

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

ORDER

Under sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 and regulation 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999

In respect of –

Sr. No.	Name of noticee	CIN/DIN	PAN
1.	Disc Assets Lead India Ltd.	-	AACCD4575E
2.	Mr. Vivekanandam Janarthanan	02292665	AFFPJ9926C
3.	Mr. Nithiyanantham Arunkumar	01612408	AFWPA7113H
4.	Mr. Srinivasan Chidambaram	03296079	AJTPS6054J
5.	Mr. Shyamchander Thanikodi	03328678	BPEPS8939C
6.	Mr. Nithiyanantham Malathi Umashankar	01612437	AAOPU8534H
7.	Ms. S. Jeevalatha Sridhar	03357606	AKPPJ3044C

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Date of personal hearing: January 13, 2016

Appearance:

1. Mr. D. P. Singh, Advocate appeared for **Disc Assets Lead India Limited** and **Mr. N. Arunkumar**.
2. Ms. Shuchita Shrivastava, Advocate represented **Mr. Shyam Chander Thanikodi**.
3. **Mr. V. Janarthanan** and **Mr. N. M. Umashankar** appeared in person.
4. Mr. P. Thamburaj, Chartered Accountant appeared for **Mr. Srinivasan Chidambaram** and **Ms. S. Jeevalatha Sridhar**.

For SEBI: Mr. G. Ramar, General Manager, Mr. E. Balasubramanian, Assistant General Manager, Mr. R. Anand, Assistant General Manager and Mr. T. Vinay Rajneesh, Assistant General Manager.

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1. Securities and Exchange Board of India (“SEBI”), vide an interim Order dated August 20, 2015 *prima facie* observed that the company, **Disc Assets Lead India Limited** (“the Company” or “DALIL”) had launched Collective Investment Schemes (“CISs”) without obtaining certificate of registration for carrying on such activity from SEBI as required under section 12(1B) of the SEBI Act, 1992 and regulation 3 of the SEBI (Collective Investment Scheme) Regulations, 1999 (“CIS Regulation”). The interim order had also alleged that illegal mobilization of funds from the public through such unauthorized CISs amounted to a fraudulent practice in terms of regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 (“the PFUTP Regulations”).

2. In order to protect the investors, prevent the Company from further carrying on such unregistered CIS activity, to safeguard the assets acquired by the Company from public funds and also in view of the non-cooperation of the Company in furnishing information/documents as sought by SEBI during enquiry, the following directions were issued:

“22. *In view of the above, I, in exercise of the powers conferred upon me under Section 11(4) and 11B of the SEBI Act, 1992 and Regulation 65 of CIS Regulations, hereby direct Disc Assets Lead India Ltd. (PAN: AACCD4575E) and its Directors viz. Mr. Nithiyantham Arunkumar (PAN: AFWPA7113H), Mr. Vivekanandam Janarthanan (PAN:AFFPJ9926C), Mr. Srinivasan Chidambaram (PAN:AJTPS6054J), Mr. Shyamchander Thanikodi (PAN:BPEPS8939C), Mr. Nithiyantham Malathi Umashankar (PAN:AAOPU8534H) and Ms. S. Jeevalatha Sridhar (PAN:AKPPJ3044C):*

- i. not to collect any fresh money from investors for its existing schemes;*
- ii. not to launch any new schemes/plans or float any new companies to raise fresh moneys;*
- iii. not to dispose of any of the properties or alienate the assets of the existing scheme;*
- iv. not to divert any funds raised from customers/ investors, kept in bank account(s) and/ or in the custody of the company;*
- v. to immediately submit the full inventory of the assets owned by DALIL,*
- vi. to furnish all the information sought by SEBI, vide letters dated October 03, 2013, January 22, 2015 and March 03, 2015 and not yet submitted, including,*

- (a) *Scheme-wise amount mobilized (for both Cash Down Payment Plans and Instalment Payment Plans/"Land Installment Scheme"), since inception with year-wise break-up of amount mobilized, amounts repaid, etc.*
- (b) *Details of scheme-wise list of customers/investors (for both Cash Down Payment Plans and Instalment Payment Plans/"Land Installment Scheme") along with their names, addresses and telephone numbers including,*
- *list of investors to whom land has been allotted and got registered,*
  - *list of investors to whom land was allotted but not registered in the name of the customers,*
  - *list of investors who opted for the rent out/sales option of the scheme,*
  - *list of investors who have been refunded.*
- (c) *Details of the "Product Package Scheme" offered by DALIL, in the manner specified in item No.vi (a) and (b) above,*
- vii. *to furnish the Audited Balance Sheet as on March 31, 2015,*
- viii. *Details and item-wise break-up of ₹410.49 Cr. shown as "Pre-paid Expenses for ILPS Product" under the head "Other non-current Assets" (of the Balance Sheet as on March 31, 2014),*
- ix. *Full details and Item-wise break-up of ₹119.28Cr. shown as "Loan and Advances" under the head "Shortterm loans and advances" in "Current Assets" (of the Balance Sheet as on March 31, 2014), including a special mention of all loans to its Related Parties/Wholly Owned Subsidiaries/Associate companies/entities,*
- x. *Details of item-wise commission paid to agents/investors for the promotion of the schemes (all schemes floated by the company), since inception till date".*

**3.** The directions issued vide the interim order came into force with immediate effect. The interim order also directed the Company and its directors to show cause as to why appropriate directions/prohibitions under section 11 of the Securities and Exchange Board of India Act, 1992 (SEBI Act) and the SEBI (Collective Investment Schemes) Regulations, 1999 (CIS Regulations) , including the following, should not be taken/imposed against them:

- i. Directing them jointly and severally to refund any moneys/assets collected from the investors under the scheme, along with the requisite interest,
- ii. Directing them to wind up such plans/schemes,
- iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities market for a particular period.

