

**SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER
ORDER**

DIRECTIONS UNDER SECTIONS 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATIONS 65 AND 73 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 1999.

In respect of:

- 1. M/s. Maitreya Services Pvt. Ltd. (PAN: AABCM9358H)**
- 2. Mrs. Varsha Madhusudan Satpalkar (PAN: ACEPS9276L)**
- 3. Mr. Janardan Arvind Parulekar (PAN: AKNPP6001B)**

Appearances:

For Noticees:

1. Mr. Zal T. Adhyarujina, Advocate
2. Mr. Joby Mathew, Advocate
3. Mr. Kiran Kakad, Chartered Accountant
4. Mr. Vijay Tavare, General Manager, Maitreya Services Pvt. Ltd., and
5. Mr. Anant Wagh, Finance Manager, Maitreya Services Pvt. Ltd.

For SEBI:

1. Mr. Santosh Kumar Shukla, Joint Legal Advisor
2. Mr. S. Madhusudhanan, Deputy General Manager
3. Mr. T. Vinay Rajneesh, Assistant Legal Adviser, and
4. Ms. Meetu Aggarwal, Manager.

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1. Securities and Exchange Board of India (“SEBI”) received a letter dated September 21, 2010 from the Office of The Income Tax alleging contravention of the SEBI Act and Regulations against M/s Maitreya Services Pvt. Ltd. (“MSPL”). Alongwith said letter, the Office of The Income Tax had also forwarded certain documents including copy of statements dated June 21, 2010, June 25, 2010 and July 02, 2010, of Mrs. Varsha Satpalkar, Director of MSPL recorded under section 131 of the Income Tax Act, 1961.
 2. After examining the reference from Office of The Income Tax, SEBI undertook inquiry into the operations and activities of MSPL having its registered office at Lawrence Trade centre Co-op Hsg. Soc Ltd, Shop. No B 207,208, 2nd Floor, Survey No. 44, Navaghar, Vasai, Maharashtra – 401202 and contact address at ‘Indrakunj’, 1st floor, Behind Balaji Hospital, Bazar Ward, Virar(E), Taluka- Vasai, District- Thane- 401303.

3. In order to understand the nature of activities of MSPL and to examine whether they would fall within the ambit of the SEBI (Collective Investment Scheme) Regulations, 1999 ('CIS Regulations'), SEBI made inquiries and sought certain documents from MSPL with respect to its various schemes, details of funds mobilized from investors under the said schemes, the year-wise funds collected from the investors, the manner in which the funds were getting utilized, etc. SEBI vide numerous letters, particularly those dated October 13, 2010, November 18, 2010, December 01, 2010, January 03, 2011, January 11, 2011, May 19, 2011 and 09 June 2011 advised MSPL to submit certain documents. MSPL submitted certain information vide letters dated December 02, 2010, December 20, 2010, May 30, 2011 and 30 June 2011. The information so received included:
- Memorandum and Articles of Association of MSPL;
 - Plan wise details of number of investors and amounts received by MSPL from applicants for allotment of land units;
 - Details of past and present directors of MSPL;
 - Copy of a Unit Certificate issued by MSPL to its customer;
 - Application Form;
 - Memorandum of Understanding executed by the MSPL with the customers.
4. During inquiry, the MSPL had submitted that it carries out the business of real estate and its business includes buying and selling of land, development of the land, construction and other land related activities. These activities further include selling land units to small customers at a reasonable price. MSPL had further submitted that it had stopped accepting fresh investments from new investors as on October 2009.
5. During the inquiry, it was found that MSPL had launched various schemes under which money was collected from the public. These schemes differed on the basis of -
- the periodic payment to be made by the investor, and
 - the time period for which such investments were to be made.
6. In all, 41 schemes were, admittedly, launched by MSPL. The year-wise statement detailing collection and opting out from all the schemes as submitted by MSPL (cumulative for the 41 schemes) is given in the following Table:

Table- I

<i>Year</i>	<i>No. of Customers</i>	<i>Amount received from these</i>	<i>No. of outstanding</i>	<i>Promised Amount Due to</i>	<i>Amount repaid in the respective year</i> (□)	<i>No. of customers</i>	<i>Balance amount outstanding by</i>

