

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/KS/AE/2020-21/9432]

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

In respect of:

(Late) Shri Sunil Kanti Kar

House No. 14, South End Park, Lake,

Kolkata - 700029

In the matter of fund mobilization by Alchemist Infra Realty Ltd.

BACKGROUND

1. Securities and Exchange Board of India (*hereinafter referred to as 'SEBI'*) conducted an examination in the matter of fund mobilization by Alchemist Infra Realty Ltd. (*hereinafter referred to as 'AIRL' / 'Company'*) to ascertain whether there was any violation of the provisions of Section 12(1B) of SEBI Act, 1992 and Regulation 3 of Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (*hereinafter referred to as 'CIS Regulations'*) by AIRL and its directors viz. Mr. Brij Mohan Mahajan, Mr. Narayan Madhav Kumar, Mr. Balvir Singh, Mr. Chandra Sekhar Chauhan, and Mr. Sunil Kanti Kar (*hereinafter referred to as 'Noticee'*).
2. Based on the examination, it was alleged that AIRL had floated some plans/schemes, based on which it was collecting money from investors and purchasing large plots of land and developing the same. It was also inter alia observed that a certificate of Property was issued to the purchaser by AIRL, wherein the expected value of the said piece of land after the expiry of a fixed period of time has also been mentioned. Further, it was alleged that the

agricultural land purchased by an investor/customer is managed on his behalf by AIRL and that investors/customers do not have day control over the agricultural land purchased by them.

3. In view of the above, it was alleged that the Schemes of AIRL are nothing but pooling of resources from investors, profit expectation by investors, management of schemes by AIRL on behalf of investors and no day to day control by investors. Therefore, it is alleged that the schemes, being operated by AIRL, are of the nature of CIS, as defined under Section 11AA of the SEBI Act, 1992 which requires registration from SEBI. It was further alleged that AIRL has not obtained registration under CIS Regulations from SEBI. Therefore, it was alleged that AIRL and its directors, by operating an unregistered CIS, have violated the provisions of Section 12(1B) of the SEBI Act read with Regulation 3 of the CIS Regulations.
4. Accordingly, SEBI initiated Adjudication Proceedings against the AIRL and its aforementioned directors, which includes the Noticee for alleged violation of Section 12(1B) of SEBI Act and Regulation 3 of CIS Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as the Adjudicating Officer (**AO**) vide communique dated January 28, 2020 under Section 15-I of the SEBI Act, 1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (*hereinafter referred to as 'Rules'*) to inquire into and adjudge under Section 15A(d) of SEBI Act, 1992 the aforesaid violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Show Cause Notice dated February 14, 2020 (*hereinafter referred to as "SCN"*) was issued to the Noticee in terms of Rule 4 of the Rules read with Section 15-I of the SEBI Act, 1992 to show-cause as to why an inquiry should not be initiated and penalty be not imposed under Section 15A(d) of the SEBI Act,

1992 on the Noticee for the alleged violation of the provisions of Section 12(1B) of SEBI Act, 1992 and Regulation 3 of CIS Regulations.

7. From the material available on record, I note that the aforesaid SCN was sent to the Noticee through *Speed Post with Acknowledgement Due*, however the same returned undelivered with the caption "Deceased". The SCN had also been sent for service to the Noticee by way of hand delivery / affixture, however it was informed by Shri Swagato Kar, son of the Noticee, that the Noticee had passed away. Subsequently, Shri Swagato Kar vide email dated October 08, 2020 submitted copy of the death certificate of the Noticee as proof of demise. From the aforesaid certificate, it is observed that the Noticee had passed away on July 21, 2012.
8. In this regard, I note that the Hon'ble Supreme Court in its Order in the case of *Girija Nandini vs. Bijendra Narain Choudhury (AIR 1967 SC 2110)* has stated that in case of personal actions, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives, and in such cases the maxim "*actio personalis moritur cum persona*" (personal action dies with the death of the person) would apply. The Hon'ble Securities Appellate Tribunal has also held in *Chandravadan J Dalal Vs. SEBI* that "*The appeal abates since the appellant during the pendency of the appeal died on 29th November, 2004. The appeal accordingly abates. The penalty imposed on the original appellant being personal in nature also abates*". In the present case, I note from the copy of the Death Certificate No. 0258121 dated July 21, 2012 issued by the Kolkata Municipal Corporation, that the Noticee had passed away on July 21, 2012.
9. Therefore, by relying on the aforementioned Orders, I am of the view that the Adjudication Proceedings initiated against the Noticee will not survive and is liable to be abated without going into the merits of the case. Consequently, no penalty is imposed on the Noticee, who has since deceased and the Adjudication Proceedings shall stand abated.

10. Accordingly, the aforesaid Adjudication Proceedings initiated against the Noticee viz. Late Shri Sunil Kanti Kar vide SCN dated February 14, 2020 are disposed of without further going into the merits of the case.

11. In terms of the provisions of Rule 6 of the Rules, a copy of this Order is being sent to Shri Swagato Kar (son of the Noticee) and also to SEBI.

Date : October 22, 2020
Place: Mumbai

K Saravanan
Adjudicating Officer