4. The **Company** filed its reply dated October 15, 2015 and *inter alia* submitted that after opinion from its lawyers that its activities shares borders with CIS activities, it has since October 2013 not collected any fresh investments in its schemes from new investor and submitted that –

- (a) The Company has not launched any new schemes/plans or floated new companies to raise fresh money.
- (b) The Company is willing to wind up its existing schemes and to dispose of properties so as to repay its existing investors so that investors' interest could be safeguarded.
- (c) The Company has not diverted any funds raised from its investors.
- (d) It did not obtain a registration from SEBI as it was under belief that its investment schemes were not in the nature of CIS.
- (e) The sale deeds were not executed after the initiation of SEBI enquiry as alleged in the interim order. The sale deeds were executed even prior to enquiry.
- (f) Majority of the investors opted for monetary benefits under the schemes. Therefore, demarcating a land would have caused hardship to the Company and adversely affected interest of investors.
- (g) The right to change location of land was only reserved to avoid loss to the investor in case of unforeseen circumstances.
- (h) The Company had employed the funds mobilized from investors either for operation of the business or to develop business by investing in other companies.
- (i) The Company assured certain return on the maturity of the scheme in the form of either payment of estimated value or registration of land.
- (j) The Company denied the violation of regulation 4(2)(t) of the PFUTP Regulations.

The Company requested SEBI that –

- (a) The restrictions imposed by SEBI on the Company and its present and past directors may be removed.
- (b) A period of one year may be granted to the Company to fully repay its investors.
- (c) The Company may be allowed to wind up its existing schemes.
- (d) No future restrictions be imposed on the Company and directors restraining them from dealing in the securities market or to launch any new scheme/plan.

The Company requested for an opportunity of personal hearing.

5. The replies of the directors of the Company are summarized below:

- (a) **Mr. Srinivasan Chidambaram**, Director of the Company vide letter dated October 15, 2015 submitted that he is a director in the Company since December 16, 2010 and that he had conducted the business of the Company in utmost good faith and in a fair and transparent manner. He submitted that he had mobilized money from investors in the best possible manner to serve their interests. He neither intended nor earned wrongful gains as a director. The violations alleged in the interim order was not intentional.
- (b) **Mr. Vivekananda Janarthanan, Managing Director of the Company** vide letter dated October 15, 2015 *inter alia* stated as follows:
  - i. He was one of the directors of the Company when the Company was incorporated. He became the managing director on February 06, 2009.
  - ii. In the capacity as director or managing director, he had conducted the business of the Company in utmost good faith and in a fair and transparent manner.
  - iii. He had mobilized money from investors in the best possible manner to serve their interests. He neither intended nor earned wrongful gains as a director.
  - iv. The violations alleged in the interim order was not intentional and were mere irregularities.
  - v. He had made best efforts to completely co-operate with SEBI.

- vi. He adopts the reply of the Company.
- vii. He requested that SEBI should not take any action against him.

- (c) **Mr. Nithiyantham Arunkumar, director**, vide letter dated October 15, 2015, submitted that he was one of the directors of the Company since May 15, 2006. While stating that he too adopts the reply of the Company, made similar submissions as that of Mr. Vivekananda Janarthanan.
- (d) **Mr. Shyamchander Thanikodi**, vide letter dated October 15, 2015, submitted that he was a director in the Company from December 06, 2010 to September 16, 2015 and that during his directorship, he never had role in the affairs of the Company. He also submitted that he did not sign any documents as a director. He was given a honorarium of Rs.50,000/- per month during his tenure. At the time of his appointment as a director, 3% shares of the Company were allotted to him on payment of Rs.30,000/-. The noticee submitted that the allotment was a gesture as he had helped the Company in acquiring some key properties for which he had not taken any brokerage. He further stated that over a period of time, his share diluted from 3% to 1.4%. This noticee further submitted that as he was never involved in the affairs of the Company, he would not be able to file a detailed reply.
- (e) **Mrs. S. Jeevalatha Sridhar**, vide letter dated October 17, 2015, submitted that she was a director from January 24, 2011 to July 26, 2013 and that during her tenure she looked after the Human Resource work of the Company. She submitted that she had no role in the affairs of the Company and got a nominal number of shares and Rs.50,000/- as remuneration. The noticee further submitted that before her appointment as the director, she had joined the human resources department of the Company in 2006 for a salary of Rs.6000/-. Over a period of time, her salary was increased to Rs.20,000/-. Even after appointment as director she continued to look after the human resource work. During her tenure of 30 months, she had received a total amount of Rs.9,75,555/-. She further stated that she would not be able to throw any light on the merits of the case as alleged in the interim order. She therefore requested SEBI not to take any action.