	<i>from whom money was received</i>	<i>customers (□)</i>	<i>customers to whom money was to be paid</i>	<i>be paid by the respective year end (□)</i>	<i>Principal</i>	<i>Benefit paid</i>	<i>to whom money was yet to be paid</i>	<i>respective year end to be paid (□)</i>
		&	#	#	#		\$	\$
1998-99	1,054	782,235	1,054	782,235	-	-	1,054	782,235
1999-00	15,176	24,084,945	15,691	22,652,908	2,214,272	258,227	15,691	22,652,908
2000-01	44,765	91,080,730	54,857	91,777,744	21,955,894	4,039,444	54,857	91,777,744
2001-02	81,163	220,789,080	124,325	260,299,605	52,267,219	10,752,207	124,325	260,299,605
2002-03	113,214	330,835,214	214,603	479,836,785	111,298,034	21,506,968	214,603	479,836,785
2003-04	203,748	650,006,703	379,265	926,031,730	203,811,758	36,564,150	379,265	926,031,730
2004-05	239,718	873,957,074	549,024	1,400,600,408	399,388,396	68,688,009	549,024	1,400,600,408
2005-06	332,800	1,213,806,750	805,136	2,154,879,249	459,527,908	68,717,549	805,136	2,154,879,249
2006-07	420,241	1,630,480,765	1,117,922	3,092,152,306	693,207,709	126,296,423	1,117,922	3,092,152,306
2007-08	529,936	2,052,982,125	1,580,594	4,653,767,527	491,366,903	168,503,513	1,580,594	4,653,767,527
2008-09	625,549	2,690,166,945	2,087,757	6,421,291,755	922,642,718	268,572,227	2,087,757	6,421,291,755
2009-10	90,044	2,198,213,225	2,052,873	7,628,582,243	990,922,737	334,716,668	2,052,873	7,628,582,243
2010-11	-	1,336,467,500	1,957,721	8,044,967,344	920,082,399	205,999,239	1,957,721	<u>8,044,967,344</u>
Total	2,697,408	13,313,653,291			5,268,685,947	1,314,614,625		

Notes:

☞ Investors initially pay 25% of value of the plot booked and balance payable if they opt for the plot.

* Due Date for exercising option of allotment of land/plot or refund with benefit varies with each investors and date of investment.

Refund is due to customers on completion of booking amount and contingent to their not exercising option of allotment of land/ plot, after a specified period. Due date for refund varies from customer to customer as per their start-date. Benefit amount is based on their date of investments and this amount is paid as compensation for land appreciation during the interim period.

§ Cumulative as on 31st March of each year.

7. From the above Table, it was observed that for the year 2010-11, an amount of ₹ 804 crore (approximately) was outstanding with MSPL to be repaid to the investors.
8. On examination of the business methodology of MSPL, on the basis of the information received during the course of the inquiry, it was observed that MSPL has launched/sponsored /operated the 'collective investment schemes' as defined in section 11AA of the SEBI Act without obtaining registration from SEBI in terms of section 12(1B) thereof and regulation 3 of the CIS Regulations. In view of the same, a show cause notice (SCN) dated October 14, 2011 was issued to MSPL and its directors, namely, Mrs. Varsha Madhusudan Satpalkar and Mr. Janardan Arvind Parulekar (collectively referred to as 'the noticees') asking them to show cause as to why suitable action should not be initiated against them for the violation of regulation 3 of the CIS Regulations read with section 11AA of the SEBI Act. The SCN was issued on the basis of information and documents furnished by MSPL during the inquiry, its publicity material and brochures of MSPL and the three statements of its director that were received from Office of Income Tax and furnished to the noticees alongwith the SCN.
9. MSPL submitted its reply to the SCN vide letters dated November 03, 2011 and December 02, 2011. Mrs. Varsha Madhusudan Satpalkar and Mr. Janardan Arvind Parulekar have not filed any reply to the SCN till date. In its replies, the MSPL has *inter alia* submitted as under:-
 - (a) All the charges and allegations in the SCN are denied.
 - (b) It is involved in development of properties by constructions of commercial and residential buildings. It also divides large properties into plots. In its various plans MSPL receives booking amounts in installments (monthly/quarterly/annually) over a defined period. The booking amount is usually 25% of the land/plot value. The customers have option of allotment of land or refund of the booking amount paid by them, with certain benefits. The option is to be exercised within a specific period and only after payment of all the installments as agreed upon. If the customers opt for allotment of land, he has to pay balance 75% of the land /plot value.
 - (c) It refunds booking amount, to customers who opt out of land/plots after fully paying the booking amount, with additional amount as benefit to compensate the incremental value of land over the booking period. The money collected from customers is used for development of the properties.

