

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

**Misc. Application No. 52 of 2013
And
Appeal No. 88 of 2013**

Date of decision: 23.07.2013

1. Maitreya Services Private Limited
Lawrence Trade Centre Co-op Hsg.
Soc. Ltd.,
Shop No. B- 207, 208,
2nd Floor, Survey No. 44,
Navghar Station Road,
Vasai (West), Thane 401 202.

2. Mrs. Varsha Madhusudan Satpalkar
Indrakunj, 2nd Floor,
Behind Balaji Hospital,
Bazar Ward, Virar (E),
Vasai, Thane 401 303.

3. Mr. Janardan Arvind Parulekar
Indrakunj, 2nd Floor,
Behind Balaji Hospital,
Bazar Ward, Virar (E),
Vasai, Thane 401 303.

... Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A, G-Block,
Bandra Kurla Complex,
Mumbai – 400 051.

... Respondent

Mr. Nizam Pasha, Advocate with Mr. Joby Mathew, Advocate for the
Appellants.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Yogesh Chande, Advocate
for the Respondent.

CORAM : Jog Singh, Member
A. S. Lamba, Member

Per : Jog Singh

The instant appeal is filed by Maitreya Services Private Limited and two of its directors (“Appellants”) against order dated March 25, 2013 (“Impugned Order”) passed by SEBI (“Respondent”) holding that the Appellants are carrying on business activities in the nature of collective Investment Schemes (“CISs”) without being registered with the Respondent as required under the provisions of the SEBI (Collective Investment Schemes) Regulations, 1999 (“CIS Regulations”). The Impugned Order directs the Appellants to wind up their schemes and refund all monies collected from investors along with returns payable as per the terms of offer within three months from the date of the Impugned Order, along with a winding up and repayment report to SEBI in accordance with the CIS Regulations.

2. Brief facts leading to the dispute are that Appellant No. 1, Maitreya Services Private Limited, is a Company incorporated under the Companies Act, 1956 purportedly engaged in the business of real estate. The Income Tax Office vide letter dated September 21, 2010 informed SEBI of the alleged violation of the SEBI Act and the CIS Regulations by Appellant No. 1. Attached to the said letter were documents substantiating the claims of the I. T. Office. SEBI started an inquiry into the business of Appellant No. 1 on the basis of the letter and documents sent by the I. T. Office. In relation to the inquiry, the Respondent sent a few letters dated October 13, 2010; November 18, 2010; December 1, 2010; January 3, 2011; January 11, 2011; May 19, 2011 and June 9, 2011 to Appellant No. 1 seeking some documents which would help establish whether or not the business dealings of the Appellants would fall under the definition of a CIS. The Appellants submitted some of the required documents annexed with letter dated

December 2, 2010 requesting the Respondent to grant the Appellants some time to put together certain information required by the Respondent. Among the documents sent to the Respondent were the Memorandum and Articles of Association of Appellant No.1, plan wise details of the member of investors and amounts received from applicants for allotment of land units, details of past and present directors of Appellant No. 1, copy of a standard unit certificate issued by Appellant No. 1 to its customer, the application form, memorandum of understanding executed by MSPL with the customers. The Appellants finally submitted their detailed reply vide letter dated December 20, 2010 in which all accusations levelled against them by the Respondent were denied by the Appellants. It is stated in the said letter that Appellant No. 1 had stopped taking new investment from the public. For the next couple of months SEBI moved forward with the inquiry, inspecting documents sent by the Appellants. Vide letter dated May 30, 2011, the Appellants refuted allegations of the Respondent accusing the business of the Appellants to be in the nature of CISs within the meaning of the expression as defined in Section 11AA of the SEBI Act. Finally, a Show Cause Notice dated October 14, 2011 (“SCN”) was issued to Appellant No. 1 for conducting CISs without getting registered with SEBI in terms of Section 12(1B) and Respondent 3 of the CIS Regulations. Appellant No. 1 replied to the show cause notice vide letters dated November 3, 2011 and December 2, 2011 denying all allegations in the SCN. Appellant nos. 2 and 3 did not reply to the SCN. A personal hearing was conducted before the Whole Time Member (“WTM”) on January 23, 2012 at which Appellant No. 1 submitted that it would propose a repayment plan which would allay all of the Respondent’s fears, and for this time was sought by the Appellants. On March 21, 2012, at the next hearing of

Appellant No. 1, the Appellant put forth a repayment plan spread over a period of five years. The WTM, on perusing the application for repayment, advised Appellant No. 1 to decrease the time period to a mere suitable and appropriate number in view of the number of investors and risks involved. A hearing was then held on June 5, 2012 when the revised plan was submitted. It was stated that since Rs. 707.74 crore had to be repaid to the investors, it would be possible only over a period of four years. The Appellant was asked for a copy of its statement of accounts along with a copy of its balance sheet, both of which were provided to the Respondent on June 15, 2012 and July 12, 2012 respectively.