- (f) **Mr. Nithyanantham Malathi Umasangarr**, vide letter dated October 23, 2015 submitted that he was the managing director of the Company since inception on May 15, 2006 and was relieved from such position on February 06, 2009. As the managing director, he had always conducted the business in utmost good faith and the money received from investors were utilized in the best possible manner. He did not earn any wrongful gains as the managing director. He became the Chairman of the Company on February 06, 2009. During his office, he had chaired the board meetings and general meetings only. He resigned from post of Chairman and directorship on July 24, 2013 and after that he was not in-charge of the affairs of the Company. The noticee further submitted that the alleged violation were not intentional and requested SEBI not to take action against him.

6. Thereafter, the Company vide letter dated December 16, 2015 *inter alia* submitted that it had launched two kinds of investment schemes in the year 2006 – ***Instalment Land Purchase Scheme and Cash Down Land Purchase Scheme***. The Company invited investment from investors in lieu of which certain assured returns were granted at maturity of the scheme. The Company also submitted that –

- (a) It had furnished complete information to SEBI.
- (b) The activities of the Company did not cause any adverse impact on any investor.
- (c) The Company had duly complied with the directions issued vide the interim order.
- (d) The interest of investors could be served only by returning their money or an amount to which they are entitled under the schemes of the Company. For this purpose, the Company has to sell the assets. The Company is ready to do so under instruction of SEBI.
- (e) If SEBI vacates the interim order for a period of 6 months, the Company would be able to repay all its investors.
- (f) In case the assets of the Company fell short to repay the investors, the directors of the Company are ready and willing to overcome such shortfall through their personal assets or other sources such as taking loans from banks/financial institutions, friends and family.

7. The noticees (i.e. Company and its directors as named in the interim order) were afforded an opportunity of personal hearing on January 13, 2016 when –

- a. Mr. D. P. Singh, Advocate appeared for **Disc Assets Lead India Limited** and **Mr. N. Arunkumar**.
- b. Ms. Shuchita Shrivastava, Advocate represented **Mr. Shyam Chander Thanikodi**.
- c. **Mr. V. Janarthanan** and **Mr. N. M. Umashankar** appeared in person.
- d. Mr. P. Thamburaj, Chartered Accountant appeared for Mr. Srinivasan Chidambaram and **Ms. S. Jeevalatha Sridhar**.

The noticees/representatives submitted that they do not want to enter into any litigation by making contentions as they do not deny the observations made in the interim order. They requested for time of six months for making repayments to investors. The representatives also stated that undertaking was filed by the noticees stating that in case of shortfall of funds for making repayments, they would borrow funds and/or alienate their personal assets for satisfying the dues.

**8.** After the personal hearing, the Company, vide letter dated January 13, 2016 filed brief written submissions *inter alia* submitting the following:

- (a) The Company's businesses were closed and no fresh monies were collected in accordance with SEBI's directions.
- (b) Perusal of the reply clearly shows that there was no challenge made to the interim order.
- (c) After filing the reply, the noticees have had meetings with many investors and other leaders working for the Company. The valuation of properties were also done with the help of independent valuers.
- (d) The noticees are in touch with potential buyers and that few buyers have shown interest in immediate transactions. The Company requested the following:
  - i. Allow to re-pay the investors and wind-up the schemes
  - ii. Allow the noticees to dispose the assets to repay all investors within a period of six months.
  - iii. The noticees have undertaken to repay the investors even if they have to put their personal assets for sale to repay the investors. The noticees are confident that the assets of the Company are sufficient to pay not only the investors but also other liabilities of the Company.



- (e) The Company requested SEBI to keep in mind that the Company and its directors have the following credentials:
- i. There is not a single default in all the years while the company was doing business
  - ii. Every penny spent by the Company in its operations or for the payment of salary or commissions is accounted for and tax has been deposited
  - iii. The directors or its employees have never indulged in any luxury or extravagant lifestyle
  - iv. The Company has also indulged in a lot of charitable endeavors and behaved like a responsible corporate entity.
- (f) SEBI has been consistently giving opportunities to companies to repay the investors by disposing the assets and the same liberty was sought by the Company.
- (g) The noticees requested time of six months for repayment by disposing the assets.

**9.** The Company vide letters dated February 19, 2016 and March 10, 2016 submitted that there is a growing unrest amongst the investors and that it does not wish to be a defaulter. It reiterated that the interim order has restrained it from alienating assets. The Company requested SEBI to issue an order at the earliest so that it could take steps for alienating the assets for making repayments to the investors.

**10.** I have considered the interim order, the submissions made by the noticees, the material submitted by them and other material available on record. The interim order has alleged that the Company indulged in unregistered CIS activities in contravention of section 12(1B) of the SEBI Act read with regulation 3 of the CIS Regulations and regulation 4(2)(t) of the PFUTP Regulations. The Company has not challenged the allegations and observations made in the interim order. The only relief which the Company/noticees have sought for is permission from SEBI to alienate the assets for the purposes of repaying their investors. The directors of the Company have submitted that in case of shortfall in repaying the investors after disposing off the assets of the Company, they would bridge the gap by availing loans or alienating/encumbering their personal assets/properties.