- (d) It owns properties largely in the states of Maharashtra and Gujarat and has land banks at various places like Vasai, Virar, Vikramgad, Baroda, Sangli, Kudal, Chiplun, Pune, Nashik, etc.
- (e) It does not receive any "contributions" from the investors. All monies received by it are part payments/booking amounts towards purchase of land. Investments by purchasers in its plans are used to create assets that have grown in value over time. These assets are illiquid and therefore, it would not be economical to liquidate these assets to repay the investors who opt for repayment. Monies collected from new purchasers are partially used to repay investors who opt for repayment.
- (f) Now it has stopped taking any monies from purchasers for allotment of land and it is still able to repay the customers as and when it is due.
- (g) 1025 acres of land has been allotted to 8602 purchasers during 2010-11. It has entered into a contract with its customers. Non-fulfillment of promises made in the contract entitles investors to file suit for specific performance or claim damages. No purchaser has so far filed any suit against it.
- (h) SEBI has overlooked and ignored the contract with investors. It was not obligatory on its part to immediately buy the equivalent quantity of land upon receipt of any money or even after receipt of 25% of the contract money from the investor.
- (i) Value of assets owned by it is erroneously and wrongly computed by SEBI to be ₹ 200 crore.
- (j) It is highly improbable that all the investors would have asked for allotment of land at the same time.
- (k) It does not develop land using the booking amount received from the purchasers and the lands are not developed on behalf of purchasers. It develops land by itself and then sells it to purchasers who wish to purchase. Merely because it does not identify the plot of land to be allotted to purchasers at the time of allotment, it can not be said that it takes 'contribution' from the 'investors' and develops land on their behalf. The booking amount collected by it is not solely used for the purposes of its scheme. These amounts are also used for its normal business activities.
- (l) It is denied that its schemes/plans are in nature of '*collective investment scheme*' and therefore, section 11AA of the SEBI Act and CIS Regulations do not apply to its activities.
- (m) It is requested that the instant proceedings may, therefore, be terminated and it may be discharged from the SCN. MSPL also sought opportunity of personal hearing before any order is passed against it.

10. An opportunity of personal hearing was granted to the noticees before me on January 19, 2012 but the same was adjourned on request of MSPL to January 23, 2012 when its authorised advocate reiterated the submissions made in the replies of MSPL and without prejudice to those submissions, he submitted that it would submit an application proposing repayment that would in effect meet the concern of SCN and, therefore, the matter need not be proceeded further. The learned advocate sought time to submit the proposal within 15 days and sought for another date of hearing which was granted. The learned advocate also submitted that MSPL has filed a consent application for disposal of instant proceedings through a consent order and the proposal of the MSPL may be considered for the purposes of the consent proceedings also.
11. Vide its letter dated February 07, 2012, the MSPL sought extension of time for submitting repayment proposal and postponement of date of hearing. The opportunity of hearing was, thus, again granted to MSPL on March 21, 2012 when the authorised representative of MSPL, vide letter dated March 21, 2012, submitted a proposal to make repayment to investors as per the planned business model over a period of about 5 years. The learned advocate also submitted that MSPL has filed a consent application for disposal of the present proceedings through a consent order. Considering the risks involved in the matter and the proposal not being within spirit of the SEBI Act read with CIS Regulations and in the interests of investors, the time period of 5 years to wind up the schemes was felt excessive and learned advocate was advised about the same. The MSPL was also directed to clarify the following on the next date of hearing i.e. on April 10, 2012-

"a. How its proposal is in the interest of its investors and how other options/proposal if resorted to, could prejudice the investors' interest?"

b. How the time frame of five years as proposed in the aforesaid proposal for repayment be reduced? and

c. How the assets/property of the entity are protected and how SEBI would be assured that the assets would not be alienated?"

12. The learned advocate sought time to submit revised proposal for repayment/refund of monies to investors which was granted. Hearings dates were, thereafter, scheduled on April 10, 2012, May 10, 2012 and May 31, 2012, all of which were adjourned at the request of the MSPL. The hearing was finally held on June 05, 2012 when MSPL through its advocate submitted a revised repayment proposal, vide letter dated May 31, 2012, to refund the monies to investors within 4 years. The MSPL submitted that the total monies repayable to investors were ₹707.74 crores that is repayable over a period of four years. As against this, the total value of the assets (both movable and immovable) is only around ₹440.48 crores. If it were to sell all its assets to repay all the investors, there would be shortfall of ₹267.26 crores. Further, such sale would be distress sale and even the

estimated value may not be realized. No investor would get principal amount or interest. It proposed to sell the liquid assets in the first year and to develop the immovable properties and generate income for repayment to the investors. The MSPL and its directors may undertake that the proceeds of any alienation / sale will be utilized only for repayment to the investors.