3. We now come to the Appellants' case. The Appellants submit that the CIS Regulations apply to businesses pertaining to plantation and agricultural activities and they were brought into force to deal with entities whose modus operandi was to issue bonds on collection of money from the public. For this reason, the reliance placed by the Respondent on *PGF Ltd. vs. Union of India*, decided by the Supreme Court on March 12, 2013, has been refuted by the Appellants since *PGF Ltd.* was a company engaged in plantation activities. It is submitted that the sale and purchase of land does not fall within the purview of the CIS Regulations. The Appellants submit that it does not offer any exorbitantly high returns to its buyers but an acceptable figure of 12% per annum. The funds raised are not utilized only for development of the alleged schemes but also go towards "ongoing corporate expenses and other business activities of Appellant No. 1". It is submitted that the Respondent erred while examining the documents provided, which demonstrated how Appellant No. 1 was utilizing its funds. It is further submitted that the sole purpose of the Schemes of Appellant No. 1 is to provide a convenient way to pay for the plots of lands, which it sells.

4. The Appellants further submit that customers pay money not as an investment out of which they expect profits but as payment for a piece of land to be bought by them. It was only in a few cases that “some of the subscribers sought return of the part payments made by them instead of allotment of land units.” It is also submitted that the only obligation cast on Appellant No. 1 was that of delivering possession of land upon receipt of 75% of the consideration for the plot, or alternately to repay the part payment of 25% received from the buyer, if he so desired. Therefore, there was no question of managing the property on behalf of the investors. On the other hand, the Respondent submits that neither the property nor the contributions are managed by the customers, in any way, but is managed by Appellant company itself. It is an admitted position that the contribution received from investors is utilized by the company for purposes of land development, which is done on behalf of the investors who have already invested in the scheme. It is, therefore, submitted that the investors have no control over any aspect of the scheme and they “do not participate in the acquisition, development and management of the land”. The Respondent also submits that in the twelve years of Appellant No. 1 being in the business of real estate, as it claims, there has not been any transfer of land until the year 2010-2011 when the scheme came under surveillance by the I. T. Office and SEBI. In this regard paragraph 35 of the Impugned Order is reproduced below :-

“35. I note that in response to the allegation in the SCN that not a single piece of land had been handed over to any of the investors till the date of the SCN and all the investors had been paid the returns as promised in its schemes, the MSPL has submitted that it allotted 1025 acres of land to 8602 investors during the Financial Year (FY) 2010-2011. Thus, it is clear that not a single piece of land had been allotted to any investor by MSPL in its

twelve year business period prior to FY 2010-2011. I find that it cannot be a mere coincidence that MSPL allotted land/plot to some investors only in FY 2010-11, when its scheme came under inquiry by the Office of Income Tax and SEBI”

The Respondent further submits that as per the auditor’s report, Appellant No. 1 had been incurring losses over the last few years, and inspite of being in such a situation sought investments from customers promising them high returns.

5. It is submitted by the Respondent that the schemes carried on by the Appellants, on the pretext of a real estate business, are in the nature of CISs. In this context, it is pertinent to reproduce paragraph 31 of the Impugned Order demonstrating how the plans and schemes launched by the Appellants are not “pure real estate business”.

“31. I note the MSPL has claimed that its schemes/plans are pure real estate business. In my view, a typical real estate business might satisfy one or more but not all of the above four conditions. In common parlance, in a real estate business the agreement to sell is executed for purchase of the immoveable property that is identified and distinguished. Right, title and interest of purchaser in the identified and distinguished immoveable property is created at the time of executing the agreement to sell. This real estate business entails a contract to buy and sell immoveable property rather than an investment contract involving investment with a view to receive the pre-determined returns as in the schemes /plans of MSPL. Further, in real estate business the contributions might be pooled but may not be necessarily utilized for the purposes of development of the property. The property might be already identified, acquired and/or developed and thereafter the payments might be received against different stages of construction. In a real estate transaction, the purchaser gets title to the property, and he can transfer the same before getting possession. Further, he may be given participation in development by consulting him on amenities, facilities and quality of constructions etc. Thus, he gets certain amount of accessibility to the property.”