11. The Company has been incorporated on April 20, 2006. The Company has admitted of launching the ‘investment schemes’ in 2006, which are alleged to be CIS. The Company has stated that it launched two plans – *Instalment Land Purchase Scheme* and *Cash Down Land Purchase Scheme*.

12. I have perused the interim order and *inter alia* note the following:

(a) SEBI has perused the scheme related documents of the Company like application form, agreement, registration letters, allotment letter etc.

(b) As per such documents, it is noted that an investor who wishes to subscribe to the schemes of the Company are required to submit the filled in application form. The application form contains basic details of the applicant (like name, address etc.), plan/product details (giving plan/product number, area, total consideration), etc. The application form contains the following “General Terms and Conditions”-

- *“The applicant shall make the payment strictly as per the payment plans.*
- *In case of instalment land purchase plans, if customer makes a default by not paying one or more instalment for a period of 12 consecutive months from the due date, such default shall be treated as Breach of Agreement. If such breach occurs, the payment received till the last due under said plan refundable after deducting 20% of consideration comprising various costs and other incidental expenses and remaining shall be entitled to a simple Interest @ 12.5% P A and refunded after the completion of period of instalment.*
- *There will not be any change of plans or breach occur under cash down land purchase scheme. The payment once paid is refunded after the completion of the period of terms or plans.*
- *If customer after subscribing to any plan or plans of company fails or refuses to submit necessary documents, papers, photographs/to complete the necessary formalities and execute the documents required for the purpose of effective transfer and maintenance of his/her/their products by company the same shall be construed as a case of opting out, In the event of such failure or refusal, company shall be entitled to appropriate 20% consideration, comprising various costs and incidental expenses. Company shall give 60 days’ notice to the concerned customer for compliance before his/her/their case is treated as a case of opting out and dealt with accordingly.*

- *The management of company reserves the right to discontinue / change/amend/modify or alter prospectively any of the rules/regulations and plans and introduce new plans at any time at its sole discretion with or without any notice.*
- *In case, the agreement entered between the customer and the company could not be given effect to, because of enactment of any law by State or Central Government, the customers are entitled to rescind the agreement, in which event, the company shall refund the amount paid by customer together with simple interest @ 12.5% per annum from the date of the agreement.*
- *The company reserves the right to change the location of the property allotment and allot you an alternate site at any other place.*
- *The sale deed in respect of product [land] after the completion of periodicity of instalments, the product allotted to you, shall be executed and registered shortly where, however transfer of such small plot of land is prohibited by law or otherwise not possible / feasible / practicable, company shall arrange for transfer of title of the said plot in favour of customers in joint holding with other the customer."*

(c) The investor is also made to execute an Agreement with the Company. This Agreement *inter alia* contains the following clauses:

- *Whereas DAL makes arrangement for sale of pieces of land with clear and marketable title to the extent of .....by purchasing/procuring land in favour of the customer and also on option of the customer develop and maintain the same.*
- *ALLOTMENT OF LAND: DAL shall issue an Allotment Letter to the Customer, describing the details of SAID LAND after identifying the same, within 270 days after receipt full consideration in case of Cash Down Payment Plans and 90 days after receipt of half of the consideration in case of Instalment Payment Plans.*
- *CONSIDERATION: The total consideration is.... for arrangement and execution of sale, registration of Sale Deed, development and maintenance of the SAID LAND during the term of this agreement and other incidental expenses.*
- *DEVELOPMENT AND MAINTAINCE : The DAL shall develop and maintain the SAID LAND from the date of Allotment Letter as per the Scheme/Plan opted by the Customer*

*in Consultation with Agro experts and subject to the factors of soil condition, climate etc. The DAL shall have the rights and sole discretion to take final decision in all matters relating to development and maintenance including survey, demarcation identify the SAID LAND clearing, cultivation, Plantation, farming, rising of crops trees, plants, saplings, herbals etc. using fertilizers, pesticides, irrigation, harvesting and all are activities incidental thereof.*

- *COMMON AMENITIES: DAL shall provide for certain common amenities such as irrigation, drainage systems, pipelines, electrical lines which may laying through the SAID LAND either underground or over ground, motor pump sets, temporary sheds and structures etc., as per the final decision of DAL.*
- *PROHIBITION OF COMMON AMENITIES: .The CUSTOMER or any other person or persons claiming under him shall not claim or ownership or right or interest over the common amenities staled in the clause [9]. No such person or persons upon regular expiry or this Agreement shall any way interfere in any manner, damage, tamper, destroy or disrupt the irrigation systems, power lines, pipelines, electric system and other common amenities including fittings and other implements.*
- *AGREEMENT PERIOD: The period of this agreement pertaining to the rights and obligations of parties, shall come into force only after Registration of the Customer and expires on the completion of the period specified in the Scheme/Plan opted by the Customer. The DAL shall remove its all machineries and equipment from the SAID LAND after expiry of the tenure of this Agreement.*
- *This Agreement can be extended on requisition of the Customer in writing within 30 days after expiry of this agreement and on mutually agreed terms and conditions. The DAL shall have the discretion to extend this agreement.*
- *The CUSTOMER can opt for withdrawal from the Scheme/Plan on written requisition. The amount paid by the CUSTOMER under plan opted by him, shall be refundable after deduction 20% of the amount towards the total consideration along with simple interest of 15% per annum for various costs and incidental expenses, The TDS and other taxes will also be applicable.*
- *FAILURE/REFUSAL TO COMPLETE FORMALITIES : If the CUSTOMER after registration, fails or refuses to furnish necessary documents or to complete formalities or to execute necessary documents required for the purpose of effective transfer of title of the SAID LAND in*