13. During the hearing, certain clarifications were sought by SEBI with regard to this proposal as it was unclear as to where the amount mobilized from the public had been invested by the MSPL since the amount of assets available with MSPL was noted to be far below the monies mobilized by it from public and the amount of liability to refund. When asked during the hearing, the learned advocate of MSPL stated that it never built real estate assets completely corresponding with the amounts mobilized by it because through past experiences, it knows that very few investors are interested in taking possession and most of the investors generally opt for refund of the amounts invested in the schemes, along with the pre-determined return. He also submitted that the MSPL has never defaulted in making payment to investors when it becomes due and a part of the amounts mobilized has been paid as commissions to agents/ field workers for generating business. He, therefore, was advised to submit by June 07, 2012 the following:-

- (a) a statement of accounts with all supporting documents regarding the total money collected from the subscribers and how the same was deployed by MSPL.
- (b) details/proof for commissions paid, expenses met from the monies mobilised by MSPL.

14. MSPL, vide its letter dated June 15 , 2012 submitted cash flow statement and profit and loss account summary for the period April 1998- March 2011. However, copy of its balance sheet was not provided by it. Later, when reminded, MSPL vide letter dated July 12, 2012, submitted copy of its balance sheet to SEBI.

15. I have carefully considered the SCN, replies of the MSPL, information/documents furnished by it during the proceedings and other material available on record and shared with the noticees. I note that sufficient opportunities of hearings have been provided to the noticees. The MSPL has made submissions on merits in its written as well as oral submissions during hearings. However, other noticees have failed to file their reply to the SCN and appear for personal hearing despite service of SCN and other notices upon them. I note that the above mentioned repayment proposal of MSPL was also examined while considering its settlement proposal and the same has already been rejected in the consent process. MSPL had been informed about rejection of its consent application by SEBI vide letter dated September 14, 2012. In view of the allegations in the SCN and

replies of the noticees, I note that the issue for determination in these proceedings is whether the activities/plans/schemes of MSPL are in the nature of '*collective investment scheme*', and if yes, then whether action as contemplated in the SCN should be taken against the noticees for carrying on the activities of '*collective investment scheme*' without obtaining certificate of registration under the SEBI Act and CIS Regulations.

16. In order to deal with the issues and for a proper appreciation of this matter, I deem it necessary to refer to the background behind the necessity to have a policy and regulation of '*collective investment schemes*'. It is right to say that SEBI has statutory duty to protect the interests of investors in securities market and to protect the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. Section 11 of the SEBI Act has empowered it to take such '*measures*' as it thinks fit for carrying out those objectives and duties. Section 11(2) of the SEBI Act says that without prejudice to the generality of the provisions of section 11(1), the '*measures*' referred to in section 11(1) may provide for registering and regulating the working of '*collective investment schemes*'.
17. I note that during the late 1990s, the Government of India noticed that certain entities were soliciting investments and issuing instruments such as agro bonds, plantation bonds, etc. by offering very high rates of return, which were inconsistent with the normal rate of returns in such schemes. Such entities mobilized huge amounts from the public and then mis-utilized (misappropriated) these funds, for the purposes not disclosed at the time of soliciting these investments from public, thereby not only causing loss to the investors who lost their savings to such unscrupulous entities, but also eroding the confidence of the general public. Considering the high element of risk associated with such schemes, the Central Government felt that it was necessary to set up appropriate Regulatory framework to regulate such entities. Hence, in order to protect the interest of the investors and to ensure that only legitimate investment activities are carried on, vide press release dated November 18, 1997, the Central Government communicated its decision that schemes through which instruments such as agro bonds, plantation bonds, etc., are issued by different entities would be treated as 'Schemes' under the provisions of the SEBI Act and directed SEBI to formulate Regulations for the purpose of regulating these Collective Investment Schemes. It was against this background that the CIS Regulations came to be framed by SEBI and the SEBI Act was amended to explicitly define '*collective investment scheme*' by inserting section 11AA therein. Thereafter, several press releases and newspaper advertisements/ notices were issued by SEBI from time to time in the leading newspapers of India bringing to the notice of the investors and the persons concerned, the various instructions issued by SEBI/ Central Government from time to time in respect of the functioning of the collective investment schemes.

