

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. SM/AO-10/2017]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In the Matter of M/s Rose Valley Real Estates and Constructions Ltd

In respect of:

- (1) M/s Rose Valley Real Estates and Constructions Ltd. (CIN:U45201WB1999PLC089311)**
 - (2) Mr. Gautam Kundu, (PAN: ALMPK9146L)**
 - (3) Mr. Shibamoy Dutta (PAN: AHRPD6466H)**
 - (4) Mr. Ram Lal Goswami (PAN: AHDPG0244L)**
 - (5) Mr. Abir Kundu (PAN: AQKPK1365J)**
 - (6) Mr. Ashok Kumar Saha (PAN: BDCPS5827D)**
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BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") received references from the Economic Offences Investigation Cell, Government of West Bengal as well as from Deptt. of Financial Services, Ministry of Finance, Govt. of India stating that "M/s. Rose Valley" had been raising funds from public in districts of West Bengal, and as such, was allegedly running Collective Investment Scheme (hereinafter referred to as 'CIS') without obtaining a Certificate of Registration from SEBI. Preliminary enquires in this regard were made with the company and details of mobilization of funds were sought in order to examine the applicability of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as the 'CIS Regulations'). During the course of enquiry, it was observed that one of the group companies, M/s Rose Valley Real Estates and Constructions Ltd. (hereinafter referred to as "Noticee no.1" or the "company" or "RVRECL"), had been inviting contributions from the general public through one 'Ashirbad' scheme (hereinafter called the "scheme"). The examination revealed that the company along with its promoter/directors, namely, Mr. Gautam Kundu (hereinafter referred to as "Noticee no. 2"), Mr Shibamoy Dutta (hereinafter referred to as "Noticee no. 3"), Mr. Ram Lal Goswami, (hereinafter referred to as "Noticee no. 4") Mr. Abir Kundu (hereinafter referred to as "Noticee no. 5") and Mr. Ashok Kumar Saha (hereinafter referred to as "Noticee no. 6") (hereinafter collectively referred to as "Noticees") had

fraudulently launched and raised funds through the scheme which was a CIS as defined in Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the “SEBI Act, 1992”) without obtaining certificate of registration from SEBI as required under the provisions of the SEBI Act, 1992. It was therefore alleged that the Noticees had contravened Section 12(1B) of the SEBI Act, 1992 and Regulations 3 & 4(2) (t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as ‘PFUTP Regulations”).

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide order dated September 24, 2015, I was appointed as Adjudicating Officer, in terms of Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “the Rules”) to enquire into and adjudge, under sections 15D (a) and 15HA of the SEBI Act, 1992, the alleged violations by the Noticees.

SHOW CAUSE NOTICE, REPLY OF NOTICEES AND PERSONAL HEARING

3. a) Show Cause Notices, dated January 12, 2016 and supplementary Show Cause Notice dated July 27, 2016, August 25, 2016 and January 30, 2017 (hereinafter referred to as “SCN”) were issued to the Noticees under Rule 4 of the Rules read with sub-section (2) of Section 15-I of the SEBI Act, 1992 advising them to show cause as to why an inquiry be not held against them and penalty be not imposed under Sections 15D(a) and 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by them.

b) The details of the charges in the SCN are as under:

(i) It was alleged that RVRECL had fraudulently launched and raised funds through the Collective Investment Scheme such as “Ashirbad” without obtaining requisite certificate of registration from SEBI.

(ii)As per the scheme named “Ashirbad”, a portion of claimed sale price of the plot is collected from the investors as earnest money, as per a pre-fixed table mentioned in the application form and RVRECL issued money receipt against each such deposit. RVRECL provides a pre-determined Credit value against the earnest money so deposited and the same is adjusted against the purchase value of the plot. The scheme gives an option to the investors to not take possession of the plot and receive the pre-determined Credit value. The Credit value so determined is substantially more than the total earnest money deposited. The details of the scheme i.e. earnest money / investment and corresponding Credit value / return has been depicted in the following tables:

