BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. AO/AP/PACL/1-10/2016]

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

In the Matter of M/s PACL Ltd.

In Respect of:

1. M/s PACL Limited (PAN: AAACP4032A)

2. Mr. Anand Gurwant Singh

3. Mr. Gurnam Singh (PAN:AOYPS320H)

4. Mr. Tarlochan Singh (PAN: AIEPS9489Q)

5. Mr. Sukhdev Singh (PAN: AUGPS0130B)

6. Mr. Nirmal Singh Bhangoo (PAN: ACTPB6698L)

7. Mr. Uppal Devinder Kumar (PAN : AABPU0363K)

8. Mr. Tyger Joginder(DIN: 00694280)

9. Mr. Gurmeet Singh (PAN: AAMPS1400Q)

10. Mr. Subrata Bhattacharya (PAN: AAIPB6480H)

Background:

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation into the affairs of M/s. PACL Limited. The investigation conducted by SEBI revealed that M/s. PACL Limited (hereinafter referred to as "**Noticee no.1" or "the company"**) and its directors namely, Mr. Anand Gurwant Singh (hereinafter referred to as "**Noticee no. 2**"), Mr. Gurnam Singh (hereinafter referred to as "**Noticee no. 3**"), Mr. Tarlochan Singh (hereinafter referred to as "**Noticee no.4**"), Mr. Sukhdev Singh (hereinafter referred to as "**Noticee no.5**"), Mr. Nirmal Singh Bhangoo (hereinafter referred to as "**Noticee no. 6**"), Mr. Uppal Devinder Kumar (hereinafter referred to as "**Noticee no. 7**"), Mr. Joginder Tyger(hereinafter referred to as "**Noticee no. 8**"), Mr. Gurmeet Singh (hereinafter referred to as "**Noticee no. 9**") and Mr. Subrata Bhattacharya (hereinafter referred to as "**Noticee no. 10**") , (hereinafter all the Noticee no. 1 to Noticee no. 10 collectively referred to as "**Noticees**") had mobilized funds from general public by sponsoring/causing to be sponsored, carrying/causing to be carried, collective investment schemes, without obtaining registration from SEBI, as required under the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") and SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "**CIS Regulations**").

2. Vide order dated December 09, 2014 issued by the competent authority, I was appointed as Adjudicating Officer, in terms of Section 15-I read with Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**the Rules**"), to inquire into and adjudge under Section 15 D of the SEBI Act, 1992, the violations of Section 12 (1B) of SEBI Act, 1992 read with Regulations 5, 68 and 69 of CIS Regulations, alleged to have been be committed by the Noticees, by not obtaining certificate of registration from SEBI for sponsoring and/or carrying on any collective investment scheme.

3. **Show Cause Notices, Replies and Personal Hearings:**

Show cause notices, dated January 20, 2015 (hereinafter referred to as "**SCN**") were issued to the Noticees under Rule 4(1) of the Rules calling upon Noticees to show cause as to why an inquiry should not be initiated and penalty be not

imposed against them under Section 15 D of the SEBI Act, 1992, for the alleged violation of Section 12 (1B) of SEBI Act, 1992 read with Regulations 5, 68 and 69 of CIS Regulations. The Noticees were advised to file their replies to the respective SCN within 14 days of its receipt. In the SCN, it was alleged that the Noticee No.1 has mobilized funds to the tune of Rs49,101,00,3012,28,24/- (Rs Forty Nine Thousand One Hundred and One Crore One Lakh Twenty Two Thousand Eight Hundred and Twenty Four only) from the year1996 till the year 2014 (excluding certain period for which information has not been furnished by the Noticee no.1) under its various collective investment schemes, without obtaining registration from SEBI. It was also alleged that during the period, Noticees no. 2 to 10 were incharge and responsible for the activities of Noticee no.1 and were directly/indirectly involved and instrumental in such illegal mobilization under the various schemes of Noticee no. 1. Thus, it was charged that the Noticees have violated provisions of Section 12(1B) of SEBI Act, 1992 read with Regulations 5, 68 and 69 of CIS Regulations. The charges have been levelled against the Noticees in the SCN, based on the Investigation Report (hereinafter referred to as "**the IR**") and other material made available to me. Copy of relevant extract of the IR and other documents relied upon in the proceedings were given to the Noticees along with the SCN. The details of the charges in the SCN are as under:

a) On May 30, 1996, 27 schemes (Plan Code No. 1 to 27) were launched by the Noticee no. 1 which were discontinued over a period of time and subsequently, schemes with Plan Code No. 28 to 67 were launched. The payment plans in the schemes of the Noticee no. 1 were of two types, viz. : 'Installment Payment Plan' (hereinafter referred to as "**IPP**") and 'Cash Down Payment Plan' (hereinafter referred to as "**CDPP**"). The only difference in all the 67 schemes are of tenure of the scheme, plot size and regular returns.

b) Single instalment regular income schemes were floated under Plan code No. 10 to 27, wherein, *inter-alia*, regular annual returns were being offered to the customer on their investment in the agriculture land, to be developed by the Noticee no. 1. The said schemes (Plan Code No. 10 to 27) were discontinued from December 15, 1997. It has been stated in Circular no. 83/97 dated November 22, 1997 issued by Noticee no. 1, that in view of some proposed regulation, scheme no. 10 to 27 were to be withdrawn w.e.f. December 15, 1997. The said plans were akin to collective investment scheme and were discontinued subsequent to the press release dated November 26, 1997 issued by SEBI.

c) The Noticee no. 1 introduced certain other schemes (Plan Code No. 28 to 67), over a period of time. All such schemes, provided for estimated realizable value or projected plot value.

d) The Noticee no. 1 on July 16, 2010, re-classified all the prevailing plans, i.e. plan code no. 28 to 67. By the said reclassification, the consideration being taken from the customers, was bifurcated into two components i.e. the cost of plot and development charges. Out of the total consideration, 36% of the consideration is fixed towards cost of the plot and 64% towards the development and other charges for the existing plans. In some instances, the consideration towards cost of plot is 40% and 60% is towards the development and other charges.

e) The development agreement forms part of all the prevailing plans, i.e. plan code no. 28 to 67. Hence, it is inferred that the customer does not have any option of developing the land on its own. It has also been stated during investigation by Shri Sukhdev Singh, M. D., (Noticee no.5), of M/s. PACL that "*All business plans are inclusive of land cost and development charges. Therefore there is no scope for the customer to opt for the self-development of the plot in the existing plan.*" The same was also confirmed during investigation by Shri Gurmeet Singh (Noticee No. 9) that the development of agricultural land sold to its customers is done by the Noticee no. 1 only.

f) The scheme wise/plan wise details, including amount mobilized are not maintained by the Noticee no. 1.

g) The commission structure ranges from 6.58% to 10.25% for plans under IPP and 10.50% to 12.50% in CDPP.

h) In the existing plans, the total consideration towards the plot is bifurcated into cost of the land and development charges. The application forming part of agreement provides option to the customer to develop the land, however, as per the information given by the Noticee no. 1, the land is developed by it only.

i) As per the agreement, the Noticee no. 1 has exclusive rights to develop and maintain the property scheduled therein in consultation with experts and customer shall have no right either to encumber/alienate/transfer the property or to interfere in howsoever remote manner with the method and mode of development and maintenance of property.

j) The salient features of the agreement pertaining to development of land are :

i. The Noticee no. 1 organizes the sale of undeveloped agricultural land of various sizes to customers and on the option of the customer, undertakes the development of the said land.

ii. The customer has expressed his desire of buying the said agricultural land and also opted to have the same developed by the Noticee no. 1. For this purpose, an application, which forms the basis of the agreement is made by the customer.

iii. No dues certificate is required to be obtained from the Noticee no. 1 in order to sell/assign/mortgage/pledge/alienate the plot.

iv. In case of CDPP and Cash Down Flexi Plan, the allotment of the land shall be allotted in the name of the customer within 270 days of receipt of full consideration. Whereas, in case of IPP, the land shall be allotted within 270 days of receipt of 50% of the consideration amount of the plot and charges.

v. By the agreement, the customer confirms that he has exercised the option to get the plot developed by the Noticee no. 1.

vi. The Noticee no. 1 shall, as it may deem appropriate, provide irrigation system use necessary fertilizers and also employ its technical experts.

vii. The Noticee no. 1 shall enter upon the land for the limited period for the purpose of undertaking development of the plot.

viii. The Noticee no. 1, unless specifically otherwise directed by the customer, shall be responsible for arranging sale of produce, if any, out of the plot, on behalf of the customer. The said task shall be subject to the condition that the Noticee no. 1 may sell the produce at such price which it may deem fit, subject to the factors of grade of produce, market conditions etc. The customer will be paid the net proceeds and no dispute shall be raised in respect of the same.

ix. On execution and registration of the sale deed, the customer shall become and be absolute owner-in-possession of the plot and the trees, crops standing etc., and the produce out of it. The customer shall not have any claim over common facilities provided by the Noticee no. 1, such as, irrigation pipelines, drainage systems etc. which may be passing through the plot.

k) The customer does not have an option to develop the land on its own and thus has no role to play in day to day affairs of the Noticee no. 1 in relation to development of the land.

l) Mr. Sukhdev Singh (Noticee No. 5) has, during the course of investigation, confirmed that there is no scope for the customer to opt for self-development of the land as the business plans are inclusive of land cost and development charges. It has been further confirmed that since inception, none of the plans have provided option of self-development and thus none of the customers have opted for self-development. It has been further stated that the option of self-development by the customer is provided keeping in mind further changes in business plan.

m) Development charges, being 64% of the total payment forms major part of the consideration.

n) The original title deeds pertaining to the sale of the plot is kept by the Trustee, who is appointed by the Noticee no. 1. The customer is provided only with a certified copy of the title deed, through the trustee.

o) The customer does not have an option to choose the state in which he wishes to invest, the land is allotted on the discretion of the Noticee no.1 and the allotment letter specifies that the Noticee no. 1 has the right to change the location.

p) Analysis done by the Investigating Authority, of the sale deeds provided by the Noticee no. 1, *inter alia* indicated the following :

i. Copies of application forms, agreement and sale deed executed in case of 10 customers have been provided. In all the cases, the customer has applied for 5 plots of 1000 sq. yards under Plan Code No. C3/39 and sale deed has been executed for one plot of 1000 sq. yards.

ii. All the customers were represented by one Mr. S. Karthikeyan who was authorized by the customer by executing a Special Power of Attorney in his favour.

iii. The customers are residents of different villages of Rajasthan and Uttar Pradesh, and the land to such customers have been allotted in the villages of District Ramanathapuram, Tamil Nadu.

iv. In most of the sale deeds the seller of these plots is either World Wide Real Estate Private Limited or TC Developers Private Limited. In some cases the sellers were Shining Constructions Pvt. Ltd, Pearls Buildcon Private Limited, NSB Realtors Limited or Pearls Lifestyle Developers Pvt. Ltd. All these sellers are absolute owners of the land.