18. Section 11AA provides the conditions for determining whether a scheme or arrangement is a 'collective investment scheme'. Section 11AA of the SEBI Act reads as follows:

"(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (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 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."

19. In order for the schemes of MSPL to qualify as a 'collective investment scheme', the conditions specified in section 11AA of the SEBI Act should be satisfied by those schemes. For this purpose, it is pertinent to examine the features and characteristics of schemes /plans of MSPL on basis of the documents, information and material available on record, as against each condition of section 11AA (2).

Whether the contributions, or payments made by the investors are pooled and utilized solely for the purposes of the scheme or arrangement of MSPL-

20. On perusal of documents available on record including the copy of the MoU that MSPL enters into with its investors, I note that as per its schemes/plans, MSPL receives 25% of the land/plot value, from the investors in installments. On payment of this amount, the investor gets the option of being allotted land/plot or receiving the refund of his/her initial payment (25%) alongwith the benefits that may accrue to him/her, as applicable on the land unit applied by him/her. If the investor opts for land unit, he has to pay the balance 75% as may be demanded by MSPL.

21. Admittedly, under the scheme/plan of MSPL, the payments collected/received from investors are to be used for the development of the land/property or to repay the investors who opt for repayment as per the schemes/plans. Thus, it is clear that the contributions or payments received from investors were pooled and had to be utilized by MSPL for the purposes of the schemes/plans of the MSPL. The MSPL has contended that the booking amount collected by it is not 'solely' used for the purposes of its

schemes and these amounts are also used for its 'normal business activities'. In my view, utilization of contribution/payments for any purpose other than the purpose of schemes/plans would amount to breach of terms of the scheme/plan and breach of promise to the investors. Therefore, 'normal business activities' of MSPL would be those which are contemplated in its schemes/plans and other incidental activities. I note that MSPL pays commissions to its field workers for the business generated by them. In my view, payment of commissions to agents for generating business, from the pooled contributions/payments, is also utilization thereof for the purposes of the schemes/plans of MSPL.

22. I note that MSPL has also been investing part of monies collected from investors in the units of mutual funds, fixed deposits and debentures of private companies as shown in its Cash Flow Statement under '*funds used for investment*'. A cumulative amount of about ₹193 crore has been so invested till the end of FY 2009-10. Only in FY 2010-11, an amount of ₹37 crore had been redeemed from such investments.
23. It is noted that such investments made by MSPL are also intended to be used for the purpose of repayment to the investors. I note that such short-term investments are made so that the redemption proceeds/ return could be utilized for the purposes of the scheme as and when required. This is evident from the proposed repayment plan of the MSPL wherein it had proposed to liquidate its short term investments for repayment to investors. Such investments by MSPL, in the *interim*, further prove that the contribution/payments were pooled and collectively invested by it, ultimately, to be used for the purposes of the schemes/plans.
24. I, therefore, find that that the schemes/plans of MSPL satisfy the first condition stipulated in section 11AA (2) (i) of the SEBI Act.

Whether 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?

25. There is no dispute as to the fact that under the schemes/plans of MSPL, the investors make contribution/payment with a view to receive the property or profits, income and return on their initial investments that may accrue to them as applicable on the land unit applied by them. In this regard, I refer to the judgment of the Hon'ble Punjab and Haryana High Court in the matter of *PGF Limited vs. Union of India & others*, wherein the Hon'ble High Court held that when each customer/investor is a recipient of 'property' it is apparent that each customer/investor is admittedly a recipient of one of the benefits

contemplated under section 11AA (2) (ii), namely, 'property'. I note that the average return offered by MSPL, when the investor opts for returns from it is, admittedly, about 12%. The fact that till FY 2010-11 not a single investor had opted for allotment of land and all investors opted for refund alongwith benefits, establishes that the investors predominantly contributed/paid the money to MSPL with a view to receive the profits and returns offered by it. Thus, its schemes/plans satisfy the condition stipulated in section 11AA (2) (ii) also.