Table – 1

Ashirbad Scheme – A (for 1 katta)					
Option	Monthly instalment (₹)	Total EMD (₹)	Credit Value (₹)	Excess amt refunded (₹)	Annualised return *
E (12 months)	420/-	5040/-	5400/-	360/-	12.50% (Approx)
E-1 (24 months)	210/-	5040/-	6050/-	1010/-	17.50% (Approx)

E-2 (36 months)	140/-	5040/-	6838/-	1798/-	19.00% (Approx)
E-3 (60 months)	90/-	5400/-	8812/-	3762/-	18.00% (Approx)

Table – 2

Ashirbad Scheme – A (for 2 kattas)					
Option	Monthly instalment (₹)	Total EMD (₹)	Credit Value (₹)	Excess amt refunded (₹)	Annualised return *
E (12 months)	840/-	10080/-	10800/-	720/-	12.80% (Approx)
E-1 (24 months)	420/-	10080/-	12100/-	2020/-	17.50% (Approx)
E-2 (36 months)	280/-	10080/-	13676/-	3596/-	19.00% (Approx)
E-3 (60 months)	170/-	10200/-	17624/-	7424/-	20.00% (Approx)

Table – 3

Ashirbad Scheme – A (for 3 kattas)					
Option	Monthly instalment (₹)	Total EMD (₹)	Credit Value (₹)	Excess amt refunded (₹)	Annualised return *
E (12 months)	1250/-	15000/-	16200/-	1200/-	14.00% (Approx)
E-1 (24 months)	630/-	15120/-	18150/-	3030/-	17.50% (Approx)
E-2 (36 months)	420/-	15120/-	20514/-	5394/-	20.00% (Approx)
E-3 (60 months)	250/-	15000/-	26436/-	11436/-	21.00% (Approx)

Table – 4

Ashirbad Scheme – A (for 5 kattas)					
Option	Monthly instalment (₹)	Total EMD (₹)	Credit Value (₹)	Excess amt refunded (₹)	Annualised return *
E (12 months)	2090/-	25080/-	27000/-	1920/-	13.50% (Approx)
E-1 (24 months)	1050/-	25200/-	30250/-	5050/-	17.50% (Approx)
E-2 (36 months)	700/-	25200/-	34190/-	8990/-	19.00% (Approx)
E-3 (60 months)	420/-	25200/-	44060/-	18860/-	21.00% (Approx)

Table – 5

Ashirbad Scheme – A (for 10 kattas)					
Option	Monthly instalment (₹)	Total EMD (₹)	Credit Value (₹)	Excess amt refunded (₹)	Annualised return *
E (12 months)	4170/-	50040/-	54000/-	3960/-	13.50% (Approx)

E-1 (24 months)	2090/-	50160/-	60500/-	10340/-	18.00% (Approx)
E-2 (36 months)	1390/-	50040/-	68380/-	18340/-	20.00% (Approx)
E-3 (60 months)	840/-	50400/-	88120/-	37720/-	21.00% (Approx)

Table – 6

Ashirbad Scheme – B(for 1 katta)**				
Options	Initial payment (₹)	Credit Value (₹)	Excess amt refunded (₹)	Annualised return *
E-2 (36 Months)	5000/-	7000/-	2000/-	11.40 % (Apprx)
E-3 (70 Months)	5000/-	10000/-	5000/-	12.00% (Apprx)

(iii) Based on the examination of the features and characteristics of the scheme, it was alleged that the scheme named “Ashirbad” launched by RVRECL satisfied all the four conditions of Section 11AA of the SEBI Act, 1992 and therefore RVRECL was alleged to have been engaged in the fund mobilizing activity from public through “Collective Investment Scheme” as defined in Section 11AA of the SEBI Act, 1992.

(iv) RVRECL had mobilized Rs.1358.09 crores as on 31.03.2010, Rs.2016.32 crores as on 31.03.2011, Rs.1538.58 crores as on 31.03.2012 and Rs.742.45 crores as on 31.03.2013, in a fraudulent manner through CIS, “Ashirbad”, without obtaining necessary certificate of registration from SEBI.

(vi) It was also alleged that Noticees no. 2 to 6 being promoter/director/person responsible for the affairs of RVRECL at the relevant period were involved and instrumental in sponsoring or causing to be sponsored, carrying out or causing to be carried out, the CIS, “Ashirbad” and thereby illegally raising money by running such scheme without obtaining certificate of registration from SEBI.