6. We have heard the counsel for both the parties at length and perused the appeal and documents provided to us by the parties minutely.

7. It is our considered opinion that the concept of CIS was initially conceived with the intention to envelop primarily companies engaged in agricultural and plantation activities. However, its parameters were widened by the legislature, keeping in view the interests of investors in the securities market at large, to bring within its folds all those entities which satisfied the criteria laid down in Section 11AA which was introduced to the SEBI Act on January 30, 1992. The CIS Regulations were, therefore, framed on the basis of the report of the Dave Committee and brought into force in 1999 to regulate seemingly profitable schemes launched by various entities to attract investors who wished to earn profits by investing their hard earned money and life savings in such schemes.

8. Sections 11AA and 12(1B) of the SEBI Act alongwith Regulations 3 and 73 of the CIS Regulations being pertinent to the present case have been reproduced hereinbelow :-

Securities and Exchange Board of India Act, 1992:-

“11AA. (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) shall be a collective investment scheme.

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

- (i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized 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.*
- (3) *Notwithstanding anything contained in sub-section (2), 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;*

shall not be a collective investment scheme.”

“12(1B) 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 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.]

(2) Every application for registration shall be in such manner and on payment of such fees as may be determined by regulations.

(3) The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations :

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.”

CIS Regulations :

“3. No person other than a Collective Investment Management Company which has obtained a certificate under these regulations shall carry on or sponsor or launch a collective investment scheme.”

“73. (1) An existing collective investment scheme which:

- (a) has failed to make an application for registration to the Board; or
- (b) has not been granted provisional registration by the Board; or
- (c) having obtained provisional registration fails to comply with the provisions of regulation 71;

shall wind up the existing scheme.

(2) The existing Collective Investment Scheme to be wound up under sub-regulation (1) shall send an information memorandum to the investors who have subscribed to the schemes, within two months from the date of receipt of intimation from the Board,

detailing the state of affairs of the scheme, the amount repayable to each investor and the manner in which such amount if determined.

(3) The information memorandum referred to in sub-regulation (2) shall be dated and signed by all the directors of the scheme.

(4) The Board may specify such other disclosures to be made in the information memorandum, as it deems fit.

(5) The information memorandum shall be sent to the investors within one week from the date of the information memorandum.

(6) The information memorandum shall explicitly state that investors desirous of continuing with the scheme shall have to give a positive consent within one month from the date of the information memorandum to continue with the scheme.

(7) The investors who give positive consent under sub-regulation (6), shall continue with the scheme at their risk and responsibility :

Provided *that if the positive consent to continue with the scheme, is received from only twenty-five per cent or less of the total number of existing investors, the scheme shall be wound up.*

(8) The payment to the investors, shall be made within three months of the date of the information memorandum.

(9) On completion of the winding up, the existing collective investment scheme shall file with the Board such reports, as may be specified by the Board.”

9. We see from the provisions reproduced above that Section 11AA lays down the conditions which need to be satisfied before any scheme or arrangement can be launched by any given entity, viz., the money collected from investors should be pooled and then utilized for the purposes of the scheme; the investors should have contributed their money with the objective of deriving profits in any form, whether “income, produce or property”, the entire working and operation of the scheme is managed by the concerned company on behalf of the investors; and the investors have no modicum of control over daily activities with respect to the arrangement in question. Section 12(1B) succinctly provides that all persons intending to

float any scheme or arrangement in the nature of a CIS shall do so only after obtaining a certificate of registration from SEBI. Further, Regulation 3 of the CIS Regulations states that only a Collective Investment Management Company shall sponsor CISs. Regulation 73 provides for the winding up of an existing scheme in certain cases, viz., failure to make an application to SEBI regarding registration, refusal of SEBI to grant provisional registration or, failure to comply with provisions of Regulation 71 once provisional registration is obtained from SEBI.