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

26. I note that in the schemes/plans of MSPL, at the time of making the contribution/payment, the investor only gets a promise to be allotted a piece of land in the properties developed and managed by the MSPL or to get repaid along with promised benefits. At this stage, the land unit is not identified as it is non-distinguishable. The identification of the land/plot to be allotted to such investor is at MSPL's discretion at the time of allotment of land unit. The investor does not take part in acquisition, development and management of property i.e. land /plot. He also does not himself manage his investments in the schemes rather his investments are managed and utilized by MSPL. Thus, there is no doubt that the investor does not manage the property, contribution or investment forming part of schemes at any stage under the schemes.
27. The MSPL has contended that it does not develop lands on behalf of the investors and it develops land by itself and then sells to those purchasers who want to purchase. I note that the acquisition, holding, development and management of the land unit till the allotment to the investor, who had opted for the same at the time of initial contribution, is undertaken by MSPL. As discussed above, the right of investor is created at the time of making contribution/payment in an unidentified and non-distinguishable land unit. Admittedly, the contribution/payment paid by the investors was to be used for the development of the land. Such development would undoubtedly be on behalf of the investors who may opt for land unit. In my view, therefore, MSPL manages the property that is part of its scheme on behalf of those investors. Further, the contributions /payments made by investors in the schemes of MSPL are utilized by MSPL for the purposes of the schemes/plans as discussed above. The aforesaid facts and circumstances, in my view, therefore, lead to the only possible conclusion that the land to be purchased by customers/investors and their contribution or investment are managed by the noticees on behalf of the investors in the schemes/plans of MSPL. I, therefore, find that the schemes/plans of MSPL satisfy the third condition stipulated in section 11AA (2) (iii) also.

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

28. There is no dispute as to fact that the day to day control over management and operation of schemes/plans of MSPL is exclusively with the noticees. I note that the MoU between MSPL and its investors has inter alia following stipulations/covenants:-

- (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."*

29. It is clear from the above conditions that the investors do not have any control in the scheme/plan of the MSPL. From the above analysis, it is further noted that since the contribution/ investment/and the land/plot are managed by MSPL on behalf of the investors, they do not have any say in the management and operation of its schemes/plans. They do not participate in the acquisition, development and management of the land. The investors do not have accessibility to do anything on the land unit that is yet to be identified and allotted to them. It is practically impossible for these investors to have a day to day control over the land to be allotted to him. The investors even do not have any control on the contribution/investments made by them as they are managed and utilized by the noticees exclusively without any involvement of the investors. In these facts and circumstance, I find that the only possible conclusion can be that the investors do not have day to day control over the management and operation of the schemes/plans of MSPL and they squarely satisfy the fourth condition stipulated in section 11AA (2)(iv) also. I note that the fourth condition is very important to hold any scheme/plan a 'collective investment scheme' as observed by Hon'ble Punjab and Haryana High Court in the matter of *PGF Limited vs. Union of India & others* in following words:

"..... Day to day control with the customer/investor is one of the most important tests delineated by the Dave Committee for arriving at a final determination, whether or not; a scheme/arrangement is a "collective investment scheme"....."

30. In view of the above analysis and examination, I find that the schemes /plans of MSPL satisfy all four conditions of section 11AA of the SEBI Act. I, therefore, find that the noticees are engaged in the fund mobilising activity from public through investment contracts by floating/sponsoring/ launching '*collective investment schemes*' as defined in section 11AA of the SEBI Act
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 immovable property that is identified and distinguished. Right, title and interest of purchaser in the identified and distinguished immovable property is created at the time of executing the agreement to sell. This real estate business entails a contract to buy and sell immovable 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.
32. Further, a real estate business would price its land banks depending on the location, terrain, current and future potential of use of the land/ land bank. It is prevalent and innate features of real estate that even within the same location, there may be differential pricing taking into account the factors including dimension, surroundings, floor rise, situation of plot/unit with respect to proximity to road, park, etc. I note that the MSPL has land banks at more than one place. Normally, in a real estate business, the lands/ land banks at difference places are valued differently. However, in the schemes /plans of MSPL there is no demarcation in terms of pricing of land. The land is proposed to be sold according to the plans offered under the schemes and not on the basis of pricing of land based on its location, time of contribution/payment or otherwise. Hence, the land units in the schemes of MSPL are fungible and irrespective of location, the price remains the same.
33. MSPL issues 'Unit Certificate' to investors at the time of payment of first installment of the initial payment. I note from the copy of the 'Unit Certificate' provided by MSPL vide

its letter dated June 30, 2011 that the investor / subscriber is recognized as the registered holder of the unit of a face value. No land unit is identified and described in the said Unit Certificate. The MSPL has promised 5% capital appreciation. The certificate also clearly indicates that the schemes of MSPL are investment plan rather than a real estate business. In my view, therefore, the MSPL's claim that its schemes /plans in question are pure real estate business is a mere sham and its schemes /plans are investment contracts in the nature of '*collective investment schemes*'.