(v) It was therefore alleged that the Noticees had fraudulently launched a collective investment scheme without obtaining certificate of registration from SEBI, in contravention of provisions of Section 12(1B) of the SEBI Act, 1992 and Regulations 3 and 4(2)(t) of PFUTP Regulations.

4. Delivery of SCN/Replies Received

- The SCN dated January 12, 2016 was delivered to Noticees No 1, 2, 5 and 6 and returned undelivered for Noticees No. 3 & 4.
- Replies were received from Noticee No. 1 seeking extension of 6 weeks’ time for filing of submission on the grounds that Noticee No. 2, Noticee No. 3 and Noticee No. 6 were in judicial custody and Noticee No. 4 and Noticee No. 5 were seriously ill. The request for extension of time was acceded to.
- Since the aforesaid three Noticees were in judicial custody, copies of SCN dated 12.01.2016 were served on Noticee No. 2 at Presidency Correctional Home, Kolkata and on Noticee Nos. 3 and 6 at Jharpara Special jail, Bhubaneswar.
- SCN dated January 12, 2016 was initially sent through post for Noticee No. 4 but was returned undelivered. Thereafter, it was sent for affixture and it was affixed.
- Apart the above, no other replies were received in respect of the aforesaid SCN.

- Supplementary SCN dated July 27, 2016/August 25, 2016/January 30, 2017 was served in the following manner:
 - Noticee No.1- Initially through speed post A/D which returned undelivered. Thereafter, it was duly affixed on the premises at two available addresses.
 - Noticee No. 2 - Served at Presidency Correctional Home, Kolkata.
 - Noticee No. 3 & 6 – Served at Balasore Jail, Orissa.
 - Noticee No 5- Hand delivered.
 - Noticee No 4 – Initially through hand-delivery/affixture which failed. Thereafter the SCN was duly delivered at an alternate address made available to me.

The Noticees were advised to file their replies within 21 days of receipt of SCN. One reply was received from wife of Noticee no 4. Apart from this, no other replies were received.

5. Delivery of Hearing Notice/Replies Received - An opportunity of personal hearing was granted to the Noticees vide notice dated May 19, 2017. The notice was served upon the Noticees in the following manner:

- Noticee No.1- Initially through speed post A/D which returned undelivered. Thereafter, it was duly affixed on the premises at the available addresses.
- Noticee No. 2, 3 & 6 - Served at Presidency Correctional Home, Kolkata.
- Noticee No 5 - Hand delivered.
- Noticee No 4 – Duly delivered through Speed Post at alternate address made available to me.

The Noticees did not attend the hearing. However, a reply was received from wife of Noticee no.4, reiterating earlier submissions. Apart from this, no other replies were received.

6. The submissions made by the Noticees are summarized below:

- Noticee No 4 through his wife, Ms Sampa Chakraborty responded vide letters dated 28/04/2017 and 15/06/2017 stating that he had been branch manager of Rose Valley Chain Marketing System Ltd in 2002 and was appointed director of Rose Valley Projects Ltd in April 2010. He further stated that he was not a stakeholder in RVRECL and therefore had no information about it. He also stated that he was hospitalized in November 2010 after an accident.
- Noticee No 6 vide letter dated 16/04/2016 submitted that he joined as a regular employee of the company; however, the company had fraudulently included his name as a director of the company without his consent. He stated that he had not signed any resolution papers, had not attended any kind of meeting like AGM, general body meeting etc. conducted by the Board of Directors. He submitted that he resigned from the Directorship of the company on 01/10/2013.

7. Although the above two Noticees have contended that they were not involved in the affairs of the company as directors, no documentary evidence have been furnished by them in support of their contention.

8. Since no information/documents as sought vide the aforesaid SCNs have been furnished by the Noticees, I proceed to examine the issue ex-parte, on the basis of information available on record.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have examined the SCNs and other documents and information available on record.