*favour of the CUSTOMER and development of the same, shall be construed as a case of withdrawal. In that event, DAL shall be entitled to invoke the terms in Clause 12. DAL may give 60 days' notice to the customer for compliance before his case be treated as a case of withdrawal*

- *MARKETING SERVICE: The customer has the option of retain or sell the SAID LAND as he become deem fit, on expiry of the agreement. To facilitate this liquidity, DAL provides its Marketing services to the customer(s). if the customer is desirous of avail the aforesaid marketing services, only at the end of this agreement. In case of this opting, the customer shall have to submit necessary documents required by DAL at least 30 days in advance along with a letter to Custodial Section of DAL.*
- *BREACH OF AGREEMENT :*

*1. BY DISC:*

*[a] In case DAL commits a Breach Agreement by not allotting the SAID LAND in favour of Customer in the manner agreed to CUSTOMER shall be entitled to terminate the agreement. In that event DAL shall refund the amounts paid CUSTOMER together with simple interest @12.5% per annum from the date of contract.*

*[b] In case DAL commits of Breach Agreement by not completing the development of SAID LAND in the manner agreed to CUSTOMER[s] shall be entitled to terminate Agreement, In which event DAL shall refund the amounts paid by the CUSTOMERS[s] after deducting cost of land registration expenses, development charges and other incidental expenses, and the balance amount, if any would be refunded together with simple interest at 15% per annum from the date contract.*

*2. BY THE CUSTOMER*

*.....*

*[B] Default after allotment / registration of land: In case of installment Payment Plans, if such breach occurs after the allotment of the said land, DAL shall be entitled to appropriate 20% of total consideration of cost, development charges and all other expenses incidental thereto. Where, however, such breach occurs after registration of sale deed. DAL shall entitle to recover. In addition to the aforesaid 20% the balance amount, if any, of original land cost outstanding from him together. However, in case CUSTOMER sells his land including trees, saplings, plants, crops and*

*other items thereon to any person. DAL shall only appropriate 20% of total consideration. The CUSTOMER shall bear the cost and other incidental expenses related to transfer of the said land*

...

- MISCELLANEOUS :

*[a] The DAL is not responsible for any confusion / misleading / misconception / misconstruction / misinterpretation / dishonesty / misappropriation / misconduct / false counselling occur in the field or down line of an applicant / customer and it is purely because of the misrepresentation and the false detailing of the introducer only. If it occurs the DAL shall have the right to terminate both of them."*

(d) Pursuant to the submission of the Application form and the Agreement by the investor, the Company issues a "Registration letter". This letters contains the following details:

- Details of the customer name/address and other details,
- Registration No. and date of commencement,
- Plan No. and term,
- Consideration and Plot size (Sq.Ft.),
- Periodicity of Installment and Duration,
- Mode of payment,
- Amount of instalment,
- Expiry date of agreement,
- Details of "*Estimated Value at the end of the term*",
- Date of Realizable value at the end of term.

Further, it is important to note the following "*General Terms and Conditions*" mentioned in the Registration letter issued by the Company:

- "*Applicant shall make payment according to the payment plans.*
- "*All remittance must be made by the agents to concerned branch office or the company directly.*

- *In case of instalment land purchase plans, if customer makes a default by not paying one or more instalment for a period of 12 consecutive months from the due date, such default shall be treated as Breach of Agreement.*
- *There will not be any change of plans or breach occur under cash down land purchase plan. The payment once paid is refunded only after the completion of the period of the terms of plans,*
- *The management of company reserves the right to discontinue/change/amend/modify or alter prospectively any of the rules/regulations and plans mentioned in the rule book 1 and 2 at any time at its sole discretion with or without any notice."*

(e) The Company also issues an "Allotment letter" to the investor. This letter mentions details like the plot numbers, area of the plot, survey number, district etc. This letter too contains certain clauses/terms as follows:

*"We are pleased to inform you that Farm plot(s) booked by you vide application dated ....have been allotted to you by DALIL as per the details given below:*

*No. of Farm plot(s) ....., Area Sq, Ft.....D. No....., Survey No..., M. Plot No.....*

***However, DALIL, reserves the right to change the location of this allotment, and allot an alternate site at any other place within Tamil Nadu. Title Transfer is also subject to timely payment of all future instalments by you.***

*The allotment and the subsequent conveyance of the Plot, shall be only in conformity with terms and conditions of application and agreement executed. All the instalments paid by customer under ILPS(Instalment Land Purchase Schemes) Plan 2. Quarterly Rs..... to DALIL, until date, now stand appropriated by DALIL.*

*All future instalments which are to be paid under the said plan, shall automatically stand appropriated by DALIL upon receipt.*

*These appropriations shall cover the cost of procuring the said property and conveying it to the customer, developing the same. Administration and management fees and other ancillary expenses incidental thereto.*