q) In the sale deed under reference, none of the identification means adopted by Revenue Authorities like Khewat number, Khasra number, Khatoni or Killa number, or any such means to identify the land, have been disclosed. Therefore, such land cannot be identified clearly. In case of a dispute with a third party, it would be practically impossible for the customer, to establish his title to the agricultural land allegedly purchased by him from the Noticee no. 1.

r) It would not be practicably possible for the customers residing in the villages of Rajasthan and Uttar Pradesh to control/supervise the property, in Tamil Nadu, purchased by them. It may not be possible for such customers to even ascertain whether the Noticee no. 1 has carried out its promise of development.

s) The customer does not have exclusive rights over the facilities such as irrigation, drainage system, etc. He is only entitled to use such facilities along with others in the neighborhood. Without having any control over such facilities, the customer is not having, for all practical purposes, the absolute ownership/possession/control of the agricultural land purchased by him.

t) The land being sold by the Noticee no. 1 is not held by it directly as Noticee no. 1 is not the registered owner of such land.

u) The nature of all the schemes of Noticee no. 1 are same, i.e., sale, purchase and development of the agricultural land. Hence, the Noticee no. 1 has floated certain schemes/plans from time to time.

v) The Noticee no. 1 adopted the rule book in its Board Meeting held on May 30, 1996, for inviting investment from the public in its land related schemes of the company. Hence, the purpose of this scheme or arrangement is to enable the investors to participate by way of subscription.

w) The Noticee no. 1 has failed to provide scheme-wise amount mobilized or the details of the amount used for development of the land. Such details are also not

available in the financial statements of the Noticee no. 1. The price of plots is uniform across all the states. Thus, the monies mobilized by it under the schemes, have been pooled and utilized for the purposes of the schemes.

x) At the time of making the investment, the customers are informed about the 'estimated realizable value' of such plot. The plot can be sold by the customer only at respective estimated realizable value. As stated by Noticee no.9, during the course of Investigation, all customers seek assistance of the Noticee no.1 to sell their plot. The amount mentioned under such head is the amount that the customers is expected to receive at the end of the tenure of the scheme. The Noticee no. 1 has submitted that by carrying out development activities on the landit ensures that the customer receives at least the 'estimated realizable value'. It is clear that the investor would be getting the 'estimated realizable value' and not the rights over the land or anything growing over it. The customer cannot sell the plot for more than the value determined by the Noticee no. 1. Hence, the contributions/payments made by the customers are with a view to receive profit from such schemes.

y) The customer does not have a right to choose the state where the land is situated. This option has been started to be given to the customers only 2-3 years back. Exact location of the plot is decided by the Noticee no. 1 only, which is also subject to change by the Noticee no. 1. The customers of the Noticee no.1 belong to various parts of the country, however, land has been allotted to them in 8 states only, that too in 3 statesmajorly. The title deeds pertaining to sale of plots is kept with the Trustee appointed by the Noticee no. 1. The same is not given to the customer even after payment of full consideration. The investor does not get any right over the land beyond the pre-determined amount of 'estimated realizable value' and the land cannot be utilized for any other purpose.

z) As per the agreement, the customer is supposed to hand over the plot to the Noticee no. 1 for development, cultivation, etc., during the tenure of the agreement. The customer, though projected to be the absolute owner, and in exclusive possession of the agricultural land, has no exclusive ownership rights over the aforesaid facilities nor a right to interfere in the aforesaid facilities. The Noticee no. 1 pays the land tax and other public dues payable qua the plot and the said amount is reimbursed by the customer out of the net sale proceeds. This make clear that the control over day to day affairs of the schemes remain in the

hands of the Noticee no. 1 and properties are also managed on behalf of the customers by the Noticee no. 1.

aa) As per the agreement, the customer shall have the requisite share along with other allottees/transferees in a joint holding, due to the reason that fragmentation of land into smaller size may not be practicable, feasible or permissible under the relevant revenue laws. Only symbolic possession of the plot shall be handed over to the customer immediately after registration of sale deed so as to enable the Noticee no. 1 to implement the agreement. Thus, the customer does not have any role to play in day to day affairs of the Noticee no. 1 with regard to the development of the land.

bb) In view of the above, it was alleged in the Investigation Report that the schemes of the Noticee no. 1 are in the nature of collective investment schemes.

cc) It was also alleged that the Noticees have mobilized funds to the tune of Rs 49,101,0,03,01,22,824/- (Rs Forty Nine Thousand One Hundred and One Crore One Lakh Twenty Two Thousand Eight Hundred and Twenty Four only) from the year 1996 till the year 2014 (excluding certain period for which information has not been furnished by the Noticee no. 1), without obtaining registration from SEBI.

4. The SCNs were served to all the Noticees except Noticee no. 2 and Noticee no. 7. The SCN issued to Noticee no. 2 came back with the remark: "unclaimed" and the SCN issued to the Noticee no. 7 came back with the remark: "Left India return to sender". Accordingly, the SCNs were sought to be served to the aforesaid Noticees through affixation at their last known address. During the attempt of affixation at the address of Noticee no. 7, he was present and accordingly, the SCN was served on the Noticee no. 7 by hand delivery.
5. Vide letter dated February 03, 2015, Noticee no. 9 requested for reasonable time to file reply to the SCN. The said letter was filed for seeking time for the Noticee no. 1, Noticee no. 4, Noticee no.5 and Noticee no. 10, however, authorization letters in favour of Noticee no. 9 by other Noticees were not filed. Accordingly, vide letter dated February 11, 2015, time to file reply to the SCN was extended for another 7 days. The Noticee no. 9 was also advised to file independent authorization letter on behalf of all other noticees, authorizing him to represent them in these proceedings. Subsequently, separate letters dated February 20, 2015 were received from the all these Noticees, seeking further time of 10 days to file reply to the SCN.

6. Vide letter dated February 04, 2015, the Noticee no. 6, citing to his long illness, sought reasonable time to file the reply to the SCN. Accordingly, vide letter dated February 11, 2015, time to file reply to the SCN was extended for another 7 days. Subsequently, a letter dated February 25, 2015 was received from Shri Gaurav Kejriwal, Advocate, on behalf of the Noticee no. 6 seeking extension of 2 weeks to file the reply.
7. However, as no reply was received in the extended time also, it was decided to conduct an inquiry in the matter, based on the material available on record. Accordingly, hearing notice dated March 17, 2015 was issued fixing April 06, 2015 as the date of hearing.
8. On April 06, 2015, Mr. Pawan Shree Agarwal, Advocate appeared on behalf of Noticee no. 1, Noticee no. 4 and Noticee no. 5. Ms. Meeta Sharma, Senior DGM Legal, PACL was also present in the hearing. A common reply on behalf of the aforesaid three noticees was filed and the hearing was fixed for May 18, 2015. On May 18, 2015, the counsel made oral submissions on behalf of all the aforesaid three notices.
9. Noticee no. 3 appeared in person, on April 06, 2015 and sought time to file reply to the SCN. The Noticee no. 3 was given time till April 25, 2015 to file his reply to the SCN. A reply dated April 25, 2015 was filed by Noticee no. 3. A hearing notice dated May 19, 2015 fixing date of hearing as June 15, 2015 was issued to Noticee no. 3. On June 15, 2015, the Noticee no. 3 appeared in person and made submissions.
10. On April 06, 2015, Mr. Ramji Srinivasan, Senior Advocate, appeared through Mr. Gaurav Kejriwal, Advocate on behalf of Noticee no. 6. A reply on behalf of Noticee no. 6 was filed and as the arguments remain part heard, the next date of hearing was fixed for May 18, 2015. On May 18, 2015, Mr. Gaurav Kejriwal, Advocate appeared on behalf of Noticee no. 6 and made oral submissions. A request to cross examine the Investigating Authority ("IA") was also made and accordingly the matter was fixed for cross examination of the IA and conclusion of the arguments on June 26, 2015. A request dated June 24, 2015 was received from the counsel of Noticee no. 6 seeking adjournment in the matter. Accordingly, the matter was adjourned to July 20, 2015. On July 20, 2015, the counsel for the Noticee no. 6 conducted cross examination of the IA and the matter was fixed for August 04, 2015 for conclusion of arguments. The counsel for Noticee no. 6 appeared on the date as fixed and made oral submissions and also submitted the written submissions.
11. A reply dated March 31, 2015 was received from Noticee no. 7. A hearing notice dated July 08, 2015 fixing the date of hearing as July 27, 2015 was issued. Though, authority letter on behalf of the Noticee no. 7 was received from the Advocate,

however, for the hearing, the said Noticee appeared in person and made oral submissions.

12. Mr. Ayush Sharma, Advocate, appeared on April 06, 2015 on behalf of Noticee no. 9 and Noticee no. 10 and filed separate replies on behalf of the aforesaid noticees and the hearing was fixed for May 18, 2015. On May 18, 2015, a request from the counsel to adjourn the matter was received and accordingly, a hearing notice dated May 19, 2015 fixing June 15, 2015 as the next date of hearing was issued. On June 15, 2015, the counsel appeared and made request for inspection of documents relied upon during investigation. The request was accepted and SEBI was directed to provide inspection of documents. Subsequently, vide hearing notice dated July 29, 2015, the hearing was fixed for August 14, 2015. However, due to certain official reasons, the hearing was rescheduled to August 17, 2015 and the same was informed to the Noticees/counsel. The counsel appeared on August 17, 2015 and concluded the oral arguments. On request made by the counsel, time of 1 week to file written submissions in the matter was given. On August 24, 2015, a request from the counsel was received seeking additional 15 days to file written submissions. The written submissions were filed belatedly on September 14, 2015, which were taken on record.

13. Noticee no. 2 and Noticee no. 8 did not file any reply nor appeared for hearing despite service of SCNs and various hearing notices, issued to them.

14. **Submissions by the Noticees**

The details of the submissions made during the hearings and submissions vide written replies are as under:

14.1. **Noticee no. 1, Noticee no. 4 and Noticee no.5:**

In response to the charges in the SCN and the aforesaid findings of the IR, Noticee no. 1, Noticee no. 4 and Noticee no. 5 filed a common reply. The submissions made on behalf of these three noticees are as follows:

14.1.1. Preliminary Objections:

14.1.1.1. The business of the company is not relating to any 'securities' as defined under Section 2 (h) of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "SCRA"). The SEBI Act and regulations

made thereunder deal with securities marketable on securities market and relates only to movable assets such as shares, bonds etc. The sale/title deeds of land and maintenance/development agreements cannot be considered to be 'securities' as they are not capable of being marketed on any stock exchange.

14.1.1.2. The agreements executed with the customers are with regard to immovable assets and the term 'units' used by Noticee no. 1 refers to fixed size of plots of land. The documents issued to the customers are not instruments deriving their value from underlying assets and such documents cannot be considered as movable asset, nor are they capable of being traded or listed on a stock exchange.

14.1.1.3. The CIS Regulations are not intended to regulate the sale and purchase of land. The Entry 18 of List II under the Schedule VII of the Constitution of India read with Article 246(3) thereof stipulates that the power to make laws relating to land (especially agricultural land), lies with the State.

14.1.1.4. The extent to which SEBI Act, 1992 and CIS Regulations seek to regulate Noticee no. 1's arrangements which involve transfer of agricultural land to the customers by Noticee no. 1 and the development of such lands, are ultra vires the Constitution of India.