10. The issues that emerge for consideration in the present case are:

- I. Whether the Noticees have launched a collective investment scheme in violation of Section 12(1B) of the SEBI Act, 1992?
- II. Whether the Noticees have contravened the provisions of Regulations 3 & 4(2)(t) of PFUTP Regulations by launching a fraudulent collective investment and mobilizing funds illegally?
- III. If the findings of issues 10(I) and 10(II) are in the affirmative, then who are to be held liable for the violations?
- IV. Whether the violations, as established, would attract monetary penalty under Sections 15D (a) and 15HA of the SEBI Act, 1992?
- V. If so, what would be the quantum of monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

11. Before going into consideration of the facts of the case, I find it appropriate to reproduce the aforesaid legal provisions which find merit in the instant case:

- a) Section 12 (1B) was inserted in the SEBI Act, 1992 by the Securities Laws (Amendment) Act, 1995. The said section reads as:

“No person shall sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations:

Provided that any person sponsoring or causing to be sponsored, carrying on or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30.

Explanation- For the removal of doubts, it is hereby declared that, for the purposes of this section, a collective investment scheme or mutual fund shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment besides the component of insurance issued by an insurer.”

b) Section 11AA of the SEBI Act, 1992 reads as follows:

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

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

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

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

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

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

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

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

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

(i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

(ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(iii) being a contract of insurance to which the Insurance Act, 1938 (4 of 1938), applies;

(iv) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952);

(v) under which deposits are accepted under section 58A of the Companies Act, 1956 (1 of 1956);

(vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956 (1 of 1956);

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

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

[(ix) such other scheme or arrangement which the Central Government may, in consultation with the Board, notify,] shall not be a collective investment scheme.]

c) Definition of "Fraud" given under Regulation 2 (C) of PFUTP Regulations reads as under:

2(C) "Fraud" "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
- (2) a suggestion as to a fact which is not true by one who does not believe it to be true;
- (3) an active concealment of a fact by a person having knowledge or belief of the fact;
- (4) a promise made without any intention of performing it;
- (5) a representation made in a reckless and careless manner whether it be true or false;
- (6) any such act or omission as any other law specifically declares to be fraudulent,
- (7) deceptive behaviour by a person depriving another of informed consent or full participation,
- (8) a false statement made without reasonable ground for believing it to be true.
- (9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly;

Nothing contained in this clause shall apply to any general comments made in good faith in regard to—

- (a) the economic policy of the government
 - (b) the economic situation of the country
 - (c) trends in the securities market;
 - (d) any other matter of a like nature
- whether such comments are made in public or in private;

(d) Regulation 3 of PFUTP Regulations reads as under:

3. Prohibition of certain dealings in securities;

No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made*

there under.

(e) Regulation 4 (2) (t) was inserted in PFUTP Regulations with effect from September 06, 2013. The said regulation is reproduced hereunder:

Prohibition of manipulative, fraudulent and unfair trade practices

.....

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

.....

(t) illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any collective investment scheme by any person.”

Consideration of issues :

12 Issue 10 (I) - Whether the Noticees have launched a collective investment scheme in violation of Section 12(1B) of the SEBI Act, 1992?

12.1I note that Section 12(1B) of the SEBI Act, 1992, prohibits any person to sponsor or cause to be sponsored or to carry on or caused to be carried on any collective investment schemes, as defined under Section 11AA of the SEBI Act, 1992, without obtaining a certificate of registration from SEBI. For this purpose, it is pertinent to examine the features and characteristics of the scheme / arrangement of RVRECL on basis of the documents, information and material available on record, as against each of the conditions of Section 11AA (2) (i) to (iv) of the SEBI Act, 1992.

12.2I note that the “Ashirbad” scheme involves selling of plots of land for residential/ commercial units at a future date against earnest money received in advance in installments. As alleged in the SCN, RVRECL had mobilized Rs. 1358.09 crores as on March 31, 2010 under the “Ashirbad” scheme. Thereafter, the money collected under the scheme had increased to Rs 2016.32 crores as on 31.03.2011, reduced to Rs 1538.58 crores as on 31.03.2012 and further reduced to Rs 742.45 crores as on 31.03.2013. RVRECL proposes to utilize the funds so mobilized under the ‘Ashirbad’ scheme through circulation of “Application Forms” for the purpose of developing the property into “Rose Valley City” by making Master plots (Commercial Plots, Mall, Playground, Residential plots) of the units so that several persons can build their own house after purchase of Master plot. A portion of the agreed sale price of the plot is given as EMD as per pre-fixed table. The company provides a pre-determined credit value against the EMD so deposited and the same is adjusted against the purchase value of the plot. If a person does not want possession of land after payment of EMD, an amount equivalent to the pre-determined credit value is returned to him. I note that the credit value is far in excess of each option of the “Ashirbad” scheme, yielding annualized returns in the range of approx. 12% to 21%, as stated in the preceding paragraphs.