*This sale deed in respect of Farm Plots, allotted shall be executed and registered once full payment is received by the company. Where however, transfer of such small Farm Plot of land is prohibited by Law or otherwise not possible/feasible/practicable, DALIL, shall arrange for transfer of title of the said Farm plot in favour of Customers in Joint Holding with other like Customer. DALIL shall execute / procure execution of Joint sale deed in favour of the said customers [including the Customer] conveying the proportionate area of the Farm plot to them where the title of the Farm Plot is transferred to the Customer in Joint Holding with other customers by means of joint sale deed from the office of concerned Sub-Registrar for and on behalf of concerned customer, and shall provide certified copy to each Customer, if the same is not possible / feasible / practicable, DALIL, shall provide a copy of the sale deed to customer duly attested by Notary Public. Where title of Farm Plot is transferred by means of specific separate sale deed. DALIL, shall arrange to provide said original sale deed to customer”.*

- (f) As per the Balance Sheet of the Company as on March 31, 2014, the Company had collected Rs.874.5 crore under its Instalment land Purchase Scheme. The Company held only lands (inventory regarding stock of land) worth Rs.205.79 crore.

13. For any ‘scheme’ to be concluded as CIS, it has to satisfy the provisions of section 11AA of the SEBI Act. The said provision is reproduced below for reference:

*“(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (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 the exemptions from CIS sub-section (3), involving a corpus amount of one hundred Crore rupees or more shall be deemed to be a collective investment scheme.*

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

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

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

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



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

*(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.”*

Sub-section (3) to section 11AA mentions the list of activities covered under other enactments which are not considered as CIS.

**14.** In the present case, it is an admitted position that the Company/directors have mobilized funds from the public under the schemes launched by the Company. The Company has launched and carried on two schemes - *Instalment Land Purchase Scheme* and *Cash Down Land Purchase Scheme* from the year 2006. As mentioned above, the Company has mobilized Rs.874.5 crore under its Instalment land Purchase Scheme as on March 31, 2014. Further, the Company in the annexure to its reply has mentioned that it has collected Rs.1137.30 crore during the period June 01, 2006 to September 14, 2015. Further, the Company does not identify the plot in any of its documents issued to its investor. Further, as observed in the interim order, the Company has mentioned that the investor is entitled to “estimated value” after the completion of the term. The Company has submitted that majority of the investors opted for monetary benefits which is equivalent to the estimated realizable value promised under the schemes. The Company in its submissions has stated that the monies collected from investors have also been invested in other companies with a view to develop its business. Therefore, it becomes clear that the Company does not focus in real estate rather in a scheme which solicits and pools monies from customers with a promise of return. In view of the above, it can be concluded that the Company pools the contributions from investors and utilizes the same for the purposes of the scheme.

**15.** I note that the interim order has made the following observation with respect to section 11AA(2)(ii) of the SEBI Act:

*“The "Registration Letter" issued to the "customers"/investors indicate an "Estimated Realizable Value"/return/profit at the end of the term. From a sample copy of the "Registration Certificate"*

*issued by DALIL to one of its investors, it is noted that an investor opting for "ILPS (63 months)" where the "Consideration" is mentioned as ₹12,600/-, he/she has to pay an amount of ₹200/- monthly. After the term period of 63 months, the investor is entitled to an Estimated Value at the end of the term" of ₹18,000/- i.e. he/she is entitled to an amount of ₹5,400/- as profit/ return. In view of above, it is apparent that the contributions of the "customers"/investors (whether by instalments or cash down payment) are made to such scheme or arrangement with a view to receive the "Estimated Value"/profit/return."*

It is an admitted position that the Company has solicited monies under its schemes from investors with a promise of return i.e. estimated realizable value. The Company has also stated that its customers opt for monetary return against registration of land. Therefore, it is concluded that 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.

**16.** I also note that the interim order has referred to various clauses of the scheme related documents of the Company to observe that the contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors, and that the investors do not have day-to-day control over the management and operation of the scheme or arrangement. I have perused the scheme related documents and agree with the observations made in the interim order.

**17.** The activities of the Company are not exempt under the clauses under section 11AA(3) of the SEBI Act. It is also noted that the Company, as per its admission, has mobilized a total amount of Rs.1137 crore till September 14, 2015. In view of the same, the pooling of funds by the Company is covered under the *proviso* to section 11AA(1) of the SEBI Act.

**18.** From the above discussions, I conclude that the schemes offered by the Company satisfy all the four conditions specified in Section 11AA (2) of the SEBI Act and therefore qualify as a Collective Investment Scheme as defined under the said section read with the CIS Regulations. At this juncture, it is important to note that the Hon'ble Supreme Court in the matter of PGF Limited vs. UoI and