14.1.2. General Submissions:

14.1.2.1. The company has denied that its business is in the nature of CIS and that it did not sponsor or caused to be sponsored a CIS any time after insertion of Section 11 AA in SEBI Act, 1992.

14.1.2.2. The company has given emphasis on the Press Release dated November 18, 1997 issued by Government of India. It has been submitted that the substance of the said Press Release clearly shows that the agro bond/plantation bonds funding agro based activities shall be treated as CIS falling under provisions of Section 11 (2) (c) of SEBI Act, 1992 after November 18, 1997. It has been submitted that before issuance of such Press Release, such activities were not treated as CIS and thus were not illegal or prohibited as they were beyond the ambit of Section 11(2) (c) and Section 12 (1B) of SEBI Act, 1992. SEBI was given the jurisdiction over plantation entities vide the aforesaid Press Release and the company received the communication in this regard only on March 04, 1998. The company has contended that its activities

are not covered under the Press Release of the Government of India and the Press Release/public notices of SEBI and the communication of SEBI dated March 04, 1998.

14.1.2.3. The provisions of Section 12 (1B) of SEBI Act,1992 and provisions of CIS Regulations cannot be applied retrospectively in violation of Article 20 of the Constitution of India.

14.1.2.4. The business of the company relates to buying and selling of agricultural land including development of such land into cultivable land and providing other infrastructure on it. The transactions of the company are comparable to that of a builder/developer of a property. It purchases lands from its own funds prior to inviting allotment for individual plots, adds value to the land through its development activities and based on such land banks, the customers approach the company through its agents for purchase of lands.

14.1.2.5. The company has different plans to sell these lands wherein payment can be made in one or multiple installments. The sale and development transactions contemplated in the agreements entered by the company with its customers are not a 'scheme or arrangement'. The use of words 'scheme' or 'plans' by the company is done only for administrative convenience to categorize the transactions on the basis of time taken for development, size of units of land etc., and the same do not imply that the company is running any investment scheme/CIS. The plots are not transferable till the execution of sale deeds.

14.1.2.6. The company has introduced 67 schemes till date. The land is held by various associate companies of the company under a MoU by paying holding charges to such associate companies and consideration to buy such land is paid by the company. The business model of the company is not limited to mere trading in land but it includes providing significant value addition to such low value barren land.

14.1.2.7. The company has not issued any units/instruments/security. The terms 'units' and ' plots' refer to the land to be sold to the customers and the same cannot be interpreted to mean that any securities were ever issued to the customers. The business of the company cannot be regulated by SEBI as it does not involve or relates to any 'securities'.

14.1.2.8. On execution of the sale deed, ownership and possession of the land vests with the purchaser and they are free to do deal with the property.

14.1.2.9. The allotment letter etc., issued by the company are for the sale of land and the same do not create any marketable securities. As per CIS

Regulations, the 'units/other instrument' of a CIS should be capable of being marketable on a stock exchange. The 'units' used by the company refers to fixed size of plots and agreements are executed with regard to the plots, hence, such documents cannot be considered to be capable of being listed/traded on stock exchange and thus cannot be held to be security as defined under Section 2(h) of SCRA.

14.1.2.10. The mandate of Dave Committee was to assist SEBI in evolving framework for the regulation of schemes issuing 'agro and plantation bonds' and not the activities relating to development of land and agricultural activities.

14.1.2.11. Justice K. Swamidurai (Retd.) who was appointed by Hon'ble High Court of Delhi in the matter of S.D. Bhattacharya &Ors. Vs SEBI and others, to supervise the land sale transactions of the company has in his report observed that the sale and purchase transactions carried out by the company are genuine. The reports have been filed by Justice K. Swamidurai does not contain any adverse findings against the company.

14.1.2.12. There is no scheme or arrangement being managed by the company by virtue of which the customers receive profits/property, nor there is any assured return/profit promised to the customer. The customer pay the 'consideration' for the sale and development service of the company. The customers get profits as a natural consequence of owning the land, which appreciates considerably due to the development services. The 'estimated realizable value' is the price which the land will command upon development of the land.

14.1.2.13. Every transaction with each customer is a distinct transaction for sale and development of agricultural land. The common factor in such transactions is only the payment mechanism/tenure of development/unit of land, size etc. and it cannot be construed that these transactions are all part of a common 'scheme'. The monies received from the customers are not 'pooled and utilised' for any common purposes. The plots sold to customers are distinctly identifiable and customer pays for purchase and development of such land.

14.1.2.14. Noticee no. 1 does not have any entitlement to control or take charge of the property or monies paid by the customers. Noticee no. 1 is not in the possession of the land and merely has limited right of entry to provide development services and management of property is not

handed over to Noticee no. 1. Marketing services provided at the end of the development period to help the customers sell the plot are provided at the request of the customer. Customers are free to retain the plot or sell it by himself. The company does not manage any contribution or investment as the monies paid by the customers are consideration for the plot and fees for development services provided by it. The customer does not hand over the management of the property but merely conveys limited right of entry to the company, for the purpose of development. To develop the land, the company exercises certain level of discretion, but the same cannot be termed as 'management' of properties. The company uses its expertise and experience in developing the land without undue interference from the customers. The customers have a right to give suggestions with regard to the development and maintenance of the land.

14.1.2.15. The sums paid by the customer are consideration of the land and fee for development and thus the company is not managing the contributions of the customers. The customers are informed about the composite nature of contract, i.e., transfer of title of a piece of land and development of land by the company. The development and maintenance for the period of tenure of the agreement, forms an integral and conjoined service offered to the customer. The company prefers to do the development without undue interference from the customers. However, the customers have the right to tender suggestions regarding development & maintenance of the land.

14.1.2.16. The details in the agreement cum application form are not inconsistent with the actual payment plan and there has been no instance where the customer has been forced to change the plan by the company.

14.1.2.17. On completion of tenure, the customer either retains the land or on request of the customer, the company attempts to facilitate the sale of the developed land for the customer, through its marketing services. The customer cannot transfer any right, title or interest in the land before execution of sale deeds. After execution of sale deeds, the purchasers are free to deal with the property as ownership is vested in them coupled with the possession.

14.1.2.18. The land is allotted to the customer in the State of his choice, based on the availability. The plots of land available are very similar to each other, being mostly pre developed barren land. A person who makes

substantial purchase of land by making payment cannot be said to be finding it difficult to visit the piece of land.

14.1.2.19. The company executes a Special Power of Attorney in favour of its representative to provide flexibility in facilitating the execution of sale deeds. The execution of SPoA is optional. This SPoA is executed to provide certain amount of flexibility to facilitate the execution of sale deeds, especially in cases where in the customer is not residing in the same State where the plot is situated. The company appoints an individual to go and execute sale deeds on behalf of the customers.

14.1.2.20. The current application forms and agreements do not contain clauses of joint sale deed. The customers may have undivided shares along with other customers in a plot of land. The rights of each customer are recorded in separate sale deed. From 2011 onwards, customers have option to self-develop the land. If the customers were developing all the plots, the company would merely be engaged in land trading. However, the value proposition offered by the company is development of agricultural land, which increases the sale price of land manifold at the time of expiry of the agreement. The major parts of charges are towards development charge as barren land is converted into cultivable over the period of plan.

14.1.2.21. The company is an aggregator of land bank and is in position to fix the price of land units offered at uniform rates across the country. The company carries out extensive development work across its land bank in order to raise its productivity. The valuation of plot is based on the end product received by the customer upon expiry of the agreement and on expected income that the customer can generate from such developed land.

14.1.2.22. Since last few years, the application forms/agreement provide the customers with an option to select the state and consent of customer is taken in advance in cases where the location of the land is required to be changed. There is no impact due to change in location as land is uniformly barren at the time of acquisition and is uniformly developed.

14.1.2.23. Title deeds are kept in the safe custody of trustee appointed by the company and a certified copy of the title deed is given to the customer. Original title deed can be taken by the customer after the expiry of the agreement.

14.1.2.24. All taxes/public dues are paid by the company on behalf of the customer and the same are reimbursed by the customer on expiry of

tenure. SEBI cannot challenge the validity of the agreement entered between two parties. Agreements are backed by consideration of reciprocal promises and SEBI cannot question the adequacy of consideration.

14.1.2.25. CIS Regulations were notified on October 15, 1999 and the same cannot be given retrospective effect. The term "collective investment scheme" came to be defined much later after Dave Committee submitted its report. The whole things are subsequent to the date the Noticee ceased to be director of the company.

14.1.2.26. It has been contended for the directors (Noticee no. 4 and Noticee no. 5) that they cannot be held responsible for any of the actions of the company, much less for running CIS, thus, SEBI has erred in directing the issuance of proceedings against noticees.

14.1.2.27. The CIS Regulations were notified only on October 15, 1999 and SEBI was assigned the task vide Press Release of Govt. of India dated November 18, 1997. Therefore, before November 18, 1997, the activities of agro based plantation bonds were beyond the ambit of Section 11 (2) (c) of SEBI Act, 1992. The company was of the opinion that its activities are not covered under the communication dated March 04, 1998.

14.1.2.28. The company has already allotted land to 1.22 crore customers, no notice can be issued against it. SEBI in its order has admitted that there are negligible cases of pooling. As sale deeds have been verified by Justice K. Swamidurai, there is no case of fraud.

14.2. Noticee no. 3

The Noticee no. 3 filed his reply dated April 25, 2015 in the proceedings and in the said reply, the Noticee no.3 contended as follows : -

14.2.1. Noticee no. 3 was not a director at the time of formation of the Noticee no. 1 in the year 1996. One person, also named as Gurnam Singh was the Director of the Noticee no. 1, who died in the year 1998.

14.2.2. The Managing Director of Noticee no. 1, Mr. Nirmal Singh Bhangoo had taken signatures of Noticee no. 3 on many blank papers in the year 2000 and subsequently, the Noticee no. 3 was appointed as Director of Noticee no. 1 by Mr. Nirmal Singh Bhangoo.

14.2.3. The Noticee no.1 has not appeared in any of the meetings of the Board of Directors of Noticee no.1 nor he received any remuneration or benefit from Noticee no. 1. After the year 2009, the Noticee no.3 has no

connection with Noticee no. 1 as he has been removed from the Board of Directors of Noticee no. 1.

14.2.4. The Noticee no.3 is bearing all his expenses in the proceedings and the Noticee no. 1 is not contributing in any manner in the present proceedings.

14.2.5. Noticee no. 3 also filed details/statements of the various bank loans taken by him.

14.3. Noticee no. 6 :

14.3.1. The Noticee no. 6 filed his reply dated March 31, 2015 and also filed written submission. The noticee no. 6, in its reply submitted as under:

14.3.1.1. The Noticee no. 6 was neither the promoter nor the first director of Noticee no. 1 and he joined as a Director of Noticee no. 1 on June 03, 1996 and the Form 32 had been filed on June 25, 1996. The Noticee no. 6 has resigned from the Board of Noticee no. 1 on February 03, 1998 and the Form 32 in this regard was filed by Noticee no. 1 in the same month.