10. Now, the issue before us, i.e., whether or not the business carried on by the Appellants is in the nature of CIS, is not res-integra anymore in the light of the Hon'ble Supreme Court's judgment in the case of PGF Ltd. vs. Union of India and Ors. reported in **[(2013) AIR SCW 2420]**. At this stage, it is pertinent to reproduce certain paragraphs of the Hon'ble Supreme Court's judgment which expertly deal with the basic ingredients of a CIS :-

“51. A conspectus consideration of the scheme of development of the land purchased by the customers at the instance of the PGF Limited and the promised development under the agreement disclose that there was wholesale uncertainty in the transactions to the disadvantage of the investor' concerned. The above factors and the factors, which weighed with the Division Bench in this respect definitely disclose that PGF Limited under the guise of sale and development of agricultural land in units of 150 sq. yds. i.e. 1350 sq. ft. and its multiples offered to develop the land by planting plant, trees etc., and thereby the customers were assured of a high amount of appreciation in the value of the land after its development and attracted by such anticipated appreciation in land value, which is nothing but a return to be acquired by the customers after making the purchase of the land based on the development assured by the PGF Limited, part with their monies in the fond hope that such a promise would be fulfilled after successful development of the bits of land purchased by them.”

“52. The above conclusion of ours can be culled out from the sample documents placed by the appellants before the Court. The appellants, however, failed to supply any material till date to

demonstrate as to how and in what manner any of the lands said to have been sold to its customers were developed and thereby any of the customer was or would be benefited by such development. It is imperative that the transaction of the PGF Limited vis-a-vis its customers has necessarily to be examined as to its genuineness by subjecting itself to the statutory requirement of registration with the second respondent followed by its monitoring under the regulations framed by the second respondent. All the above factors disclose that the activity of sale and development of agricultural land propounded by the PGF Limited based on the terms contained in the application and the agreement signed by the customers is nothing but a scheme/arrangement. Apart from the sale consideration, which is hardly 1/3rd of the amount collected from the customers, the remaining 2/3rd is pooled by the PGF Limited for the so called development/improvement of the land sold in multiples of units to different customers. Such pooled funds and the units of lands are part of such scheme/arrangement under the guise of development of land. It is quite apparent that the customers who were attracted by such schemes/arrangement invested their monies by way of contribution with the fond hope that the various promises of the PGF Limited that the development of the land pooled together would entail high amount of profits in the sense that the value of developed land would get appreciated to an enormous extent and thereby the customer would be greatly benefited monetarily at the time of its sale at a later point of time. It is needless to state that as per the agreement between the customer and the PGF Limited, it is the responsibility of the PGF Limited to carry out the developmental activity in the land and thereby the PGF Limited undertook to manage the scheme/arrangement on behalf of the customers. Having regard to the location of the lands sold in units to the customers, which are located in different states while the customers are stated to be from different parts of the country it is well-nigh possible for the customers to have day to day control over the management and operation of the scheme/arrangement. In these circumstances, the conclusion of the Division Bench in holding that the nature of activity of the PGF Limited under the guise of sale and development of agricultural land did fall under the definition of collective investment scheme under Section 2(ba) read along with Section 11AA of the SEBI Act was perfectly justified and hence, we do not find any flaw in the said conclusion.”

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

conclusions, the PGF Limited has to comply with the directions contained in last paragraph of the order of the second respondent dated 06.12.2002. We also hold that while ensuring compliance of the order dated 06.12.2002, the second respondent shall also examine the claim of the PGF Limited that it had stopped its joint venture scheme as from 01.02.2000 is correct or not by holding necessary inspection, enquiry and investigation of the premises of the PGF Limited in its registered office or any of its other offices wherever located and also examine the account books other records and based on such inspection, enquiry and investigation issue any further directions in accordance with law. Whatever amount deposited by the PGF Limited pursuant to the interim orders of this Court relating to joint venture scheme shall be kept in deposit by the second respondent in an Interest Bearing Escrow Account of a Nationalized Bank. The second respondent shall also verify the records of the PGF Limited relating to the refund of deposits of the customers who invested in the joint venture schemes and ascertain the correctness of such claim and based on such verification in the event of any default noted, appropriate further action shall be taken against the PGF Limited for settlement of the monies payable to such of those investors who participated in any such joint venture schemes operated by the PGF Limited. It will also be open to the second respondent while carrying out the above said exercise to claim for any further payment to be made by the PGF Limited towards settlement of such claims of the participants of the joint venture schemes and charge interest for any delayed/defaulted payments. As far as the deposit made by the PGF Limited with the second respondent on the ground that the such amount could not be disbursed to any of the investors for any reason whatsoever the second respondent, based on the verification of the records of the PGF Limited, arrange for refund/disbursement of such amount back to the participants of the joint venture schemes with proportionate interest payable on that amount. The above directions are in addition to the directions made by the Division Bench of the High Court.”

