

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: ORDER/GR/RR/2020-21/9536-9539)

**UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA
ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND
IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995**

In respect of:

Noticee No.	Name of the Entity	PAN/DIN
1	Raghav Capital and Infrastructure Limited	AAECR1541A
2	Raj Kumar Raghav	AJIPR8427K
3	Nirmala Raghav	AHWPN9045M
4	Ritu Verma	AGPPV1332D

In the matter of Raghav Capital and Infrastructure Limited

(The aforesaid entities are hereinafter individually referred to as Noticee 1 to Noticee 4 and collectively referred to as "the Noticees")

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") initiated adjudication proceedings under Section 15D(a) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), the alleged violations of provisions of Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (**'CIS Regulations, 1999'**) by i) Raghav Capital and Infrastructure Limited., (hereinafter referred to as '**Noticee 1 / Company / RCIL**') , ii) Mr. Raj Kumar Raghav (hereinafter referred to as '**Noticee 2**'), iii) Ms. Nirmala Raghav (hereinafter referred to as '**Noticee 3**') and (iv) Ms. Ritu Verma (hereinafter referred to as '**Noticee 4**') in the matter of Raghav Capital and Infrastructure Limited. While Noticee 1 is the Company, Noticee 2 to Noticee 4 are the Directors of the Noticee 1.

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide Order dated February 7, 2019, Shri Satya Ranjan Prasad, Chief General Manager, was appointed as Adjudicating Officer in the said matter to inquire into and adjudge the matter for the aforesaid violations alleged to have been committed by the Noticees.

Subsequently, vide Order dated May 22, 2019 the undersigned has been appointed as the Adjudicating Officer in the instant matter in the place of Shri.Satya Rajan Prasad.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated August 25, 2020 (hereinafter referred to as 'SCN') was issued to the Noticees under the provisions of Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held against the Noticees and why penalty should not be imposed on Noticees under the provisions of Sections 15D(a) of the SEBI Act, for the aforesaid alleged violations. The aforesaid SCN was served upon the Noticee 1 through its email id obtained from MCA website and Noticee 4 at her address available on record. As regards to the Noticee 2 and Noticee 3, the said SCN could not be served upon them at their latest address available on record. However, subsequently, the said Notices were affixed at the address of Noticee 2 and 3.

4. The fact of the case and the allegations made in the SCN are summarised below:

- a) SEBI observed that RCIL was engaged in fund mobilizing activities from the public, which is in the nature of a Collective Investment Scheme (hereinafter referred to as 'CIS') as defined in Section 11AA of the SEBI Act, 1992, without obtaining a certificate of registration from SEBI as required under Section 12(1B) of the SEBI Act, 1992, and Regulation 3 of CIS Regulations, 1999. Noticee 2 to Noticee 4 are the Directors of RCIL.
- b) With regard to the alleged mobilization of funds by RCIL, SEBI inter alia sought certain information from RCIL and its Directors viz.

Memorandum and Articles of Association of RCIL as filed with the Registrar of Companies('RoC'), Details of all the Promoters/Directors and key managerial personnel, Sample Copies of Brochure, Pamphlets, Application forms, agreement letter/contract, registration letter and allotment letter pertaining to the schemes, Copies of certificates issued to the investors to subscribe to the schemes, Structure/ terms and conditions of the schemes, Number of investors and amounts collected under various schemes, Details of regulatory approvals, if any, Copies of Annual Returns, audited Balance Sheet and Profit & Loss Accounts of RCIL since incorporation as filed with RoC, and Copies of audited financial statements and Income Tax Returns filed by RCIL for the last three financial years.

- c) RCIL vide letter dated February 28, 2014 inter alia submitted that "...company is engaged in the business of real estate where plots are made available by them to needful individuals and provide services of buy/ sell of flats/ developed plots". In addition, RCIL submitted the following documents to SEBI –
- i. Memorandum and Articles of Association of RCIL;
 - ii. Name, Address, PAN No. and Contact details of Directors of company;
 - iii. Brochure of scheme by RCIL;
 - iv. Sample copy of "Application form" and receipts for the Schemes of RCIL;
 - v. Sample Copy of "acknowledgement receipt" for the Schemes of RCIL;
 - vi. Copies of Audited Balance Sheet and Profit & Loss Accounts of RCIL for the financial years 2010-11 to 2012-13;
 - vii. Copies of Income Tax Returns for the financial years 2010-11 to 2012-13.
- d) Subsequently, RCIL vide letter dated June 07, 2014 to SEBI, submitted copy of Receipt cum Certificate, Copies of Agreement and Scheme Brochure etc. In the said letter, RCIL had inter alia stated that –