another (ref. MANU/SC/0247/2013, has observed "*.....the Parliament thought it fit to introduce Section 11AA in the Act in order to ensure that any such scheme put to public notice is not intended to defraud such gullible investors and also to monitor the operation of such schemes and arrangements based on the regulations framed under Section 11AA of the Act.*" The Hon'ble Supreme Court further observed "*Inasmuch as the said Section 11AA seeks to cover, in general, any scheme or arrangement providing for certain consequences specified therein vis-a-vis the investors and the promoters.....,*". The Hon'ble Supreme Court further observed "*A reading of sub-Section (3) of Section 11AA also throws some light on this aspect, wherein it is provided that those institutions and schemes governed by sub-clause (i) to (viii) of sub-Section (3) of Section 11AA will not fall under the definition of collective investment scheme. .... Therefore, by specifically stipulating the various ingredients for bringing any scheme or arrangement under the definition of collective investment scheme as stipulated under sub-Section (2) of Section 11AA, when the Parliament specifically carved out such of those schemes or arrangements governed by other statutes to be excluded from the operation of Section 11AA, one can easily visualize that the purport of the enactment was to ensure that no one who seeks to collect and deal with the monies of any other individual under the guise of providing a fantastic return or profit or any other benefit does not indulge in such transactions with any ulterior motive of defrauding such innocent investors and that having regard to the mode and manner of operation of such business activities announced, those who seek to promote such schemes are brought within the control of an effective State machinery in order to ensure proper working of such schemes.*"

19. In order to carry out the activity of CIS and mobilize public funds from such schemes, it is mandatory under law to obtain a certificate of registration from SEBI. Section 12(1B) of the SEBI Act mandates that no person, shall sponsor or cause to be sponsored or carry on or caused to be carried on any CIS unless it obtains a certificate of registration from SEBI in accordance with the CIS Regulations. Regulation 3 of the CIS Regulations provides that no person other than a Collective Investment Management Company which has obtained a certificate under the said regulations shall carry on or sponsor or launch a 'collective investment scheme'. A person can launch or sponsor or cause to sponsor a collective investment scheme only if it is registered with SEBI as a Collective Investment Management Company. Therefore, the launching/ floating/ sponsoring/ causing to sponsor any 'collective investment scheme' by any 'person' without obtaining the certificate of registration in terms of the provisions of the CIS Regulations is in contravention of section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. The Company admittedly does not have a

certificate of registration as mandated under law and has launched CIS without obtaining certificate of registration from SEBI, thereby contravening the provisions of section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations. Therefore, having concluded that the activities of the Company are CIS in terms of section 11AA of the SEBI Act and that the same were carried out without obtaining registration from SEBI, suitable enforcement action should necessarily follow in the interest of investors.

**20.** The interim order has alleged that the fund mobilizing activity of the Company through its schemes *prima facie* amounts to a fraudulent practice in terms of regulation 4(2)(t) of the PFUTP Regulations. I note that in terms of regulation 4(2)(t), dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and includes 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. This provision in the above Regulations has been brought into effect from September 06, 2013. Accordingly, it could be held that by mobilizing public funds through CIS without obtaining registration from SEBI as required under section 12(1B) of the SEBI Act read with regulation 3 of the CIS Regulations, after the provision coming into force, the Company has contravened the above provision and liable for action.

**21.** Having concluded that the activities of the Company are CIS in terms of section 11AA of the SEBI Act and that the same were carried out without obtaining registration from SEBI, suitable enforcement action should necessarily follow in the interest of investors. In this regard, in addition to the directions that could be issued under sections 11(4) read with 11B of the SEBI Act, regulation 65 of the CIS Regulations provides for various directions by SEBI. I also note that the Company has requested SEBI to permit it to repay investors and for permission to dispose off its assets/property for the purposes of repaying the investors. Considering that this request is made for the purposes of making refunds to the investors from whom mobilization was made, I find it appropriate and in the interest of investors to allow this request. I also note that the directors have indicated that in case there is any shortfall of monies in repaying the investors pursuant to the disposal of assets of the Company, they would arrange for funds by either borrowing from financial institutions or encumbering their personal assets. The directors are at liberty to do so.

22. The interim order has been passed against the following persons:

<b>Sr. No.</b>	<b>Name of noticee</b>	<b>Director from</b>	<b>To</b>
1.	<b>Mr. Vivekanandam Janarthanan</b>	06/02/2014	<b>Continues</b>
2.	<b>Mr. Nithiyantham Arunkumar</b>	06/02/2014	<b>Continues</b>
3.	<b>Mr. Srinivasan Chidambaram</b>	06/12/2010	<b>Continues</b>
4.	<b>Mr. Shyamchander Thanikodi</b>	06/12/2010	<b>Continues</b>
5.	<b>Mr. Nithiyantham Malathi Umashankar</b>	06/02/2009	24/07/2013
6.	<b>Ms. S. Jeevalatha Sridhar</b>	24/01/2011	26/07/2013

The period of their directorship indicated in the table is from the information available in the MCA portal.

I have considered the submissions made by the individual noticees. Regarding their liability, I observe the following:

- (a) A few of the noticees have adopted the reply of the Company, wherein the Company has stated that the CIS schemes have been launched in the year 2006 and monies have been mobilized at least till September 2015.
- (b) In terms of section 291 of the Companies Act, 1956, the board of directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the board of directors shall be responsible for the conduct of the business of a company and liable for any non-compliance of law and such liability shall trickle down to individual directors. Accordingly, a director who is part of a company's board shall be responsible and liable for all acts carried out by a company unless exemptions are provided. The present case involves a Company that has mobilized public funds from gullible investors through its unregistered collective investment schemes. In this

regard, the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs Registrar of Companies* (2002 108 Comp Cas 1 Mad) are important to note:

*"13. .... A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.*

*14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956."*

(c) The noticees have submitted that the violations were not intentional and were mere irregularities. However, this submission would not absolve the noticees of the violations committed.