“54. Having noted the conduct of the PGF Limited in having perpetrated this litigation which we have found to be frivolous and vexatious in every respect, right from its initiation in the High Court by challenging the vires of Section 11AA of the SEBI Act without any substantive grounds and in that process prolonged this litigation for more than a decade and thereby provided scope for defrauding its customers who invested their hard earned money in the scheme of sale of land and its development and since we have found that the appellants had not approached the Court with clean hands and there being very many incongruities in its documents placed before the Court as well as suppression of various factors in respect of the so called development of agricultural land, we are of the view that even while dismissing the Civil Appeal, the PGF Limited should be mulcted with the exemplary costs. We also feel it appropriate to

quote what Mahatma Gandhi and the great poet Rabindranath Tagore mentioned about the greediness of human being which are as under:

“Earth provides enough to satisfy every man’s need, but not every man’s greed.

-Mahatma Gandhi-

The greed of gain has no time or limit to its capaciousness. Its one object is to produce and consume. It has pity neither for beautiful nature nor for living human beings. It is ruthlessly ready without a moment’s hesitation to crush beauty and life out of them, molding them into money.”

-Rabindranath Tagore-

“55. In this respect, it will be worthwhile to note what the PGF Limited disclosed before the second respondent in its letter dated 15.01.1998 alongwith the covering letter dated 20.05.2002. The details mentioned therein disclose that the total amount received by the PGF Limited under different schemes from 01.01.1997 to 31.12.1997 was approximately Rs.186.84 crores. Its paid up capital was stated to be Rs.94,90,000/-and it mobilized Rs.815.23 crores under joint venture schemes from 01.04.1996 to 30.06.2002. The future liabilities towards joint venture schemes was projected in a sum of Rs.655.41 crores. Total outstanding liabilities payable to investors under the old closed schemes as on 30.06.2002 was stated to be Rs.497 crores. As against the above, till 31.10.2002, the PGF Limited stated to have made a net payment of Rs.115.93 crores leaving the balance due in a sum of Rs.393.69 crores approximately. The above details have been noted by the second respondent while mentioning the submission of the PGF Limited in its order dated 06.12.2002. Thus, we are convinced that the PGF Limited deliberately did not furnish the amounts till this date what was collected from the customers who made their investments in the so-called venture of sale and development of agricultural lands. Therefore, it is explicit that the PGF Limited was playing a hide and seek not only before the second respondent, but was also taking the Courts for a ride. We have noted in more than one place in our order that inspite of our repeated asking the appellants did not come forward to disclose the details of any development it made in respect of the lands alleged to have been sold to its customers. There is also no valid reason for not disclosing the details before the court. As in one of its activities, namely, joint venture scheme alone, it had mobilized Rs.815.23 crores, it can be easily visualized that in its activities of sale and development of land such mobilization would have far exceeded

several thousand crores. In such circumstances, the appeal is liable to be dismissed which may have costs.”

11. After a minute perusal of the verdict delivered by the Hon’ble Supreme Court in the above-mentioned case, we note that in situations where high returns are promised to investors in any form, a CIS may be said to be in place, subject to fulfillment of other conditions as per law. In the case of PGF Ltd., the company had indeed assured its customers of high returns by developing the land purchased by them, thereby appreciating the value of such parcel of land. At the same time, PGF did not offer any documents which evidenced any part of development of land as promised to its customers. On perusing copies of agreements entered into between PGF Limited and its customers, and applications made for purposes of investing in the business, it was held that the business of PGF Ltd. was undeniably in the nature of a scheme or arrangement. It was also stated that funds were pooled under the pretext of land development while giving customers the impression that once the land is developed by the company, the customers will be in a position to sell it at a significantly higher price as compared to the amount that was put in by them, initially.

12. Moreover, it was stated that pieces of land sold to various customers, were spread over such diverse locations, all over India, as to make the idea of the customers having any control over the management of the land inconceivable, rather impractical. The Hon’ble Supreme Court also noted that the company had not repaid a large amount of money under the closed schemes, which led to the inference that the PGF Ltd. was deliberately holding on to the hard earned money of the investors with the intent to defraud such bonafide investors. The judgment stressed upon the fact that inspite of repeatedly being asked for documents providing details of

development being undertaken by the company, no information was put forth by the representatives of PGF Ltd. nor was any acceptable reason provided regarding such inability.