12.3As per the terms of the Application Form, allotment of property would be finalized by the company in the form of “final allotment letter” in favour of allottees only upon receiving full payment of earnest money from them. I note from the Application Form that details of the allotted property would be mentioned in the final allotment letter only upon receipt of full

payment of earnest money by RVRECL. This indicates that the scheme, "Ashirbad" does not provide for any demarcation of land in terms of pricing for each of the applicant i.e., the land allotments have not been made vis-à-vis the applicants. The land is proposed to be sold according to the plans offered under a scheme and not on the basis of location and other facilities.

12.4I, therefore, note that the company has been mobilizing funds from the public through the Ashirbad scheme, to develop the property into "Rose Valley City". However, there is no demarcation of plots of land vis-à-vis investment by investors. Therefore, it is evident that investments received from investors are pooled by the company for utilization in the project development by the company. I, therefore, find that the scheme of the RVRECL satisfies the first condition stipulated in section 11AA (2)(i) of the SEBI Act, 1992.

12.5As per the terms of the "Ashirbad" scheme, upon full payment of consideration amount of property, applicants get the option of taking possession of the property through a registered sale deed executed in their favour or alternatively, applicants get the option to cancel their bookings. In case of cancellation of their bookings, the applicants are entitled to the scheme of pre-determined credit value benefits as per pre-fixed tables provided in the "Application Form". The company in its reply dated August 20, 2010 has itself admitted that many of the customers have not opted for execution of sale agreement and credit value has been paid to them instead of land. I also note that the credit value paid to the applicants is far in excess of the earnest money deposited with the company thereby generating returns in the range of 12%-21%(appx). I, therefore, find that the investors made investment/ contribution/ payment in the name of earnest money in the scheme of RVRECL, with a view to receive profits. Thus, the scheme satisfies the second condition in section 11AA (2)(ii) of the SEBI Act, 1992.

12.6Upon perusal of sample copy of agreement placed on record, I find that the specification of land mentioned in the agreement is not in terms of any khat/khasra/street and as such is not identifiable. Moreover, the land/credit value, as the case may be, is given to the applicants only after payment of full consideration of the property value by the applicants. Therefore, all such plots, which form part of the scheme, as well as the investment amount collected from applicants as earnest money deposit towards the scheme, are managed by the company, on behalf of the applicants and the applicants do not have any day to day to control over the management and operation of the scheme. Therefore, I conclude that the scheme satisfies the third and fourth conditions stipulated in Sections 11AA (2)(iii) and (iv) respectively of the SEBI Act, 1992.

12.7Therefore, since the "Ashirbad" scheme launched by RVRECL satisfies all four conditions as stipulated under Section 11AA of the SEBI Act, 1992, I conclude that the said scheme, "Ashirbad", launched by RVRECL is a "Collective Investment Scheme" as per Section 11AA of the SEBI Act, 1992.

12.8It is observed that SEBI, in its final order dated June 18, 2014 has concluded that *"the Ashirbad" scheme is a Collective Investment Scheme as it satisfies all the four conditions of Section 11AA of the SEBI Act, 1992.*" The aforesaid order of SEBI has been upheld by Hon'ble Securities Appellate Tribunal vide its order dated 15.12.2014.

12.9I note from the available records that the company has launched the scheme, "Ashirbad", which is a CIS and has been mobilizing funds through the scheme since 2003, but has not obtained a certificate of registration from SEBI for the same. I am, therefore, of the opinion that the Noticees have contravened the provisions of Section 12(1B) of the SEBI Act, 1992.

