wound up under Section 11,11B of SEBI Act read with regulation 65 and 73 of CIS Regulations. While upholding the order of SEBI and rejecting the argument of Alchemist that regulation 73 cannot be applied to a CIS floated after the CIS Regulations came into force, this Tribunal in para 17 held that the provisions for winding up contained in regulation 73 is applicable to CIS existing at the time when the CIS Regulations were introduced as also to the CIS which may have been launched at any point of time thereafter. Whether a CIS floated and operated after the CIS Regulations came into force without obtaining registration from SEBI was entitled to seek registration under regulation 73 read with regulation 68 was neither an issue raised by Alchemist nor decided by this Tribunal.* ***Only issue raised and decided by SEBI as also by this Tribunal in Alchemist was that a CIS floated after the CIS Regulations came into force without obtaining certificate of registration from SEBI is liable to be wound up under the regulation 65 read with regulation 73 of the CIS Regulations. Therefore, the argument that in view of the decision of this Tribunal in case of Alchemist Infra Realty Ltd. (supra) PACL has a right to seek registration under CIS Regulations cannot be accepted***". (Emphasis supplied)

(f) In view of the above reasons, the schemes of the Company having been launched after the CIS Regulations came into force, would not be covered under regulation 73 of the CIS Regulations.

(g) In view of the above observations, I hereby reject the contentions of the Company regarding invocation of regulation 73 as the said provision is not applicable to the case of the Company. Consequentially, the draft information memorandum filed with SEBI is *void ab initio*.

24. The Hon'ble SAT, in Order dated June 15, 2015 has observed that on furnishing the particulars, SEBI shall verify the claim regarding repayments and pass appropriate order. In this regard, as already mentioned in this Order, SEBI had engaged an Auditor for verifying the claim of repayments. With respect to the verification of repayments claimed to be made by the Company, I note the following:

(a) **SEBI's independent verification with investors**: In view of the conduct of the Company in not co-operating with the auditor for carrying out the verification exercise, even after a lapse of three months from the date of appointment, SEBI had to independently send letters to 501 investors (*letters sent to 378 investors as on the date of the notice dated November 11, 2015*) enquiring whether they had received repayments from the Company. The status of the same is as below:

State	**Total letters sent**	**Letters undelivered**	**Replies received confirming receipt of refunds**	**Reply received about non-refund**
West Bengal	195	25	4	16
Uttar Pradesh	186	33	1	4
Jharkhand	41	14	0	0
Bihar	38	12	0	0
Tripura	20	3	0	0
Maharashtra	12	4	1	0
Andhra Pradesh	5	1	0	0
Punjab	1	0	0	0
Delhi	1	1	0	0

Madhya Pradesh	1	0	0	0
Rajasthan	1	1	0	0
Total	**501**	**94**	**6**	**20**

It can be seen that most of the investors did not respond. Only six investors said that they had received payment, whereas twenty investors said that they have not received refunds.

(b) **Reference from the Income Tax Department**: The Income Tax Department had also informed SEBI that in a survey operation conducted on the office premises of the Alchemist group, they had seized approximately 12,900 cheques issued by the Company in names of various investors and that such cheques were endorsed in favour of Alchemist Township India Limited (a group company of Alchemist Infra). The extracts of the relevant portion of the IT dept's reference had been shared with the Company for its comments vide SEBI's notice dated November 20, 2015. The above strongly indicates that the Company was not making repayments to investors and had diverted the investors' funds to a group company. This conduct is definitely not in compliance with the SEBI Final Order as upheld by the Hon'ble SAT.

The Company has made submissions with respect to the SEBI notice dated November 20, 2015 and contended that the reference from Income Tax Dept. should not be relied upon as the same was neither relied in the SEBI Order dated May 27, 2015 or before the Hon'ble SAT in Appeal No. 298/2015 and that the allegations made in the report are extraneous. I find these submissions to be without any merit. The Company had been provided an opportunity to make its submissions on such allegations. Further, the act of the Company in endorsing the cheques to another entity instead of making refunds is totally in contravention of the directions in the Final Order as upheld by Hon'ble SAT.

Further, it should be appreciated that the reference from the Income Tax has a bearing on the 'verification exercise' as directed by the Hon'ble SAT. Therefore, stating that such reference to be extraneous to the case is without merit.