- i. "RCIL issues Receipt cum Certificate and enter into agreement with its investors.
 - ii. RCIL does small business of Real estate, hence, no regulatory approval is required.
 - iii. RCIL is not engaged in any other activities apart from Real Estate business.
 - iv. RCIL hasn't taken unsecured loan from any entity."
- e) Thereafter SEBI sought the following information from RCIL –
- i. Number of investors and amount collected in each such plan/scheme of RCIL.
 - ii. Details of amount mobilised till June 30, 2014 under such plan/scheme of RCIL.
 - iii. Details of total land acquired by RCIL till June 30, 2014 under such plan/ scheme of RCIL.
 - iv. Copies of agreements for land acquired by RCIL till June 30, 2014 under such plan/ scheme of RCIL
- f) RCIL, vide letter dated July 14, 2014, submitted its reply to the above information sought by SEBI. On perusal of the said submissions by RCIL, the following was observed –
- i. RCIL(CIN: U75302UP2008PTC036216) was incorporated on October 30, 2008 as Raghav Capital Index Securities Private Limited and later changed its name to Raghav Capital and Infrastructure Limited with effect from October 18, 2010. It has its registered office at 19 B, Manas Nagar, Jiya Mau, Near Cancer Hospital, Hazratganj, Lucknow - 226001, Uttar Pradesh. The Directors of RCIL are Shri Raj Kumar Raghav, Ms. Nirmala Raghav and Ms. Ritu Verma.
 - ii. As per the Memorandum of Association ("MoA"), the main objects of RCIL are "...to carry on the business of builders, contractors, designers, architects, interior decorators, furniture, consultants,

contractor of all type of buildings and structures; to acquire, develop, buy, sell, estate, multistoried or other buildings and group housing schemes...."

- iii. RCIL offered various schemes/ plans, inviting funds from investors towards its various schemes for availing the "Land/Plots." The investors were required to enter into an "Agreement" with it after filling an "Application Form". On perusal of the sample copy of "Application Forms" and "Agreement" submitted by RCIL in respect of its schemes for availing the "Land/Plots", it is observed that the schemes are classified into "Monthly Installment Scheme", "Daily Installment Scheme" and "One Time Payment Scheme". The details of various schemes offered by RCIL are illustrated as under:

Monthly Installment Scheme

S. No.	Area of plot	Booking amount (Rs.)	Time period and installment amount	Total plot amount (Rs.)	Adjusted amount (Rs.)	Plan number
1	50 yard	3000	60 months = 30000/- (Rs. 500 per month * 60 Months)	33,000/-	44,000/-	M 50
2	100 yard	3000	60 months = 57000/- (Rs. 950 per month * 60 Months)	60,000/-	80,250/-	M 100
3	150 yard	2900	84 months = 107000/- (Rs. 1275 per month * 84 Months)	1,10,000/-	1,60,000/-	M 150
4	200 yard	3100	108 months = 126900/- (Rs. 1175 per month * 108 Months)	1,30,000/-	2,10,000/-	M 200

Daily Installment Scheme

S. No.	Area of plot	Booking amount (Rs.)	Time period and installment amount	Total plot amount (Rs.)	Adjusted amount (Rs.)	Plan number
1	100 yard	3300	63 months = 56700/- (Rs. 30 per day * 30 days * 63 Months)	60,000/-	80,000/-	D 631

2	100 yard	2400	60 months = 57000/- (Rs. 950 per month * 60 Months)	60,000/-	72,000/-	D 841
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One time Installment Scheme

S. No.	Area of plot	Lump sum plot amount	Adjusted amount 5yrs 11 months	Adjusted amount 7yrs 10 months	Adjusted amount 9yrs 9 months	Adjusted amount 14yrs 8 months	Plan number
1	25 yard	12,500	25,000	31,250	50,000	87,500	S 25
2	50 yard	25,000	50,000	62,500	1,00,000	1,75,000	S 50
3	100 yard	50,000	1,00,000	1,25,000	2,00,000	3,50,000	S 100
4	150 yard	75,000	1,50,000	1,87,500	3,00,000	5,25,000	S 150
5	200 yard	1,00,000	2,00,000	2,50,000	4,00,000	7,00,000	S 200

g) On perusal of the brochure, receipt cum certificate, application form for the scheme namely 'RCI SAI Greens' of RCIL, the following clauses were inter alia, observed:

- i. *"If applicant doesn't take the land/plot allotted to him, applicant will receive an adjusted amount at the end of the term period as per the scheme under which applicant has applied.*
- ii. *If applicant failed to deposit continuously 3 installments, RCIL will cancel his application without any intimation to applicant.*
- iii. *In case of cancellation of application the amount will be refunded to applicant at simple interest rate at the end of the term as per the scheme under which applicant has applied.*
- iv. *RCIL has right to make any changes in residential/ commercial land/plot.*
- v. *Applicant has to take No Objection Certificate ('NOC') from RCIL before making any structure on land/plot allotted to him.*
- vi. *In case, RCIL fails to provide land/plot to applicant under the project scheme for which investor has applied, RCIL will provide land/plot to applicant in any other project scheme of company as per mutually agreed terms. Applicant have to return previous papers to company and papers pertaining to new land/plot will be issued to applicants."*

- h) From the information submitted by RCIL vide letter dated May 14, 2015 on details of investors, it was observed that there were 358 investors (residents of Uttar Pradesh, Bihar and Jharkhand) who had invested in the schemes of RCIL. The total fund mobilized by RCIL under the scheme of Land/plots during May 01, 2012 to May 31, 2014 amounted to Rs. 26,13,600/-.
- i) From the details submitted by RCIL to SEBI, it was observed that RCIL was inviting applications from the customers/ investors for obtaining plot under its various schemes. Further, RCIL guaranteed assured returns on completion of the term as more specifically mentioned in the brochure as 'adjusted amount'. It was also observed that the details of the land were not provided to the investors and no sale deed has been executed by the Company in favour of the investors. Therefore, it was alleged that the transactions of the Company were not in the nature of real estate transactions rather investment scheme.
- j) In view of the above, it was alleged that RCIL was engaged in fund mobilizing activity from public, which is in the nature of a 'collective investment scheme' as defined in Section 11AA of the SEBI Act, 1992. Further, Noticees (RCIL and its Directors), by carrying out CIS activities without obtaining any certificate of registration, have violated Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, 1999.
5. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules Noticees were granted an opportunity of personal hearing through webex platform on October 8, 2020. The said hearing was granted through videoconferencing on the Webex platform in view of the difficulties faced due to Covid 19-pandemic. The aforesaid hearing notice was duly served upon Noticee 1 at its e-mail id obtained from MCA website. However, the Noticee 1 did not avail the opportunity of personal hearing on October 8, 2020. Further, the hearing notices could not be delivered to Noticee

2, Noticee 3 and Noticee 4 at their address available on record. Therefore, the hearing Notices were affixed at the available address of Noticee 2 to 4 providing them another opportunity of personal hearing on October 22, 2020 through videoconferencing on the Webex platform. From the affixture report, it was observed that Noticee 4 has herself acknowledged with her signature on the copy of abovementioned Hearing Notice. However, Noticee 2 to 4 did not attend the said hearing on October 22, 2020.

6. In view of the above, I am of the view that principles of natural justice have been duly complied with, as SCNs and hearing Notices were duly served upon the Noticees and sufficient opportunities were provided to the Noticees to reply to the SCN and appear for hearing.
7. It is noted that the Noticees have neither filed any reply nor have availed the opportunity of personal hearing despite service of notices upon them. In the facts and circumstances of this case, I am of the view that the Noticees have nothing to submit and in terms of Rule 4(7) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 the matter can be proceeded ex-parte on the basis of material available on record. In the absence of any response from the Noticees to the SCN, I presume that the Noticees have admitted the charges levelled against them.

In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter alia, observed that, "*.....the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*".

Further, the Hon'ble SAT in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, and observed that: "*..... appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the*

adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..”

Additionally, the same position reiterated by the Hon’ble Securities Appellate Tribunal (SAT) in the matter of Dave Harihar Kirtibhai Vs SEBI (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon’ble SAT observed as under:

“...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal...”

8. In view of the observations made by the Hon’ble SAT, I find no reason to take a different view and accordingly I deem it appropriate to proceed against the Noticees ex-parte, based on the material available on record.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

9. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticees is that they have violated Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, 1999.

After perusal of the material available on record, I have the following issues for consideration, viz.