13 Issue 10(II) - Whether the Noticees have contravened the provisions of Regulations 3 & 4(2)(t) of PFUTP Regulations by launching a fraudulent collective investment scheme and mobilizing funds illegally?

13.1 As has been stated in preceding paragraphs, the funds mobilized by RVRECL through the "Ashirbad" scheme stood at Rs 1358.09 crores as on 31.03.2010, Rs 2016.32 crores as on 31.03.2011, Rs 1538.58 crores as on 31.03.2012 and Rs 742.45 crores as on 31.03.2013. I also note here that the company had offered exorbitant returns ostensibly to induce gullible investors to invest in the CIS, "Ashirbad", which was illegally launched without obtaining requisite registration from SEBI.

13.1 It is clear that illegally launching the aforesaid CIS without due registration from SEBI and mobilising funds through that CIS was an fraudulent activity on the part of the Noticees, carried out with the intention to defraud gullible investors.

13.2 In view of the foregoing, I am of the opinion that the funds raised under the CIS, "Ashirbad", have been mobilised illegally with a view to defraud the public and therefore, the violation of the provisions of Section 12(1B) of the SEBI Act, 1992 and Regulations 3 & 4(2)(t) of PFUTP Regulations are clearly established against the Noticees.

13.3 It is pertinent to mention here that the Noticees have not filed any rebuttal to the allegations of having violated the provisions of Section 12(1B) of the SEBI Act, 1992 and Regulations 3 and 4(2)(t) of PFUTP Regulations.

14 Issue 10(III) -If the findings of issues at 10(I) and 10(II) are in the affirmative, then who are to be liable for the violations?

14.1 Regarding the liability of the directors/person responsible for the affairs of RVRECL at the relevant period, it would be appropriate to deal with the submissions filed by the Noticees first. In the submissions made by Noticees no. 4 and 6, they have contested the finding that they were directors of RVRECL at the relevant period i.e., when the company was mobilizing funds from the public through the unregistered CIS, "Ashirbad". However, the aforesaid Noticees have not filed any documentary evidence in support of their contentions.

14.2 Upon perusal of the documents placed on record, I find evidence of signatures of Noticee Nos 2 and 3 no 4 as directors on the audited accounts of the company for the financial years 2009-10 and signatures of Noticee Nos 3 and 4 as directors on the audited accounts of the company for the financial years 2012-13. Further, upon perusal of returns and other documents on the MCA website, I note that Noticees no 2 to 6 were shown as directors of the company during the relevant period. The evidence of appointment and cessation of Noticees no. 2 to 6, as filed on the MCA portal, are as under:

Name	Date of Appointment	Date of Cessation	Date of Re-Appointment	Period of Directorship
Mr. Gautam Kundu	03/05/1999	17/02/2014	16/12/2014	(03.05.1999 to 17.02.2014) (16.12.2014 & Continuing till date)
Mr. Shibamoy Dutta	23/01/2005	-	-	23.01.2015 Continuing till date
Mr. Ram Lal Goswami	17/05/2006	N.A.	N.A.	17.05.2006 To 14.03.2014 (i.e., date of signing the annual return)
Mr. Abir Kundu	29/09/2007	21/02/2011	27/06/2014	(29.09.2007 to 21.02.2011) (27.06.2014 Continuing till date)
Mr. Ashok Kumar Saha	01/05/2010	-	-	01.05.2010 Continuing till date

14.3 It is noted from the table above that Mr. Gautam Kundu (Noticee No 2), Mr. Shibamoy Dutta (Noticee No 3), Mr. Ram Lal Goswami (Noticee No 4), Mr. Abir Kundu (Noticee No 5), and Mr. Ashok Kumar Saha (Noticee No 6) were part of the Board of Directors of the company at the relevant point in time. Therefore, I do not find any merit in the submissions made by the aforesaid Noticees that they were not associated in the affairs of the company, including the fund raising activity of the company under the referred CIS, as directors.

14.4 Since Noticees no. 2 to 6 were acting as directors during the period of mobilization of funds, they were officers in default as per section 5(g) of The Companies Act, 1956 and are, therefore, along with Noticee no.1, i.e. RVRECL, liable for the violations of provisions of Section 12(1B) of the SEBI Act, 1992 and Regulations 3 & 4(2)(t) of PFUTP Regulations,.