(c) **Verification by Auditor and the Company's conduct:** The Auditor, vide Report dated May 20, 2016 (copy furnished to the Company through Nodal Officer) had *inter alia* observed as follows:

i. The Auditor was appointed vide SEBI's letter dated August 06, 2015 to verify the claims of the Company that it repaid Rs.1072 crore to its investors, to verify whether the investors have been repaid the promised returns along with the principal amount as per the initial contract entered by the Company with the investors and for specifying other significant information.

ii. The Auditor could commence audit only on January 25, 2016 as there was delay in the Company complying with timelines.

iii. As the requisite information for verifying the repayments to investors was not readily available with the Company, the Auditor had to discontinue audit w.e.f. February 05, 2016.

iv. Though the Auditor recommenced audit on March 25, 2016, the Company started providing basic information to verify the repayments and therefore effective audit could only be commenced in the month of April 2016.

v. Based upon the preliminary review of data, the auditor finalized its methodology of sample selection of 49,282 out of the total investment certificates of 2,57,477 (covering approximately 56% of the amount). SEBI and the Company were notified that the

sample size could be increased depending on the progress of the assignment.

vi. As on the date of this Report, out of the total sample identified, the Company had provided repayment vouchers in respect of repayments made of only 8,471 investment certificates. The documents provided included the original investment certificates issued to the investors which are to be verified with the bank statements provided by the Company. The auditor is also not in receipt of bank statements from the Punjab National Bank though they have requested for the same.

vii. The auditor had also selected around 6000 investors for sending them direct balance confirmations out of which 2361 (in respect of 2439 investment certificates) direct balance confirmations have been sent. The auditor had received only 114 replies from investors as follows:

a. Positive reply (in respect of 87 investment certificates) – 79
b. Negative reply (repayment not made – in respect of 32 investment certificate) – **25**
c. Repayment not made but in lieu thereof investment certificates issued by Alchemist Township India Limited given – **7**
d. No reply mentioned in the confirmation letter received -3

viii. While verifying the repayment of promised returns to the investors, the auditor observed (out of initial 8471 investment certificates) that in 8275 cases, the investment amount and maturity amount were the same. In respect of 110 cases, there was short repayment of promised returns on account of pre-maturity of investment. In 7 cases, there was 'short repayment of promised returns even after the maturity of investment'. The

auditor has observed that they have advised the Company to provide the reconciliation of promised returns with short interest payment/no interest payment to the investors.

ix. **The auditor had received communication from 17 investors (in respect of 60 investment certificates) stating that the repayments were not made and instead they received certificates issued in the name of Alchemist Township India Limited. The auditor further stated that these investors are not covered within the mandate for verifying the repayment of Rs.1072 crore.**

x. The auditor has received only 8471 investment certificates (out of the sample selection of 49,282) and that the Company's response to provide replies to audit queries, including negative confirmation etc were awaited. In view of the same, the auditor is not able to certify that repayments were made by the Company to investors as claimed.

As noted from the auditor's report, the Company has not provided the documents pertaining to the full sample size of 49,000 investors. In view of the same, the auditors have not been able to certify the claimed repayments. The conduct of the Company as seen from the chronology of events of this case clearly indicates that the Company is not interested in making complete repayments even after the Final Order (directing refunds) was upheld by Hon'ble SAT (with modification w.r.t the time period). It also appears that the Company is delaying the proceedings on one pretext or the other. Therefore, waiting for further report from auditor or allowing more time for any verification would not be in the interest of gullible investors who had invested their earnings in the unregistered CIS of the Company.

(d) The Company has also contended that mere claim by investors that they have not received the refunds does not constitute proof. The Company further contended that it should be verified by issuing summons to examine and cross-examine them to ascertain the truth. These contentions are again without merit and made only to protract the proceedings. There need not be any malafide intention on the part of investors to say otherwise regarding the repayments. Therefore, allowing cross-examination of investors who have informed that they have not received refunds would not arise. It is for the Company to prove with documents that it has made the refunds as ordered in the Final Order.

25. In view of the observations, it becomes clear that the Company though made a claim that it repaid Rs.1077 crore before SEBI has not co-operated with the auditor in providing the complete information and documents for carrying out the verification exercise considering that the auditor was appointed in August 2015. Many investors have informed that they have not received refunds. Further, the Company, instead of making repayments, had issued cheques to investors which were then endorsed in favour of Alchemist Township India Limited and investment certificates were issued by that entity. In view of above observations, the Company's claim regarding repayments cannot be accepted.

26. 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 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.

27. 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.

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 Company has not been able to cite any eventuality that would have entitled it to seek further extension of time from SEBI. Further, the claim of the Company that it made refunds to investors has not been proved and accepted for the reasons mentioned in this decision. 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.

28. In view of the various reasons and observations made in this decision, I hereby reject both the application dated January 22, 2015 and the request made to circulate information memorandum under regulation 73 of the CIS Regulations. Further, it is almost three years since the Final Order was passed. Despite the long period, the Company had not made complete refunds to its investors. The Company's 'laid back' attitude and non-cooperation with the auditor in the verification exercise made it impossible for the auditor to verify the refunds claimed to have been made. Therefore, it would be a travesty of justice to allow more time to the Company for making repayments to investors. SEBI shall therefore take necessary steps to initiate attachment and recovery proceedings against the Company/directors for the purposes of making refunds to investors and shall also initiate further proceedings in accordance with law for the contraventions and non-compliance in making refunds within the stipulated period as ordered by Hon'ble SAT.

29. The application dated January 22, 2015 filed by the Company, the request dated August 07, 2015 and the SEBI notice dated November 20, 2015 are accordingly disposed off.

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date: June 14th, 2016
Place: Mumbai