- I. *Whether Noticees have violated Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, 1999?*

II. *Does the violation, if any, attract monetary penalty under Section 15D(a) of SEBI Act, 1992 for the Noticees?*

III. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

10. Before moving forward, it is pertinent to refer to the relevant regulatory provisions which reads as under:

CIS Regulations, 1999

No Person Other than Collective Investment Management Company to Launch collective investment scheme

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

SEBI Act, 1992

12(1B) No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations:

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

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

Issue I: Whether Noticees have violated Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, 1999?

12. I have perused the facts of the case, gist of allegations made against the Noticees, documents available on record and my findings thereof are specified below:

- a) From the facts of the case, I find that RCIL offered various schemes/ plans, inviting funds from investors towards its various schemes for availing the "Land/Plots." The investors were required to enter into an "Agreement" with it after filling an "Application Form". On perusal of the sample copy of "Application Forms" and "Agreement" submitted by RCIL in respect of its schemes for availing the "Land/Plots", it is observed that the schemes are classified into "Monthly Installment Scheme", "Daily Installment Scheme" and "One Time Payment Scheme".
- b) It was further observed that there were 358 investors (residents of Uttar Pradesh, Bihar and Jharkhand) who had invested in the schemes of RCIL. The total fund mobilized by RCIL under the scheme of Land/plots during May 01, 2012 to May 31, 2014 amounted to Rs. 26,13,600/-.
- c) RCIL was inviting applications from the customers/ investors for obtaining plot under its various schemes. Further, it was observed that RCIL guaranteed assured returns on completion of the term as more specifically mentioned in the brochure as 'adjusted amount'. From the details submitted by RCIL to SEBI, it was observed that the details of the land were not provided to the investors and that no sale deed has been executed by the Company in favor of the investors. Therefore, the

transactions of the Company were not in the nature of real estate transactions rather the schemes were investment schemes.

- d) In view of the above findings, the schemes offered by RCIL have to be considered in light of Section 11AA of the SEBI Act, 1992 which provided various conditions to determine whether a scheme or arrangement is a Collective Investment Scheme. Said conditions are mentioned below:

“(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) or subsection (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.”

e) In view of the aforesaid conditions, schemes offered by RCIL are examined as under:

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.

RCIL invited investment from the general public through its scheme for "land/plots" viz. "RCI SAI Greens". An investor who is desirous of investing in the said scheme has to make an application and opt for "Monthly Installment Scheme", "Daily Installment Scheme" or "One Time Payment Scheme". In each of the three schemes "Adjusted amount" has been mentioned for various time period. It was observed from the terms and conditions that in case of cancellation of application or non-submission of installments, amount deposited will be refunded at simple interest rate at the end of term of the opted plan. Further, in case of applicant doesn't take the land/plot allotted to him, applicant will receive an "adjusted amount" at the end of term opted for. Further, neither the "Agreement" nor the "Application Form" contain any details or specification of the plot/land allotted to applicants. This indicates that the funds initially collected from the applicants/investors, which are locked in for a particular period are pooled and utilized for the "scheme". Therefore, it is observed that the contributions or investments received from the "applicants"/investors are pooled and utilized solely for the purpose of the "schemes". I, therefore, find that the instant "scheme" satisfies the first condition stipulated in Section 11AA(2) of the SEBI Act.

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

It was observed from the "brochure" of RCIL that the "adjusted amount" offered under "one time/ daily/monthly installments" schemes for various time is profits/income from such scheme or arrangement. For instance, if the "applicant"/investor is investing in "One-time Installment plan" for an amount of Rs 12,500/- for a plot size 25 yards, he/she will get the return in the form of "adjusted amount" amounting to Rs 25,000/- after 5years and 11 months. The "adjusted amount" increases with the passage of time and Rs 87,500/- will be given to the investor after 14years and 8 months. In light of above, it is prima facie, observed that the investments were made by the applicants/investors with a view to receive profits or returns from the schemes. Therefore, in my opinion the schemes offered by RCIL satisfies the second condition stipulated in section 11AA (2) of the SEBI Act.