34. I note that in terms of section 12(1B) of the SEBI Act, no “person” shall sponsor or cause to be sponsored or cause to be carried on a '*collective investment scheme*' unless he obtains a certificate of registration from the Board in accordance with the regulations. In exercise of powers conferred under section 30 read with sections 11 and 19 of the SEBI Act, SEBI has framed the CIS Regulations to register and regulate the activities of '*collective investments schemes*'. 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*'. Therefore, 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. In my view, 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. Since MSPL has launched various collective investment schemes without obtaining certificate of registration from SEBI, it has contravened provisions of section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations.
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.
36. I note that the auditor of the MSPL had recorded in the Notes on Accounts for the FY 2008-09, that- “*The Company has accumulated losses of ₹ 343,16,24,243/- up to 31st March 2009. Considering the huge accumulated losses, application of Going Concern Concept to the company is doubtful. In our opinion the company does not have assets commensurate with the losses.*” This concern

had been raised by the auditors on earlier occasions also. I note that MSPL has, constantly, been under losses since the first accounting period in 1999 till the year 2010. It is surprising to note that MSPL, despite being constantly under huge losses, had been mobilizing money from public promising high returns and, thus, putting the investor's money at huge risk.

37. I note that Mrs. Varsha Satpalkar, Director of MSPL had, in her statements made to the Office of The Income Tax, submitted that the market valuation of land holdings was approx. ₹200 crore as of June 2010. From the documents and information furnished by MSPL, I note that as on March 31, 2011, MSPL had mobilized a sum of ₹1,332 crore from public as 'advances from unit holders' and repaid ₹538 crore as 'repayment to unit holders'. An amount of ₹794 crore was therefore, outstanding to be repaid as on March 31, 2011. The value of MSPL's net fixed assets, as on Mar 31, 2011, was only ₹16.2 crore. As on Mar 31, 2011, the current liabilities of MSPL were ₹796.5 crore while the corresponding current assets were way less at ₹228.5 crore. According to MSPL as on May 31, 2012, the total monies repayable to investors were ₹707.74 crore as against this, the total value of the assets (both movable and immovable) is only around ₹440.48 crore. Thus, it is evident that its current assets are insufficient to meet its current liabilities and its repayment obligations are almost double of the value of its total moveable and immoveable assets.
38. I note that MSPL does not have enough land bank compared to the investments mobilized by it from the investors. As can be seen from the following Table that at the end of FY 2007-08, MSPL had an outstanding balance of ₹305 crore due for repayment to investors against which it had land inventory of only ₹1.7 crore which is less than 1% of the outstanding amount. In the subsequent years also, it didn't have corresponding inventory even for 25% of its investors.

Table 2

	<i>For the year ended</i>				
	<i>Mar-07</i>	<i>Mar-08</i>	<i>Mar-09</i>	<i>Mar-10</i>	<i>Mar-11</i>
Advances from Unit Holder (A)	163.22	205.48	269.03	219.83	133.65
Repayment made to Unit Holder (B)	(67.87)	(49.31)	(92.38)	(99.23)	(98.33)
Amount outstanding to be repaid (C))= (A)-(B)	95.35	156.17	176.65	120.59	35.32

Cumulative Amount outstanding to be repaid (D)	305.14	461.31	637.96	758.55	793.87
Closing Inventory (E)	1.74	6.92	20.05	79.50	137.62
Closing inventory as percentage of Cumulative amount outstanding (F) = (E)/(D)*100	0.57	1.5	3.14	10.48	17.34

39. Therefore, the argument of MSPL that low inventory, (as per MSPL, inventory refers to *'land and development works in progress'* for the accounting purposes), which seems to be as low as 1% in certain years, has been maintained owing to improbability of all investors opting land allotment is not tenable. From these facts and circumstance also the reasonable inference would be that in the schemes of MSPL the predominant component is investment with view to get repayment along with promised benefits rather than allotment of land unit.