14.3.1.2. During the tenure of the Noticee no. 6 as a Director of Noticee no. 1, no new business was commenced by the Noticee no. 1. The Noticee no.6 played only an advisory role and was not involved with the day to day business/management/affairs of the Noticee no. 1. Therefore, the question of Noticee no. 6 sponsoring or causing to be sponsored any CIS does not arise.

14.3.1.3. CIS Regulations were notified on October 15, 1999. A definition of CIS was provided for the first time and a registration process was also laid down. The CIS Regulations did not per se banned CIS, and provided a period within which an existing CIS could obtain registration in terms of Regulation 5 and 68 of CIS Regulations.

14.3.1.4. Section 12(1B) provides that no person shall carry on or sponsor any CIS unless a certificate of registration he obtains a certificate of registration in accordance with the regulations, however, the CIS Regulations came into force only on October 15, 1999.

14.3.1.5. The press releases issued by SEBI during the period January 25, 1995 to October 15, 1999 did not have force of law nor did they provide for definition of CIS nor was the same in conformity with Section 12 (1B) of the SEBI Act.

14.3.1.6. Noticee no. 6 cannot be held responsible as a person either to be carrying on or having sponsored any CIS as he had no role to play in the day to day business of the Noticee no. 1 and he resigned much prior to the CIS Regulations coming into force.

14.3.1.7. From the perusal of the records available with SEBI, it was learnt that there is no mention of Noticee no. 6 apart from few pages in one of the Annexures related to the names of the persons who have acted as Directors of Noticee no. 1. The said record shows that Noticee no. 6was a Director of the Noticee no. 1 from the period of June 03, 1996 to February 03, 1998 and the requisite Form 32 have been filed by the Noticee no. 1, veracity of which (Form 32) have not been challenged by SEBI, nor anything contrary has been reported.

14.3.1.8. The name of the Noticee no. 6 is not mentioned in the list of key managerial persons of the Noticee no. 1 which shows that the Noticee no. 6 was not connected to the day to day affairs of the Noticee no. 1. Noticee no. 6 was not in a position to either carry on any business or sponsor any business of Noticee no. 1 as he only had limited advisory role during the tenure with the company.

14.3.1.9. The Noticee no. 6 also referred to the litigation and the subsequent order dated February 26, 2013 passed by Hon'ble Supreme Court of India and submitted that the said order did not enlarge the scope of investigation to be conducted into the affairs of the Noticee no. 1 to include Directors of the Noticee no.1 who resigned before notification of the CIS regulations and by involving Noticee no. 6 in the investigation, the said order of the Hon'ble Supreme Court is being misread.

14.3.1.10. The Investigation Report is not clear on aspects of author of such report, Investigation Officer, and authorization to such officer for conducting the investigation. The said report does not mention the names of the persons examined.

14.3.1.11. The IR reveals that the 1st communication from SEBI to the company regarding CIS was of March 04, 1998 and by that time the Noticee no. 6 had resigned. The said letter refers to a Press Release dated February 24, 1998 directing that the money can be collected in existing CIS only if rating from credit rating agencies is obtained.

14.3.1.12. There is no discrepancy in the dates during which the Noticee no. 6 worked as a Director with Noticee no. 1, in the Investigation Report and it is as per the claim of the Noticee no. 6.

14.3.1.13. The findings of the IR does not show the involvement of the Noticee no. 6 in any of the schemes of the company. The charges framed in the SCN in the present proceedings are baseless as it fails to disclose any specific allegation against Noticee no. 6, after the notification of CIS Regulations.

14.3.1.14. Noticee no. 6 acted as an "Advisor" to Noticee no.1 during his tenure with the Noticee no. 1. As the Advisor is not an officer, officer-in-charge or key managerial personnel under the Companies Act, 1956 or Companies Act, 2013 and thus cannot be brought within the purview of the CIS Regulations or be made liable for the acts of the company of carrying on or sponsoring CIS.

14.3.1.15. Press releases do not have the force of law and none of the press releases defined CIS. The term CIS was defined first time on October 15, 1999 when the CIS regulations were notified. The press releases extends only to plantation companies.

14.3.1.16. The Noticee no. 6 was not a Director or involved in the day to day affairs of the company at the time or after the CIS regulations were notified.

14.3.1.17. The Noticee no. 6 cannot be held responsible under Section 12(1B) or 15D of the SEBI Act, in view of the various decisions of the Hon'ble Supreme Court of India.

14.3.1.18. The order dated August 22, 2014 passed by WTM, SEBI has held that the Notice no. 6 was merely an "Advisor" and the said order has been challenged by the Noticee no. 6 before Securities Appellate Tribunal.

14.3.1.19. As per the charges levelled under the SCN, the Noticee no. 6 is being directly/indirectly involved and instrumental in sponsoring or causing to be sponsored, carrying on or causing to be carried on CIS and thereby illegally mobilizing money under such schemes without obtaining registration from SEBI. The Noticee no. 6 had resigned before the notification of the CIS Regulations, and as the Regulations are prospective, the registration could have obtained by Noticee no.1 only after October 15, 1999, when the Noticee no. 6 ceased to be the Director of the Noticee no. 1.

14.3.1.20. The vicarious liability of the Noticee no. 6 must be proved for imposition of monetary penalty. There is no such material available on record to prove that Noticee no. 6 was involved in the CIS of the

company or can be held responsible for the failure of the company to obtain registration under the SEBI Act.

14.3.1.21. As per the provisions of Section 15D of SEBI Act, penalty can be imposed on a person who is carrying on CIS, without obtaining registration from SEBI. There is no allegation that the Noticee no. 6 has not obtained certificate of registration or he has ever in a position to comply with the CIS Regulations. There is no provision in the SEBI Act or CIS Regulations which requires an "Advisor" to obtain such registration on behalf of company.

14.3.1.22. The certificate of registration could have been obtained only under the CIS Regulations which came into force subsequent to the time when Noticee no. 6 had resigned. Section 15D, being a penal provision, needs to be construed strictly.

14.3.2. Apart from the above, in the written submissions, the Noticee no. 6 submitted the following:

14.3.2.1. The Noticee no. 6 acted as Director of Noticee no. 1 only for a period of 20 months. There is nothing on record nor did the investigation report reveal that during the tenure of 20 months, the Noticee no. 6 was involved either with the day to day business or management or affairs of the company.

14.3.2.2. The cross examination of the IA or the IR does not reveal the involvement of the Noticee no.6. The SCN also does not disclose the involvement of Noticee no. 6.

14.3.2.3. Even the documents received by the Noticee no. 6 during the course of inspection of records do not disclose either the involvement of Noticee no. 6 or that he was in a position to sponsor or caused to be sponsored any CIS during his tenure as a Director.

14.3.2.4. The Noticee no. 6 also referred to the filing of writ petition before Hon'ble High Court of Rajasthan and subsequent order dated February 26, 2013 passed by Hon'ble Supreme Court of India. It is further submitted that the SCN proceeds on a pre-conceived notion that the business of the company from the very inception is a collective investment scheme. However, prior to 2014, the business of Noticee no. 1 was not a CIS as held by Hon'ble High Court of Rajasthan and therefore till August 22, 2014, no obligation arose under the CIS Regulations. Any prior determination/assumption that the business of

the company is in the nature of CIS is neither valid nor of any consequence nor binding on the Noticee no. 6.

14.3.2.5. Only after determination of the nature of business in terms of the directions passed by Hon'ble Supreme Court of India in its order dated February 26, 2013, the obligation for obtaining registration in terms of Regulation 5 would arise and therefore such obligation for registration will arise on and from August 22, 2014. It is erroneously mentioned that the business of the company from inception was in the nature of CIS. On the date of such determination, the Noticee no. 6 was not a Director of Noticee no. 1. There was no obligation cast by the order dated August 22, 2014 on the Noticee no. 6 to make him responsible for obtaining registration under CIS Regulation or that the Noticee no. 6 has failed to comply with such directions, which could be treated as the basis of the proceedings under Section 15 D of SEBI Act, 1992.

14.3.2.6. The order dated February 26, 2013 of the Hon'ble Supreme Court of India is being misread in a manner to expand the scope of enquiry and all and sundry have been included in the investigation without there being an iota of evidence showing involvement of Noticee no. 6. The SCN lacks particulars/averments against the Noticee no. 6.

14.3.2.7. Business of CIS was not barred from the proviso to Section 12 (1B), which lays down that any person carrying on CIS before the amendment of 1995 for which no certificate of registration was required may continue to operate till such time regulations are framed.

14.3.2.8. It was the duty of SEBI to formulate regulations to provide for conditions of registration etc. Without such regulations, it is inconceivable that any person, much less the Noticee no. 6 could be expected to make an application for obtaining registration. Before the time such regulations were notified, it cannot be said that there was any obligation that the Noticee no. 6 was required to comply under law and which has not been complied with by him, for which penalty can be imposed on him. Regulations 5, 68, 69 were not even on statute book for the Noticee no. 6 to comply with.

14.3.2.9. If a person wanted to apply for registration, he could not do so before 1999 as the regulations were not notified till then. Noticee no. 6 referred to various judgments including the decision of Virendra Kumar Singh Vs SEBI [2011 (167) Co. Cases 105 Del] H.R. Kapoor Vs SEBI [149 (2008) DLT 591].

14.3.2.10. No penalty can be imposed on the Noticee no. 6as certificate of registration could only be obtained under the Regulation 5 which came to be notified subsequent to the resignation of the Noticee no. 6. A person cannot be held vicariously liable for acts which are beyond his control. On this issue, various judgments of Hon'ble Supreme Court have been referred to.

14.3.2.11. There is no mens rea or deliberate/wilful disobedience of the statutory mandate which the Noticee no. 6 could have been said to be in breach of, leading to imposition of monetary penalty. To impose monetary penalty, compliance of principles of natural justice and existence of mens rea or actus reus to contravene a statutory provision are necessary ingredients.

14.4. Noticee no. 7

Noticee no. 7 in its reply dated March 31, 2015, submitted as follows:

14.4.1. The SCN has included the Noticee no. 7 on an incorrect presumption that he was a director/person responsible for Noticee no. 1.

14.4.2. The Noticee no. 7 has been a Director on the Board of the Noticee no. 1 or person responsible for the affairs of Noticee no. 1.

14.4.3. The Noticee no.7 has done his B.Sc (Agriculture), M.Sc (Horticulture) and PhD in Horticulture. The Noticee no. 7 also submitted the details of his employment which includes assignments with various universities etc. The Noticee no. 7, after retirement, is working as Managing Partner of Genesis Seeds, which is a rural based organization in India, involved in the field of seed productions etc.

14.4.4. The Noticee no. 7 was approached by the Noticee no. 1 in the year 1998 for engaging him as a consultant. The Noticee no. 7 has visited the sites of Noticee no.1 once a month and earned a nominal fee of Rs 5000/- for about one year. After a few technical sessions and having brought a few scientists for lectures, Noticee no. 7 discontinued the consultancy with the Noticee no. 1. The Noticee no. 7 did not have any connection with the Noticee no. 1 or its Directors/promoters/management, apart from the aforesaid assignment of visiting consultant. The Noticee no. 7 was not even aware of any CIS floated by the Noticee no. 1.