(d) In view of the above observations, all the persons mentioned in the interim order shall be liable for launching and carrying on with the unregistered CIS schemes. Therefore, Mr. Nithiyantham Arunkumar, Mr. Vivekanandam Janarthanan, Mr. Srinivasan Chidambaram, Mr. Shyamchander Thanikodi, Mr. Nithiyantham Malathi Umashankar and Ms. S. Jeevalatha Sridhar being the directors during the relevant period are responsible for the violations as found above against the Company. Therefore, they are also liable for suitable enforcement action.

**23.** In view of the foregoing observations and findings, 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(1), 11(4) and 11B thereof and regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby issue the following directions:

- 1. Disc Asset Lead India Limited, its directors Mr. Nithiyantham Arunkumar, Mr. Vivekanandam Janarthanan, Mr. Srinivasan Chidambaram, Mr. Shyamchander Thanikodi and its former directors Mr. Nithiyantham Malathi Umashankar and Ms. S. Jeevalatha Sridhar shall abstain from collecting any money from the investors or launch or**

carry out any Collective Investment Schemes including the schemes which have been identified as a Collective Investment Scheme in this Order.

2. **Disc Asset Lead India Limited and its directors Mr. Nithiyantham Arunkumar, Mr. Vivekanandam Janarthanan, Mr. Srinivasan Chidambaram and Mr. Shyamchander Thanikodi**, shall wind up the existing Collective Investment Schemes and refund, through 'Bank Demand Draft' or 'Pay Order', 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 thereafter within a period of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, including the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds.
3. **Disc Asset Lead India Limited and its directors Mr. Nithiyantham Arunkumar, Mr. Vivekanandam Janarthanan, Mr. Srinivasan Chidambaram and Mr. Shyamchander Thanikodi** shall not alienate or dispose off or sell any of the assets of the aforesaid company except for the purpose of making refunds to its investors, as directed above.
4. After completing the aforesaid repayments, as directed in sub-paragraph (2) above, **Disc Asset Lead India Limited** shall file a certificate of such completion with SEBI, within a period of 15 days, from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ('ICAI').
5. **Disc Asset Lead India Limited, its directors Mr. Nithiyantham Arunkumar, Mr. Vivekanandam Janarthanan, Mr. Srinivasan Chidambaram, Mr. Shyamchander Thanikodi and its former directors Mr. Nithiyantham Malathi Umashankar and Ms. S. Jeevalatha Sridhar** are directed to immediately submit the complete and detailed inventory

of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.

6. **Disc Asset Lead India Limited, its directors Mr. Nithiyantham Arunkumar, Mr. Vivekanandam Janarthanan, Mr. Srinivasan Chidambaram, Mr. Shyamchander Thanikodi and its former directors Mr. Nithiyantham Malathi Umashankar and Ms. S. Jeevalatha Sridhar** are restrained from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities market for a period of 4 years.
7. In the event of failure by **Disc Asset Lead India Limited, its directors Mr. Nithiyantham Arunkumar, Mr. Vivekanandam Janarthanan, Mr. Srinivasan Chidambaram, Mr. Shyamchander Thanikodi and its former directors Mr. Nithiyantham Malathi Umashankar and Ms. S. Jeevalatha Sridhar** to comply with the directions above, the following action shall follow:
  - i. **Disc Asset Lead India Limited, its directors Mr. Nithiyantham Arunkumar, Mr. Vivekanandam Janarthanan, Mr. Srinivasan Chidambaram, Mr. Shyamchander Thanikodi and its former directors Mr. Nithiyantham Malathi Umashankar and Ms. S. Jeevalatha Sridhar** shall remain restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, even after the completion of period of 4 years of restraint imposed vide sub-paragraph 6 above, till all the Collective Investment Schemes of the Company are wound up and all the monies mobilized through such schemes are refunded to its investors with returns which are due to them.
  - ii. SEBI would make a reference 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 mis-appropriation of public funds.



- iii. SEBI would make a reference to the Ministry of Corporate Affairs to initiate appropriate action as deemed fit against the Company.
- iv. SEBI would also make a reference to the Ministry of Corporate Affairs to restrain the abovementioned noticee directors from being directors in other companies.
- v. SEBI shall also initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder.

24. This order shall come into force with immediate effect.

25. This Order shall be without prejudice to the right of SEBI to initiate prosecution proceedings under section 24 and adjudication proceedings under Chapter VIA of the Securities and Exchange Board of India Act, 1992 against Disc Asset Lead India Limited, its directors Mr. Nithiyanantham Arunkumar, Mr. Vivekanandam Janarthanan, Mr. Srinivasan Chidambaram, Mr. Shyamchander Thanikodi and its former directors Mr. Nithiyanantham Malathi Umashankar and Ms. S. Jeevalatha Sridhar, including other persons who are in default, for the violations as found in this Order.

26. Copy of this Order shall be forwarded to the stock exchanges and depositories for necessary action.

**PRASHANT SARAN  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA**

**Date: March 30<sup>th</sup>, 2016**

**Place: Mumbai**