40. I also note that the MSPL pays very high amount of commissions to its field workers for the business generated by them i.e. the sale of land units. The commissions paid by MSPL are shown in the following Table:

Table 3

	For the year ended												
	Mar-99	Mar-00	Mar-01	Mar-02	Mar-03	Mar-04	Mar-05	Mar-06	Mar-07	Mar-08	Mar-09	Mar-10	Mar-11
Advances from Unit Holder (A)	0.08	2.41	8.62	20.62	30.90	68.77	87.65	122.11	163.22	205.48	269.03	219.83	133.65
Field Workers Commission (B)	0.01	0.41	2.16	5.33	7.80	17.38	19.01	24.34	35.16	46.91	60.61	32.57	10.54
Incentive/ Prizes/ Development exps of field workers (C)	0.00	0.04	0.38	0.94	1.51	2.42	3.73	2.96	4.96	11.81	14.73	3.84	0.48
Total field workers commission including prizes as percentage of Advances from Unit Holders [(B)+(C)]/(A)	9.36	18.42	29.49	30.38	30.14	28.78	25.94	22.36	24.58	28.58	28.01	16.56	8.24

41. From the above Table, I note that total commissions and incentives as high as 30.38% of the amount mobilized from the investors are paid to the field workers. Though the CIS regulations itself don't specify a cap on the commission payable to an agent, it is surprising to note that a company would pay such high commissions to its agents for

capital mobilisation only, such high commissions can be sustainable only if the entity is running a business which have profitability much more than the above percentage, which does not appear to be the case here. In such a situation the commission can be paid only out of the capital receipts. During personal hearing at SEBI also, the learned counsel for the entity accepted that a substantial portion of money mobilized from the public has been given as commissions to agents leading to losses for the company. In my view, it is evident that such high commissions prizes and incentives, being paid out of contribution/payments made by investors in the schemes of MSPL, are definitely not in the investors' interest, as such plans/arrangements are not sustainable. I note that statement of Mrs. Satpalkar, Director of the MSPL before Office of Income Tax that the accumulated losses of MSPL mainly occurred on account of benefits given to investors, commissions and incentive paid to agents, other administrative expenses, etc. also corroborates this finding.

42. I further note that these activities of the noticees were not only in contravention of the provisions of the SEBI Act and CIS Regulations for which the noticees are liable for appropriate action as contemplated in the SCN; they were carried out in a manner which are harmful and detrimental to the interest of the investors. In my view, a company which does not even have assets corresponding to the amount of monies raised by it from public and which is running into losses cannot be given a long time period for repayment as proposed by the MSPL. It is also noted that the proposals of MSPL have already been rejected in the consent process and appropriate enforcement action is warranted in this case in the interests of the investors.
43. In view of the foregoing, I, in exercise of powers conferred upon me under Section 11B and 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 read with 73 of Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999, hereby direct:-
- (a) Maitreya Services Pvt. Ltd. to wind up its existing collective investment schemes and refund the money collected by it under the schemes with returns which are due to the investors as per the terms of offer within a period of three months from the date of this order and submit a winding up and repayment report to SEBI in accordance with the CIS regulations failing which the following actions shall follow:
- i. SEBI would initiate prosecution proceedings under section 24 and adjudication proceedings under Chapter VI of the Securities and Exchange Board of India Act, 1992, against Maitreya Services Pvt. Ltd. and its directors, namely, Mrs. Varsha Madhusudan Satpalkar and Mr. Janardan Arvind Parulekar;

- ii. A reference would be made to the State Government/ local police to register a civil/ criminal case against Maitreya Services Pvt. Ltd. and its directors, namely, Mrs. Varsha Madhusudan Satpalkar and Mr. Janardan Arvind Parulekar and its managers/ persons in charge of the business of its scheme(s) for apparent offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and
- iii. A reference would be made to the Ministry of Corporate Affairs, to initiate the process of winding up of Maitreya Services Pvt. Ltd.;

(b) Maitreya Services Pvt. Ltd. and its directors, namely, Mrs. Varsha Madhusudan Satpalkar and Mr. Janardan Arvind Parulekar not to access the capital market and further restrain and prohibit them from buying, selling or otherwise dealing in the securities market till all its collective investment schemes are wound up and all the monies mobilised through them are refunded to the investors;

44. The order shall come into force with immediate effect.

DATE: March 25th, 2013

PLACE: MUMBAI

**RAJEEV KUMAR AGRAWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**