14.4.5. The preliminary search conducted on the website of Ministry of Corporate Affairs reveals that the Noticee no. 1 has never made any filing notifying Noticee no. 7 as a Director on its Board. Therefore, material/documents etc.,

indicating appointment of Noticee no. 7 as a Director on the Board of Noticee no.1 should be given, before it is concluded that Noticee no. 7 was appointed as the Director.

14.5. Noticee no. 9 and Noticee no. 10 :

14.5.1. Noticee no. 9 and Noticee no. 10 have filed separate replies to the respective SCN, however, contents of the said replies are almost identical which are as below :

14.5.1.1. Noticee is a salaried director who does not hold any shares in the company. As per the objects of the company, it is a real estate company engaged in the business of sale, purchase and development of agricultural land.

14.5.1.2. Section 12(1B) was inserted into SEBI Act, 1992 w.e.f January 25, 1995 for prohibiting any company from running a CIS without obtaining a certificate of registration from SEBI. Government of India issued directions under Section 16 to SEBI, directing it to formulate draft regulations for CIS. Pursuant to the same, various press releases were issued by SEBI prohibiting companies from sponsoring or causing to be sponsored any CIS, till the framing of the regulations for CIS.

14.5.1.3. A Writ petition was filed before Hon'ble High Court of Delhi, wherein SEBI submitted list of companies which according to SEBI were running CIS. The list contained name of PACL also. The company sought deletion of its name from the list of the respondents.

14.5.1.4. The Hon'ble High Court of Delhi, directed that the transactions of sale to various parties by the company should be finalized under the supervision of Justice K. Swamidurai (Retd.). Justice Swamidurai filed his report stating that the sale deeds had been executed and registered in favour of customers of the company in compliance of the order of Hon'ble High Court. The Hon'ble High Court allowed the application for deletion of the name of the company from the list of respondents. In the meanwhile, CIS Regulations were notified and Section 11 AA was inserted in SEBI Act, 1992.

14.5.1.5. SEBI issued notices to the company with regard to its schemes and with directions to abide by the SEBI Act, 1992 and CIS Regulations. The company denied that its activities fall under the purview of CIS.

14.5.1.6. The company challenged the said notices before Hon'ble High Court of Rajasthan which stayed the operation of the notices issued by

SEBI. Vide its order dated November 28, 2003, the Hon'ble High Court held that the business of the company does not satisfy 3 out of 4 conditions of Section 11 AA(2). The said order was challenged before Hon'ble Supreme Court of India by filing a SLP, but no stay was granted on the order of Hon'ble High Court of Rajasthan.

14.5.1.7. The Hon'ble Supreme Court of India disposed off the SLP with a direction that notices issued by SEBI be treated as Show Cause notices and SEBI should also issue a comprehensive show cause notice to the company, after carrying out necessary inspection/investigation and thereafter decide whether the business activities of the company fall under the ambit of CIS or not.

14.5.1.8. The proceedings initiated in pursuance of directions of Hon'ble Supreme Court culminated into SEBI holding that activities of the company fall under the ambit of CIS. On August 22, 2014, certain directions were passed by SEBI to the company and its directors directing *inter alia* to wind up its CIS and refund the money due to its customers.

14.5.1.9. The noticee was appointed as a salaried director due to his expertise and skills and is not having any pecuniary interest in the company. Thus, he cannot be held liable for the acts of the company. He has not sponsored or caused to be sponsored any CIS on the basis of which penalty can be imposed on him.

14.5.1.10. Noticee cannot be held responsible for any of the actions of the company, much less for running CIS, thus, SEBI has erred in directing the issuance of proceedings against noticee.

14.5.1.11. A person cannot be held liable for acts of the company merely on the basis of the fact that he is a director. Specific allegations must be made with regard to the role in the acts of the company, for which the order is being passed. No role has been attributed to the notice by SEBI, neither any evidence has been adduced in this regard.

14.5.1.12. The provisions of Section 12 (1B) of SEBI Act,1992 and provisions of CIS Regulations cannot be applied retrospectively in violation of Article 20 of the Constitution of India. Before the definition of CIS was inserted in SEBI Act, w.e.f 2000, the term CIS was vague and not defined anywhere. Due to this, the press releases of GOI and SEBI become crucial.

14.5.1.13. It has been submitted that the substance of the said Press Release clearly shows that the agro bond/plantation bonds funding agro based

activities shall be treated as CIS falling under provisions of Section 11 (2) (c) of SEBI Act, 1992 after November 18, 1997. It has been submitted that before issuance of such Press Release, such activities were not treated as CIS and thus were not illegal or prohibited as they were beyond the ambit of Section 12 (1B) of SEBI Act. SEBI was given the jurisdiction over plantation entities vide the said Press Release dated November 18, 1997and the company received the communication in this regard only on March 04, 1998. The company has contended that its activities are not covered under the Press Release of the Government of India and the Press Release and public notices of SEBI

14.5.1.14. Justice Swamidurai has verified the genuineness of sale deeds executed by the Noticee no.1.

14.5.1.15. Section 11 AA (2) (i) of SEBI Act, 1992 is not satisfied as there is pooling of funds due to the company owning the land and the land is properly identified in the allotment letter. Section 11 AA (2) (ii) of SEBI Act, 1992 is not satisfied as the company is merely developing the land, and not managing it. As the company has started giving the option to self-develop the land, the third condition of Section 11 AA (2) of SEBI Act, 1992 is also not satisfied. The customer, if so desires, can have day to control over the land and has control over the land after execution of the sale deed. Therefore, the fourth condition is also not satisfied.

14.5.2. In their written submissions, the aforesaid Noticees, submitted that in view of the Hon'ble Rajasthan High Court's judgment dated November 28, 2003 and refusal of Hon'ble Supreme Court to grant stay on the said judgment ,and due to the directions passed by Hon'ble Supreme Court to conduct investigation, the Noticees were under bonafide belief that till August 22, 2014 the activities of the Noticee no.1 do not fall under the ambit of CIS. The Noticees have placed reliance on the decision of Hon'ble Supreme Court's decision in the matter of R.D. SaxenaVs Balram Prasad Sharma [AIR 2000 SC 3049]. By referring to the said judgment, Noticees have submitted that they were under the bonafide belief that their activities were legal, and hence penalty should not be imposed on them.

15. **Brief Background before proceeding to deal with the submissions vis-à-vis the allegations:**

In order to understand the various contentions raised by the Noticees in correct perspective, it is deemed appropriate to refer to the brief factual back ground, as outlined in the IR and legal background of this matter:

a) Section 11(2) (c) of SEBI Act, 1992 as existing in the originally introduced SEBI Act, 1992, *inter alia* empowers SEBI to take measures for registering and regulating the working of collective investment schemes ("**CIS**"). Section 11 (2) (c), as amended from time to time reads as under:

"(2) *Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for –*

(a) ...

(b)...

(c) registering and regulating the working of venture capital funds and collective investment schemes, including mutual funds;"

b) Section 12 (1B) was inserted in the SEBI Act, 1992 by the Securities Laws (Amendment) Act, 1995, w.e.f January 25, 1995. The said section as amended from time to time reads as :

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

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

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

c) Vide Press Release dated November 18, 1997, the Government of India communicated its decision that schemes through which instruments such as agro bonds, plantation bonds, etc., issued by the entities, would be treated as collective investment schemes under the SEBI Act, 1992 and SEBI was directed to frame regulations in order to regulate these CIS. Pursuant to the decision taken by the Government of India on CIS, a press release dated November 26,

1997 was issued by SEBI, wherein it was stated that regulations under Section 12 (1B) of SEBI Act, 1992 are being framed and till the time the said regulations are framed, no person can sponsor or cause to be sponsored, carry on or cause to be carried on any new CIS. It was further notified that persons desirous of availing the benefits of the proviso to Section 12 (1B) of SEBI Act, 1992 may send the information within 21 days.

d) Another public notice dated December 18, 1997 was issued by SEBI, *inter alia* directing the existing schemes to comply with Section 12 (1B) of SEBI Act, 1992 and to send the stated information to SEBI.

e) SEBI notified the SEBI (Collective Investment Schemes) Regulations, 1999 on October 15, 1999.

f) Thereafter, Section 11 AA was inserted in the SEBI Act, 1992 by the SEBI (Amendment) Act, 1999, w.e.f February 22, 2000. Section 11 AA, as amended from time to time read as under:

Section 11AA

"Collective investment scheme.

11AA. (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (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 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 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.

(3) Notwithstanding anything contained in sub-section (2) or sub-section (2A), any

scheme or arrangement –

(i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

(ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(iii) being a contract of insurance to which the Insurance Act, 1938 (4 of 1938), applies;

(iv) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952);

(v) under which deposits are accepted under section 58A of the Companies Act, 1956 (1 of 1956);

(vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956 (1 of 1956);

(vii) falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982 (40 of 1982);

(viii) under which contributions made are in the nature of subscription to a mutual fund;

(ix) such other scheme or arrangement which the Central Government may, in consultation with the Board, notify, shall not be a collective investment scheme."

g) It was observed that the Noticee no. 1 did not file the information/details with SEBI in terms of the aforesaid press release and public notice. SEBI, vide its letter dated March 04, 1998 informed the Noticee no. 1 that it has not submitted the requisite information in terms of the said press release and public notice and thus they are not eligible to avail the benefit of proviso to Section 12 (1B) of SEBI Act, 1992 and can neither launch new schemes nor continue fund raising under the existing schemes.

h) In its reply dated March 23, 1998, the Noticee no. 1 challenged the jurisdiction of SEBI on the ground that its business activities are in the nature of sale and purchase of agricultural land and thus SEBI Act, 1992 is not applicable to it.

i) In the meanwhile, a C.W.P. No. 3352/98, S.D. Bhattacharya Vs SEBI and others, was filed before Hon'ble High Court of Delhi, against entities running plantation and similar schemes. SEBI submitted a list of all the companies which, according to it were running CIS. The said list included the name of Noticee no. 1. Hon'ble High Court vide its interim order dated October 07, 1998

directed *inter alia* such companies to comply with the SEBI's directive published on February 24, 1998 whereby it was directed that existing CIS can mobilize funds from the public or from the investors under their existing schemes only if a rating from any one of the credit rating agencies has been obtained.

j) The Hon'ble High Court of Delhi, vide its order dated May 26, 1999 directed SEBI to appoint auditors for ascertaining the genuineness of the transactions executed by the Noticee no. 1. The audit report, submitted in December 1999 brought out various deficiencies/discrepancies in the transactions of the Noticee no. 1 including the fact that the cost of land was taken to be uniform irrespective of its location and huge commission was paid to the agents, out of the public funds.

k) Pursuant to the notification of CIS Regulations, two notices dated November 30, 1999 and December 10, 1999, respectively, were issued to Noticee no. 1 *inter alia* advising it to comply with the CIS Regulations. The Noticee no. 1 filed a Writ Petition before Hon'ble High Court of Rajasthan on the ground that its schemes do not fall under the ambit of SEBI Act/CIS Regulations. The constitutional validity of CIS Regulations were also challenged under the said Writ Petition.