13. Applying the reasoning which emerges from the order of Hon'ble Justice Fakkir Mohamed Ibrahim Khalifulla and Hon'ble Justice B. S. Chauhan to the facts of the case at hand, it is evident that the scheme carried on by the Appellants is indeed in the nature of a CIS falling within the four corners of the concept of a CIS as dealt with in the judgment of the Hon'ble Supreme Court. The Appellants have attempted to distinguish the judgment in the matter of PGF Ltd. on the ground that the Appellants sell undeveloped plots of land to its customers, whereas PGF Ltd. was in the business of selling as well developing its land. While pointing out that this particular aspect would not take the matter out of the purview of the Hon'ble Supreme Court's judgment, we note that the Appellants have submitted all along that they are in the business of buying, selling, constructing and developing of land, and by trying to distinguish the said judgment on this basis, they seem to be contradicting themselves.

14. With respect to Appellants submissions that the amounts are not pooled within the meaning of Section 11AA of the SEBI Act, we note that admittedly, at the time of collection of money from the investors, no particular piece of land is ascertained against which the money is paid by the so called buyer of land. Moreover, all the money which the Appellants collect is by their own admission, utilized for purposes of development of land. We, therefore, find that as in the case of PGF Ltd., in the instant case too, money is pooled and utilized for the purposes of the scheme floated by the Appellants. Similarly, even in the case before us, the Appellants have

collected large amounts of money representing to the investors that the money will go towards development of land and promising high returns either in the form of profits or increased value of the land in question.

15. It has also been brought to our notice that between the years 1999 and 2010, not a single customer of the Appellants was allotted any plot of land, and the same is a position of fact. Significantly, the investors seem to have opted to purchase the land, as opposed to demanding their investments back along with the exponentially high returns promised to them, only after SEBI started conducting its investigation into the affairs of the Appellants in 2010, which leads us to the undeniable conclusion that the investors predominantly contributed to the Appellants' scheme in the hope that high profits would eventually accrue to them under the said arrangement.

16. Further, we appreciate the parallelism drawn between the PGF Ltd. matter and the case before us, in as much as even in the case of PGF Ltd. the daily control and management over the scheme and business in general is exclusively in the hands of the Appellants, with the customers only playing the role of interested by-standers, with a lot at risk. This is evidenced by certain clauses found in the memorandum of understanding signed between the Appellants and their customers. The clauses concerned have been reproduced below :-

a) "The applicants shall have no right to participate in the development of the land unit and the company shall exclusively look after the development of the land unit.

(b) The applicants shall not be entitled take possession custody of any product or output or development from the said land unit during the period as per plan and it will be the exclusive property of the company.

(c) The allotment of the land is entirely at the discretion of the company.

(d) On the full payment of the value of land under the plan, the company would be allotting the land to unit holders. The value of the land and the nature of the land, location, etc would be decided by the Maitreya. The decision of Maitreya would be final.

(e) The allotment of the land and the investment plans would be subject to the rules and regulation of Maitreya from time to time and binding on unit holder."

17. From the above discussion, it necessarily follows that the scheme is managed and operated by only the Appellants alone. Even the money invested by their customers is controlled and utilized by the Appellants on behalf of the investors. It is further a matter of fact that the investors take no part in the day to day workings of the Appellants' business.

18. Lastly, it is pertinent to note that in the interpretation of such regulatory measures, like the CIS Regulations in hand, the most important task is to determine the 'pith and substance' of the provisions concerned i.e., their essential and true character. The whole scheme of CIS as enshrined in the SEBI Act, 1992 and the CIS Regulations, 1999 as already discussed hereinabove is the welfare of millions of innocent investors by duly protecting their interests. The legislative intent and idea of the Parliament as well as SEBI seem to bring more transparency to the affairs of various CISs by duly regulating the same. Closing or winding up such CISs is an extreme measure to be resorted to in rare cases of adamant companies who do not wish to abide by the CIS Regulations in the matter of registration and other conditionalities laid down therein.

19. In light of the abovesaid, we find no legal infirmity with the impugned order and it is hereby upheld. Now, keeping in view the large number of investors involved, i.e., around two 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 two million 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 four years sought by Appellants would be unnecessarily long, and in the facts and circumstances of the case, a period of six months would duly suffice, with a rider that the Appellants shall submit a report to SEBI after six months giving accurate details regarding the progress made while executing the scheme of repayment in question. To this extent, the impugned order dated March 25, 2013 stands modified. 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.

The appeal, accordingly, stands dismissed, with no costs.

Sd/-
Jog Singh
Member

Sd/-
A. S. Lamba
Member

23.07.2013
Prepared & Compared by
ptm/pmk