15 Issue 10(IV) – Whether the violations, as established, would attract monetary penalty under Sections 15D (a) and 15HA of the SEBI Act, 1992?

15.1 The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) and (2006) 131 Comp. Cas. 591 (SC) held that

“In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant.”

15.2. In view of the aforementioned violations as established above, Noticees no. 1 to 6 are liable for monetary penalty under Sections 15D(a) and 15HA of the SEBI Act 1992 which read as follows:

(i) Penalty for certain defaults in case of mutual funds.

15D. If any person, who is—

(a) required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to [a penalty [which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees]];

[Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty [which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher].

16 Issue 10(V) - If so, what would be the quantum of monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

16.1 While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of SEBI Act, 1992 which reads as under:-

Factors to be taken into account by the adjudicating officer:

15J While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default.

16.2I find that the default is repetitive in nature since the company continued to mobilise funds from public illegally over a period of time. However, I note that available records neither indicate specific quantum of any unfair gains made by the Noticees nor the specific loss caused to the investors. In such cases, it is difficult to quantify the disproportionate gains or unfair advantage enjoyed by Noticees as well as the magnitude of consequent losses suffered by the investors. In the absence of these details, it is difficult to arrive at the exact quantum of penalty in terms of Section 15J of SEBI act, 1992.

16.3In a similar matter of PACL Ltd, in appeal no. 467/2015-PACL Ltd vs SEBI, Hon'ble SAT vide order dated October 27, 2016 had observed that it was obligatory on the part of AO to determine the quantum of profit made in such practice and thereafter proceed to impose penalty under Section 15HA of SEBI Act, 1992.

16.4I note that the amount of profits generated out of such fraudulent activity is not ascertainable from the documents available on records. Moreover, this specific information sought from the Noticees has also not been provided by them. Under the aforesaid circumstances, it is difficult

to impose a penalty based on the amount of profits made. Nevertheless, I am of the opinion that mobilizing funds through an unregistered CIS is certainly a serious violation affecting the interest of gullible investors at large and warrants maximum possible penalty.

ORDER

- 17 After taking into consideration all the facts and circumstances of the case, such as gravity of the case, violations committed by the Noticees and other mitigating factors as discussed in preceding paragraphs, I, in exercise of powers conferred upon me under Section 15-I (2) of the SEBI Act, 1992 read with Rule 5 of the Rules, hereby impose the maximum monetary penalty of Rs.1,00,00,000/- (Rupees One Crore only) under section 15D(a) of the SEBI Act 1992 and Rs.25,00,00,000/- (Rupees Twenty Five crores only) under Section 15 HA of the SEBI Act, 1992, i.e. total Rs.26,00,00,000/- (Rupees Twenty Six crores) on all the Noticees 1 to 6, namely, M/s Rose Valley Real Estates and Constructions Ltd (Noticee No. 1) Mr. Gautam Kundu (Noticee No. 2), Mr. Shibamoy Dutta (Noticee No. 3), Mr. Ram Lal Goswami (Noticee No. 4), Mr. Abir Kundu (Noticee No. 5), and Mr. Ashok Kumar Saha (Noticee No. 6), to be paid jointly and severally, which in my opinion is commensurate with the violations committed by them.
- 18 The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai, or through e-payment facility into Bank Account, the details of which are given below;

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI - Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

- 19 The Noticees shall forward said Demand Draft or the details/ confirmation of penalty so paid through e-payment to the General Manager, Enforcement Department (EFD -1), Division of Regulatory Action-4 [EFD-DRA-4], SEBI Bhavan, Plot No. C4-A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for:(like penalties/disgorgement/recovery/	

Settlement amount and legal charges along with order details)	
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- 20 This order is without prejudice to any other enforcement actions that SEBI may initiate in respect of SEBI's final order dated June 18, 2014 in the matter.
- 21 In terms of Rule 6 of the Rules, copies of this order are sent to the Noticees and to the Securities and Exchange Board of India.

Date: November 30, 2017

Place: Mumbai

**SOMA MAJUMDER
ADJUDICATING OFFICER**