l) In the meanwhile, SEBI, vide its order dated June 24, 2002 observed that the schemes of Noticee no. 1 fall squarely within the definition of CIS as defined under Section 11 AA of SEBI Act and therefore the Noticee no. 1 was directed to comply with the provisions of SEBI Act, 1992 and CIS Regulations, subject to the directions of Hon'ble High Court of Rajasthan.

m) Hon'ble High Court of Delhi, in the matter of S.D. Bhattacharya & Ors. Vs SEBI and others (C.W.P. No. 3352/98), vide its order passed in March 2003, allowed the Noticee no.1 to execute sale deeds in favour of its customers and notice against it was discharged. However, on SEBI's objection, the Hon'ble High Court later clarified that the said order of discharging notice would not come in the way of SEBI deciding upon whether or not the Noticee no. 1 is a CIS entity or not.

n) Hon'ble High Court of Rajasthan, vide its order dated November 28, 2003 quashed the notices issued by SEBI and observed that the schemes of Noticee

no. 1 were not CIS as they did not possess the characteristics of CIS, as defined under Section 11 AA of SEBI Act, 1992.

o) SEBI challenged the aforesaid order of Hon'ble High Court of Rajasthan before Hon'ble Supreme Court of India. Hon'ble Supreme Court, vide its order dated February 26, 2013 set aside the order of Hon'ble High Court of Rajasthan and further directed that the notices dated November 30, 1999 and December 10, 1999 can themselves be treated as show cause notice. SEBI was permitted to issue a comprehensive supplementary show cause notice to the Noticee no. 1, after carrying out necessary investigation, inquiry and verification of records of Noticee no. 1. The Noticee no. 1 was directed to permit SEBI to have free access to the records. SEBI was directed to pass fresh orders as regards the business activities of the Noticee no. 1 as to whether it falls under the category of CIS or not and depending on the ultimate order to be passed, SEBI was permitted to proceed further in accordance with law.

p) Accordingly, SEBI conducted investigation into the affairs of Noticee no. 1 to look into the possible violations of provisions of SEBI Act, 1992 and various Rules and Regulations made thereunder.

Dealing with the Preliminary Objections:

16. Before dealing with the charges, it is deemed appropriate to deal with preliminary objections taken in the common reply filed on behalf of Noticee no. 1, Noticee no. 4 and Noticee no. 5, pertaining to jurisdiction of SEBI to regulate the business of sale and purchase of land.

16.1. In so far as the contentions of the Noticee pertaining to jurisdiction of SEBI is concerned , I would like to rely upon the observations made by Hon'ble High Court of Punjab and Haryana in the matter of PGF Limited and others Vs Union of India and others [2004 Indlaw PNH 159] passed while deciding on the constitutional validity of Section 11 AA , in a similar case : *"In drawing our conclusion, therefore, the relevant question to be examined would be, whether the pith and substance of the legislation under challenge is 'investor protection', and sale and purchase of agricultural land is an activity ancillary thereto; or whether the pith and substance of the legislation under challenge is sale and purchase of agricultural land and 'investor protection' is ancillary thereto. In answering the aforesaid query, the*

conclusion undoubtedly is in favour of the former, i.e., the pith and substance of the legislation in question is 'investor protection', whereas sale and purchase of agricultural land and/or development of agricultural land is incidental thereto..... In the aforesaid view of the matter, there can be no manner of doubt that the pith and substance of the subject-matter of the legislation in hand does not fall under Entry 18 of the State List." The aforesaid decision of Hon'ble High Court of Punjab and Haryana was challenged by the petitioner therein before Hon'ble Supreme Court of India by filing an SLP which was converted into Civil Appeal [P.G.F.L. Vs Union of India and others] [MANU/SC/0247/2013]. Hon'ble Supreme Court affirmed the aforesaid decision of Hon'ble High Court of Punjab and Haryana and observed *inter alia* that: " *A detailed analysis of sub-section (2) of Section 11 AA, 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 there from.*"

16.2. I have carefully examined the contentions raised by the Noticees qua jurisdiction of SEBI over its activities. I note that the legislature has empowered SEBI by Section 11 (2) (c) to *inter alia* register and regulate the working of collective investment schemes. Further, prohibition to sponsor or caused to be sponsored or carry on or caused to be carried on any CIS, without obtaining registration from SEBI has been prescribed under Section 12 (1B) of SEBI Act, 1992. With regard to the definition of 'securities', it is observed that Section 2 (h) (ib) of SCRA, includes 'units or any other instrument' issued by any 'collective investment scheme' to the investors in such schemes. I note that legislature has entrusted the task of regulating CIS to SEBI. The Hon'ble Courts, as referred above, has also upheld the constitutional validity of Section 11 AA of SEBI Act, 1992. Thus, I observe that regardless of the nature of activity of an entity or capability of the instruments issued by such entity, of being listed and traded, SEBI has jurisdiction to regulate such transactions, if the same satisfies the ingredients of Section 11 AA of SEBI Act, 1992. Therefore, any instrument, whether it relates to maintenance/development agreement or sale deeds of a land, would fall under the ambit of 'securities' if the scheme, by which such instruments are issued, satisfies the provisions of Section 11 AA of SEBI Act,

1992. In view of the statutory provisions and the aforesaid judgments of Hon'ble Courts, I found that the arguments of the company regarding jurisdiction of SEBI are sans merit, baseless and does not hold credence of any magnitude.

16.3. I am, therefore, of the view that SEBI can regulate the purported business of sale and purchase of land of the Noticee no. 1, if the said business transactions satisfy the ingredients of Section 11 AA (2).

16.4. Further, a contention has been raised that only after the press release dated November 18, 1997, the task to regulate collective investment schemes was assigned to SEBI. In this connection, I note that the Section 11(2) (c) of SEBI Act which *inter alia* empowers SEBI to take measures for registering and regulating the working of collective investment schemes, was a part of SEBI Act since its enactment. Further, Section 12 (1B), which was inserted in the SEBI Act, 1992, vide Securities Laws (Amendment) Act, 1995w.e.f. January 25, 1995 prohibited the sponsoring or causing to be sponsored, carrying on or causing to be carried on any collective investment scheme, without obtaining registration from SEBI. Therefore, after January 25, 1999, i.e. after the date of insertion of Section 12(1B) in SEBI Act, 1992, there was a prohibition on floating collective investment schemes, without obtaining registration from SEBI.

17. Further, reliance has been placed on the fact that Hon'ble Rajasthan High Court had quashed the SEBI's notices and on the SLPs (later converted into Civil Appeals) no stay was granted on the said order by Hon'ble Supreme Court of India. In this regard, I note that the order of Hon'ble High Court (by which the notices of SEBI were quashed) has been set aside by Hon'ble Supreme Court of India, pursuant to which the investigation into the affairs of the Noticee no. 1 has been conducted by SEBI. In light of the fact that the investigation was not limited to the activities of the Noticee no. 1 after passing of such judgment and also that the judgment of Hon'ble Rajasthan High Court is no longer in force, such arguments of the Noticees do not hold any force.

Issues for Consideration:-

18. After careful consideration of the allegations and the submissions made by the Noticees, I note that following are the issues which have emerged for consideration:

I. **Whether the Noticees have sponsored and/or carried on collective investment schemes in violation of Section 12 (1B) of SEBI Act, 1992?**

II. **Whether the Noticees have violated Regulation 5, 68 and 69 of the CIS Regulations?**

III. **Whether Noticees no. 2 to Noticees no. 10 were responsible for the violations committed by the Noticee no.1?**

IV. **Whether the violations, if any, on the part of the Noticees, attract penalty under Section 15 D of SEBI Act?**

V. **If the answers to the above Issues are in affirmative, then how much should be the quantum of penalty that should be imposed on the Noticees taking into consideration the factors mentioned in Section 15 J of SEBI Act?**

Consideration of Issues:

19. **Issue I: Whether the Noticees have mobilized funds in violation of Section 12 (1B) of SEBI Act, 1992?**

19.1. It is noted that Section 12 (1B) of SEBI Act, 1992 prohibits to sponsor or cause to be sponsor, carry on or caused to be carried on any CIS without obtaining registration from SEBI. Section 11 AA (2) of SEBI Act, 1992 defines the term collective investment scheme.

19.2. The Section 12 (1B) came into force on January 25, 1995. As per the investigation report, the details of the schemes, launched by the Noticee no. 1 are as follows :

S. No.	Name / Plan code	Type	Date of inception	Date of closure
1	Plan Code 1 to 3	Installment Payment Plan	30/05/1996	30/09/2002
2	Plan Code 4 to 9	Cash Down Payment Plan	30/05/1996	30/09/2002
3	Plan Code 10 to 27	Cash Down Payment Plan	30/05/1996	15/12/1997

4	Plan Code 28 to 33	Installment Payment Plan	01/10/2002	-
5	Plan Code 34 to 41	Cash Down Payment Plan	01/10/2002	-
6	Plan Code 42 to 45	Cash Down Payment Plan	01/03/2007	-
7	Plan Code 46 to 49	Cash Down Payment Plan	01/09/2007	-
8	Plan Code 50 to 55	Installment Payment Plan	01/09/2007	-
9	Plan Code 56 to 59	Installment Payment Plan	01/05/2009	-
10	Plan Code 60 to 67	Cash Down Payment Plan	01/05/2009	-

19.3. From the aforesaid, it is amply clear that all the schemes were launched by the Noticee no. 1 at the time when Section 12 (1B) of SEBI Act, 1992 was in force.

19.4. Thus, all the schemes were launched by Noticee no. 1 when Section 12 (1B) was in force. Now the question that arises is whether the schemes of the Noticee no. 1 are in the nature of 'collective investment scheme'. The expression 'collective investment scheme' was there in SEBI Act, 1992 under Section 11 (2) (c) since 1992. Collective investment scheme, in ordinary parlance connotes schemes under which money is collected from the investors from the purpose of investment. The term 'collective investment scheme' first came to be defined in the CIS Regulations and subsequently the SEBI Act also defined the term 'collective investment scheme'. Therefore, it is to be seen whether the schemes of Noticee no. 1 satisfy the ingredients of Section 11AA.

19.4.1. <u>Pooling and utilization of contribution or payments made by the investors for the purpose of scheme [Section 11 AA (2) (i)]</u>

19.4.1.1. The Noticees have contended that there is no pooling and utilization of funds of investors as Noticee no. 1 has huge land bank and the land is clearly identified in the allotment letter. I found the argument to be erroneous due to the following findings:

i. The Noticee no. 1 enters into an agreement with its customers for the purported sale of land, however, Noticee no. 1 is not the absolute owner of 80% of such land. Noticee no. 1 has entered into Memorandum of

Understanding (MoU) with the associate companies for the purchase of land.

ii. As per the Investigation Report, it is a mandatory condition for the customer to get the said plot of land developed by the Noticee no. 1 only. It has also been submitted in the common reply of Noticee no. 1, Noticee no. 4 and Noticee no. 5 that the development and maintenance of the land for tenure of the agreement by the company is an essential and un-severable condition of the agreement.

iii. The customer executes the agreement with the Noticee no. 1 and the allotment letter is issued after 270 days in case the plan opted is CDPP and in case the customer opts an IPP, the allotment letter is issued 270 days after payment of 50% of the consideration value. The exact location of the plot is informed at the time of allotment and the Noticee no. 1 has the right to change the location of the plot thereby allotting plot in another site.

iv. The price of the plot for the same size is uniform across the states irrespective of the location, and development that is already done on the land. Furthermore, the estimated realizable value of the plots is also uniform across the states.

v. As per the agreement, the net proceeds of the project/site shall be distributed/divided among various customers in proportion to the plot held by respective customer in that particular project.