- iii. The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors, and*
- iv. The investors do not have day-to-day control over the management and operation of the scheme or arrangement.*

It was observed that the investments made by the 'applicants'/investors (in the form of application money/ one time/ daily/monthly installments) are managed and utilized by RCIL. Investors of the various schemes of RCIL do not have any say in the allotments/ management of the scheme. The "Application form" provided by RCIL does not mention about the details of the property being offered to the investor under the scheme of "RCI SAI Greens". Further, the "Agreement" duly signed by the investor also does not indicate the details of the property of "RCI Sai Greens". The said "Agreement" merely states the general terms and conditions for

allotting the unidentified "land/plots" to the applicant/investors. Further, if RCIL fails to provide land/plot to the applicant/investors under the scheme for which investor has applied, RCIL agrees to provide land/plot to the applicant in any other project/ scheme of RCIL. In such case, the applicant has to return the documents to RCIL and papers pertaining to new land/plot will be issued to applicants. RCIL has also retained the right to make any changes in residential/ commercial land/plot. Further, applicant/ investor has to obtain NOC from RCIL before making any structure on land/plot allotted to him. This clearly indicates that RCIL has the complete control of the schemes and the 'applicants'/investors do not have any say in the operation of the schemes/ arrangement. Therefore, it is clear that the "applicants"/investors do not have any day-to-day control over the management and operation of the said schemes. In view of the above, I am of the view that the instant schemes satisfy the conditions stipulated in Section 11AA(2)(iii) and (iv) of the SEBI Act.

- f) The aforesaid findings on schemes offered by RCIL, prima facie, satisfies all the four conditions specified in Section 11AA(2) of the SEBI Act. Therefore, in my opinion, RCIL is engaged in fund mobilizing activity from public, which is in the nature of a 'collective investment scheme' as defined in Section 11AA of the SEBI Act.
- g) In this context, it is relevant to refer to the observations of the Hon'ble Supreme Court of India in the matter of PGF Limited Vs. Union of India (MANU/SC/0247/2013) that *"...sub-section (2) of Section 11AA, which defines a collective investment scheme disclose that it is not restricted to any particular commercial activity such as in a shop or any other commercial establishment or even agricultural operation or transportation or shipping or entertainment industry etc. The definition only seeks to ascertain and identify any scheme or arrangement, irrespective of the nature of business, which attracts investors to invest*

their funds at the instance of someone else who comes forward to promote such scheme or arrangement in any field and such scheme or arrangement provides for the various consequences to result therefrom.”

- h) I find 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". Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 also prohibits carrying on CIS activities without obtaining registration from SEBI. Therefore, launching 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. In this regard, I find that RCIL has not obtained any certificate of registration under the CIS Regulations from SEBI for its fund mobilizing activity from the public under its schemes of land/plot.
- i) From the material available on record, I find that Shri Raj Kumar Raghav, Ms. Nirmala Raghav and Ms. Ritu Verma are the Directors who are in-charge of the day-to-day affairs of RCIL. Therefore, in my view, abovementioned Directors of the Company were engaged in fund mobilisation and responsible for carrying out unregistered CIS activity.
- j) Based on the aforesaid findings, I conclude that the Noticees have violated Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, 1999.

Issue II: Does the violation, if any, attract monetary penalty under Section 15D(a) of SEBI Act, 1992 for the Noticees?

The provisions of Section 15D(a) of the SEBI Act, 1992 read as under:

SEBI Act 15D- "Penalty for certain defaults in case of mutual funds-

If any person, who is—

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

13. In view of the foregoing, I am convinced that the Noticees are liable for monetary penalty under Section 15D(a) of SEBI Act for violation of Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, 1999.

Issue III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

14. The provisions of Section 15J of the SEBI require that while adjudging the quantum of penalty, the Adjudicating Officer shall have due regard to the following factors namely;

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

15. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that no quantifiable figures or data are available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default

committed by the Noticees. However, it's on record that without registering with SEBI under the CIS Regulations, 1999, RCIL mobilized funds under various schemes of Land/plots during May 01, 2012 to May 31, 2014 amounted to Rs. 26,13,600/-. In the present matter, I note that the Noticees have violated Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, 1999.

ORDER

16. After taking into consideration all the facts and circumstances of the case, gravity of violations and the material available on record, and also the factors stipulated in Section 15J of the SEBI Act, 1992, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, hereby impose a penalty of Rs. 40,00,000/- (Rupees Forty Lakh Only) jointly and severally on Raghav Capital and Infrastructure Limited and its directors namely Raj Kumar Raghav, Nirmala Raghav and Ritu Verma under the provisions of Section 15D(a) of the SEBI Act for violation of Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, 1999. The amount of the penalty shall be payable jointly and severally by the Noticees. I am of the view that the said penalty is commensurate with the violation committed by the Noticees.
17. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.
18. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 - DRA III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C -4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051."

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with	

19. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

20. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Date: November 3, 2020

Place: Mumbai

G RAMAR

ADJUDICATING OFFICER