19.4.1.2. As regards the ground taken by Noticee no. 1 that its business is akin to that of a builder of property, I find that the said ground is totally baseless and misconceived. It is so because, in case of a genuine real estate transaction, the 'specific location' of the plot/flat is disclosed upfront to the customer, only pursuant to which further transactions/execution of agreement happens between the customer and the builder. It is also noted from the findings of the IR that the Rule Book of Noticee no. 1 mentions about joint holding of the land, to different investors. The reason attributed for this in the agreement is that the fragmentation of land into smaller size may not be practicable, feasible or permissible under the relevant Revenue laws. I find it difficult to comprehend that why a company with such purported business of real estate will frame schemes with such 'unit size' , fragmentation to which is not practicable or permissible under the relevant Revenue Laws.

19.4.1.3. Moreover, in a simpliciter real estate transaction, the customers take possession of the flat/land. In this present case, company has not been able to prove that the customers have taken possession and using the land. Further, there cannot be a uniform price of plots of land across the nation, irrespective of its location and other quality factors that may contribute in price determination. The Noticee no.1 has also contested that it has huge land holding and in the allotment letter the land is identified, therefore, there is no pooling of funds. I note that such a contention is contrary to records as the Noticee no.1 does not hold land in its name in 80% of the cases. And most importantly, the location of the plot/land at the time of making the payment is not disclosed to the customer and even after issuance of allotment letter, the Noticee no.1 has a right to change the location. The Noticee no.1 has failed to provide the scheme wise details of the money raised by it.

19.4.1.4. Thus, from the above it is clearly established that the Noticee no. 1 pools the money and utilize the same to carry out its schemes. Therefore, the first condition under Section 11 AA (2) is satisfied.

19.4.2. Contributions or payments made to such schemes by the investors with a view to receive profits, income, produce or property, out of the scheme property [Section 11 AA (2) (ii)]

19.4.2.1. As regards the second condition of Section 11 AA (2), the following is observed:

i. The 'estimated realizable value' is disclosed to the investors at the time of the investment. The Plan Codes 28 to 67 mentioned about the estimated realizable value or the projected plot value. The estimated realizable value is the value of the land that the customer is expected to receive at the end of the tenure of the scheme/plan which is projected to be the sale value of the land after the tenure of the agreement, due to the development activities carried out by the Noticee no.1.The ownership of the plot holder is limited only to the scheduled property, the crops, trees etc., to the extent of the estimated realizable value at the end of the term, as per the plan. The residual proceeds would solely belong to the Noticee no.1. It is noticed

from the investigation report that Mr. Gurmeet Singh (Noticee no. 9) has *inter alia* informed: *"We do not buy-back plots from the customer. We provide assistance to our customers to sell their plot. Almost all the customers seek our assistance for sale of their plot. We provide buyers to our customers. In most cases, the tenure of the plan ends at the same time; hence all the customers of that particular plot seek our assistance to sell the land."*

ii. The plot holder cannot sell the plot for more than the value which has been determined by the Noticee no.1.

iii. It is further noted that in some case, the customers are resident of Villages in Rajasthan & Uttar Pradesh, whereas, the land purchased by them is in villages of Tamil Nadu. It seems difficult to assume that the customers would be in a position to control or supervise the property purchased by them.

iv. The customers would be getting the profit or income in form of the estimated realizable value and not the ownership of the plot or crops/trees growing over such plot.

19.4.2.2. In view of the above, I find that the customers made payments to schemes of Noticee no. 1 in order to receive the profit or income from such schemes and not the ownership of the plot. Therefore, the second condition stipulated under Section 11 AA (2) is also satisfied.

19.4.3. Management of contribution and properties on behalf of the customers [Section 11 AA (2) (iii)]:

19.4.3.1. In so far as the third condition of Section 11 AA (2) is concerned, the common reply of Noticee no. 1, Noticee no. 4 and Noticee no. 5 states that the company is not managing the land and is merely developing the same. The reply further states that due to the option provided by the customer for self-development of land (started to have been given from the year 2011), third condition of Section 11 AA (2) is not satisfied. In this regard, I found contradictions in the same reply. In total contradiction to the aforesaid stand of option of self-development, the reply at one place mentions that the customers are informed that

the development and maintenance of the land for the tenure of the agreement is an integral part of the services offered by the company. It has been further mentioned that the company prefers to do the development of land without undue interference from the customers and such customers have right to tender suggestions in regard to development and maintenance of the land. I find that it is beyond imagination for a person living in rural part of Rajasthan to 'tender' suggestion for development of 'unidentified portion of land' that is hundreds of miles away from him. The ground that the company is not managing the property on behalf of the customers is fortified by the following:

i. The Noticee no. 1 is not the absolute owner of the land that is being sold to its customers. In most of the cases, the land is in the names of its associate companies through General Power of Attorney /Agreement to Sale/ Memorandum of Understanding.

ii. The location of the plot is not disclosed at the time of making the payment and even after issuance of allotment letter, the Noticee no.1 has a right to change the location. The option to choose the state has been provided only since last 2-3 years. Earlier, the customers were not even given the option to choose the state in which the land would be allotted.

iii. It has been confirmed by Mr. Sukhdev Singh (Noticee no. 5) during the investigation that there is no scope for the customer to opt for the self-development of plot in the existing plans.

iv. As per the agreement, the Noticee no. 1 is under an obligation to provide services, such as, irrigation/drainage system etc. The customer, though projected to be the absolute owner, and in exclusive possession of the agricultural land, has no exclusive ownership rights over the aforesaid facilities. It is further noted that the customer does not have a right to interfere in the aforesaid facilities.

v. The company provides for execution of Special Power of Attorney by the customer in its favour *inter alia* authorizing the company to register the sale deed in favour of the customer and also to take possession of the land.

vi. It has been admitted, during investigation, by the Managing Director of the company, Shri Sukhdev Singh (Noticee no. 5) that in most of the cases the SPoA is given to the company.

vii. The Noticee no. 1 pays land tax etc., payable in respect of the plot to the appropriate authorities for and on behalf of the customer and the company is entitled to get the same reimbursed from the customer.

viii. As per the conditions of the agreement, the customer will have requisite shares along with other allottees, as fragmentation into smaller size of plots may not be practicable, feasible or permissible under the relevant Revenue laws. Accordingly, symbolic possession of the plots shall be handed over to the customer immediately after Registration of the relevant sale deed so as to enable the company to implement the agreement during the relevant period.

ix. Even after making the payment to the Noticee no. 1, the sale deed is not given to the customer.

19.4.3.2. From the above, it is noted that the Noticee no.1 manages the contribution in terms of the consideration made against the purported sale and development of plot and also manages unequivocally the land on behalf of the customers in the name of the purported developments of such land. Even at the time of registration of sale deeds in the favour of the customers, the customers are represented by the employee of the Noticee no. 1, by virtue of the Special Power of Attorney. Even after registration of sale deed, only the symbolic possession of the plot is handed over to the customer. Thus, the third condition of Section 11 AA (2) is also satisfied.

19.4.4. **No day to day control of the investors over the management and operation of the scheme[Section 11AA (2) (iv)] :**

19.4.4.1. In so far as the 4th condition under Section 11 AA (2) is concerned, I note the following:

i. The Noticee no.1 pays the consideration to buy the land, however, the land is held in the name of its associate companies. Such associate companies are paid holding charges and the associate company will only be custodian of the land purchased on behalf of the Noticee no. 1.

ii. The Noticee no. 1 has the exclusive right to develop the property and customer does not have any role to play in the day to day affairs of the company with regard to development of the land. Further, the customer is under an obligation to handover the plot for development, cultivation,

plantation etc. Merely symbolic possession of the plot is given to the customer.

iii. The Noticee no. 1 decides the estimated realizable value of the plots.

iv. The Noticee no. 1 keeps accounts with reference to the income and expenditure incurred or to be incurred, related to the maintenance of the projects.

v. The customer is not given the exclusive ownership rights over the facilities like irrigation/drainage system etc. In fact, the customer is barred from interfering with such services/facilities in any manner.

vi. The Noticee no. 1 has the first charge on the land and its produce for the outstanding dues.

vii. The location of the land is not disclosed at the time of making payment and the same is subject to change as per the discretion of the Noticee no. 1.

19.4.4.2. In view of the above, it is clear that the investors does not have any day to day control over the schemes of Noticee no. 1. Therefore, the fourth condition of Section 11 AA (2) is also satisfied.

20. In view of the foregoing discussion, I find that the schemes of Noticee no. 1 satisfy all the conditions for 'collective investment schemes', as envisaged under Section 11 AA (2) of SEBI Act, 1992 and nothing on record shows that the schemes of the Noticee no. 1 are falling under any of the exemptions enlisted under Section 11 AA (3) of SEBI Act. Thus, the Noticee no. 1 was running collective investment schemes, but without a registration as mandated under Section 12 (1B) of SEBI Act, 1992.

21. It is also observed in the order dated August 22, 2014 of SEBI, that the schemes/plans of the Noticee no. 1 satisfy all the ingredients of Section 11 AA of SEBI Act, 1992. The said order has also been upheld by Hon'ble Securities Appellate Tribunal vide its order dated August 12, 2015.

22. Thus, the answer to Issue no. 1 is in affirmative as the schemes of the Noticee no. 1 are in the nature of collective investment scheme, and such schemes were sponsored and carried on without obtaining the requisite registration from SEBI, as required under Section 12 (1B) of the SEBI Act, 1992.

23. **Issue II: Whether the Noticee no. 1 has violated Regulation 5, 68 and 69 of the CIS Regulations?**

23.1. I note that the Noticee no. 1 had not made any application for grant of certificate of registration or certificate of provisional registration, as it was required under law to make in terms of Regulation 5 and Regulation 68 of the CIS Regulations.

23.2. I further note that the Noticee no. 1 launched its Plan Code 28-67 after notification of the CIS Regulations and collected monies under such schemes. Moreover, even in the previously launched schemes, monies were continued to be raised by, after the notification of the CIS Regulations.

23.3. Therefore, the violations of the Regulation 5, 68 and 69 by Noticee no. 1 is established. Thus, the answer to the Issue II is also in affirmative.

24. **Issue III: Whether Noticees no. 2 to Noticee no. 10 were responsible for the violations committed by the Noticee no.1?**

24.1. Noticee no. 1 is a company and being a juristic entity and thus will act and has ever acted through its Directors. As such, the individuals who acted as Directors and were incharge and responsible for the affairs of Noticee no. 1 at the relevant time of commission of the violations must be held responsible for such violations.

24.2. The roles of each of the Noticee no. 2 to Noticee no. 10 is being examined hereunder, based on the replies filed and submissions made in the proceedings:

24.3. Noticee no. 2

24.3.1. I note that the Noticee no. 2, despite service of SCN and hearing notices has failed to file the reply or attend the hearing. Thus, principles of natural justice have been complied with, as sufficient opportunities to file reply and appear in the proceedings were granted to the Noticee no. 2. However, the Noticee no. 2 has chosen to abstain from participating in the proceedings. Therefore, it can be safely presumed that the Noticee no. 2 do not have anything to submit in his defense.

24.3.2. I note that the Noticee no. 2 was the Director of Noticee no.1 from the period of February 13, 1996 to September 16, 1996. Noticee no. 2 is also one of the promoters of Noticee no. 1. I further note that the Noticee no. 1 had launched its various Schemes, viz., Plan Codes 1 to 27 on May 30, 1996, and all such schemes remained in force during the tenure of the Noticee no. 2 as a Director of Noticee no. 1. It is also noted that even after resignation of Noticee no. 2, such schemes continued, which otherwise should not have been launched, if launched should not have been continued and ought to have been dissolved, which was obligatory on the part of Noticee no. 2. The Noticee no. 1, has mobilized huge funds in its various schemes.

24.3.3. In view of the above, I found that the Noticee no. 2 directly/indirectly involved and instrumental in sponsoring and carrying on CIS and thereby illegally mobilizing money under such schemes. However, it is noted that during the tenure of Noticee no. 2 as a Director of Noticee no. 1, the CIS regulations were not notified. Therefore, I hold Noticee no. 2 guilty of violating Section 12 (1B) of SEBI Act, 1992.

24.4. Noticee no. 3

24.4.1. The Noticee no. 3 has contended that his signatures were taken on blank page and he was subsequently appointed as Director on the Board of Noticee no. 1. The Noticee no. 3 has also filed statements of certain loan taken by him. In so far as the loan details submitted by the Noticee no. 3 are concerned, I note that the details of such loans taken by the Noticee no. 3 are wholly irrelevant in the present proceedings and thus the same are not being examined in detail.

24.4.2. The submission of the Noticee no. 3 that his signatures were taken on blank papers and he has never attended the meeting of the Board of Directors of Noticee no. 1 nor received any remuneration appears to be the after thought of the Noticee no. 3, to escape liability. It is difficult to accept the submission of the Noticee no. 3 as no ordinary prudent man will sign on the blank papers, as the same could be misused against such person. I also note that the Noticee no. 3 has not submitted details of any action taken against Noticee no. 1 or against the person who had taken his signature on blank papers. Therefore, the submissions of the Noticee no. 1 are rejected.

24.4.3. I note that the Noticee no. 3 was appointed as a Director of the Noticee no. 1 during the period of January 10, 1998 to February 05, 2009. During this period, the schemes of Noticee no. 1, viz., Plan Code 1 to 9 were in force and Plan Code 28 to 55 were launched. The schemes under Plan Code 28 to 55 operated even after resignation of the Noticee from the Board of Noticee no. 1. I also note that huge amount of money in such schemes have been mobilized by the Noticee no. 1 during such period. Thus, the Noticee no. 3 was directly/indirectly involved and instrumental in sponsoring and carrying on CIS and thereby illegally mobilizing money under such schemes.

24.4.4. As noted above, the Noticee no. 1 failed to comply with the Regulation 5, 68 and 69 of the CIS Regulation and during relevant time when the Noticee no. 1 was under an obligation to comply with the aforesaid regulations, the Noticee no. 3 was one of the Director and person incharge of the Noticee no. 1.

24.4.5. In view of the above, I found that the Noticee no. 3 is guilty of violating Section 12 (1B) of SEBI Act, 1992 and Regulations 5, 68 and 69 of the CIS Regulations.

24.5. Noticee no. 4 , Noticee no. 5, Noticee no. 9 and Noticee no. 10

24.5.1. The Noticee no. 9 and Noticee no. 10 have *inter alia* submitted that they are only salaried directors and solely on this ground, they cannot be held liable for the acts of the company.

24.5.2. I further note that the Noticee no. 4 and Noticee no. 5 were appointed as Directors of Noticee no. 1 in the year 1996 and they were also the promoters of the Noticee no. 1. The Noticee no. 9 and Noticee no. 10 were appointed as Directors in the year 2009. All these four noticees still continue to be the Directors of Noticee no. 1. I also note that there is no dispute as regards the period of directorship of these four noticees. These four noticees, viz., Noticee no. 4, Noticee no. 5, Noticee no. 9 and Noticee no. 10 being the directors of the Noticee no. 1 were at the helm of its affairs and incharge of activities of Noticee no. 1 and were thus directly/indirectly involved and instrumental in sponsoring and carrying on CIS and thereby illegally mobilizing money under such schemes. Moreover, the statements made by the Noticee no. 5 and Noticee no. 9, during the investigation regarding the business operations of the company demonstrates that these persons were in effect controlling and

running the activities of the company. Further, the defense taken by Noticee no. 9 and Noticee no. 10 that they were paid salaries for controlling and running the business of a company is of no help to these noticees to absolve them of their liability.

24.5.3. All the schemes of the Noticee no. 1 haven been launched when the Noticee no. 4 and Noticee no. 5 were acting as Directors of the Noticee no. 1.

24.5.4. The schemes with Plan Codes 28-55 were continuing when Noticee no. 9 and Noticee no. 10 joined the Board of Noticee no. 1 as Director and schemes with Plan Codes 56-67 were launched by Noticee no. 1 when the Noticee no. 9 and Noticee no. 10 were acting as the Director of the Noticee no.1

24.5.5. It is also noted that Noticee no. 4 and Noticee no. 5 are also the promoters of the Noticee no. 1.

24.5.6. As noted above, the Noticee no. 1 failed to comply with the Regulation 5, 68 and 69 of the CIS Regulation and during such time when the Noticee no. 1 was under an obligation to comply with the aforesaid regulations, the Noticee no. 4, Noticee no. 5, Noticee no. 9 and Noticee no. 10 were Directors and persons incharge of the Noticee no. 1.

24.5.7. Thus, the. Noticee no. 4, Noticee no. 5, Noticee no. 9 and Noticee no. 10 are guilty of violating Section 12 (1B) of SEBI Act, 1992 read with Regulations 5, 68 and 69 of the CIS Regulations.

24.6. Noticee no. 6

24.6.1. The contentions of the Noticee no. 6 revolve majorly around the fact that the CIS Regulations were notified in the year 1999 and he had resigned from the Board of Noticee no. 1 prior to that. The counsel for the Noticee no. 6 also conducted cross examination of the IA, and it has been submitted that cross examination was an eye wash. In this connection, I note that the counsel for the Noticee no. 6 could not contradict the fact that the Noticee no. 6 was a Director of the Noticee no. 1. Infact, by its own admission, the Noticee no. 6 has acted as Director of Noticee no. 1.

24.6.2. At this stage, I rely upon the judgment of the Hon'ble High Court of Allahabad (D.B.) in case titled as "Paramount Bio Tech Industries Limited V/s Union of India, 2003 Law Suit (All) 1206 , wherein it has been held in Para 66 *"It is true that there were no Regulations upto 1999 and, hence, certificate could not be granted under Section 12(1B). However, the proviso to section 12 (1B) permitted only those persons who were carrying on business of collective Investment Scheme prior to the 1995 Amendment (which came into force w.e.f. 25.1.1995) to continue to operate till regulations were framed. The petitioner No. 1 was incorporated in 1996 (vide para 7 to the writ petition) and hence it was obviously not carrying on the said business before 25.1.1995. Hence it could not get the benefit of the proviso to section 12(1B). It follows that the business of collective investment scheme which it was doing was wholly illegal. The letter of SEBI to the Petitioner dated 27.2.1998 (vide Annexure 4 of the writ Petition) was therefore unexpected. In fact by that letter SEBI took a lenient view by permitting the Petitioner to operate after getting rating from a credit agency. In fact even this concession could not have been granted by SEBI, as the proviso to section 12 (1B) does not apply to the Petitioner, for the reason given above. SEBI should in fact have totally prohibited the Petitioner from doing business of Collective Investment Schemes, and should have directed prosecution of the Petitioner and its officials under section 24 read with section 27 of the SEBI Act."*It has been further held that :*"It may be mentioned that section 12 of the SEBI Act was amended in 1995 and section 12 (1B) was incorporated which specifically state that no person can sponsor or caused to be sponsored or carry on any venture capital funds or collective investment schemes unless he obtained a certificate of registration from the Board in accordance with the Regulations. Thus after 1995, nobody could have carried on a collective investment scheme unless he obtains a certificate of registration from the Board."*

24.6.3. I further refer to the judgment of Hon'ble Delhi High Court in case titled as Shailender Kaushik and Ors. Vs. SEBI [Crl. Appeal no. 329/2010]. In which it is held inter *alia* as. *"Admittedly, the Company came to be incorporated on 21.9.1995, which was much after sub-section (1B) of Section 12 of the Act came to be notified. In view of the absolute bar contained in the aforesaid subsection, the Company could not have come out with any scheme, without obtaining a certificate of registration from SEBI, in accordance with its Regulations on the subject. Admittedly, no such registration was even applied for by the Company before it came out with its scheme. As far as the proviso is concerned, it is evident from its bare perusal that it applies to only those schemes which were already in operation on 25.1.1995 when Security Laws (Amendment) Act, 1995, came into force. Though really not necessary, a reference in this regard may be made to a judgement of the Allahabad High Court in Paramount Biotech Industries Limited v. Union of India 2003 LawSuit (All.) 1206 where noticing*

that petitioner No. 1 was incorporated in 1996, and, therefore, was not carrying on business on 25.1.1995, it was held that the proviso to sub-section (1B) of Section 12 of the Act was not applicable to it and was not entitled to the benefit of the said proviso. Therefore, by coming out with its CIS, the Company contravened the provisions of Section 12(1B) of the Act which is punishable under Section 24 of the Act." This judgment was challenged before Hon'ble Supreme Court and the same was dismissed.

24.6.4. I note that the Noticee no. 6 acted as Director of Noticee no. 1 from June 03, 1996 to February 03, 1998. I further note that during such period, the schemes of Noticee no. 1 under Plan Codes 1 to Plan Code 27 were running which continued even after Noticee no. 6 resigned and huge amount of money has been mobilized by Noticee no. 1 in such schemes.

24.6.5. The plea of Noticee no. 6 that he has resigned before the notification of the CIS Regulations and thus not liable for any penalty is not acceptable since the schemes of Noticee no. 1 were launched after Section 12 (1B) came into force and these schemes continued subsequent to his resignation. Noticee no. 6 was under an obligation to ensure that schemes without requisite registration are not launched, and if launched, he should have ensured that such schemes are closed and investors are refunded.

24.6.6. Therefore, I have only one conclusion, that the Noticee no. 6, while on the Board of the Noticee no. 1, due to his capacity as a Director was directly/indirectly involved and instrumental in sponsoring and carrying on CIS and thereby illegally mobilizing money under such schemes. However, as the CIS Regulations were not notified till the time the Noticee no. 6 was acting as a Director of Noticee no. 1, for the reasons stated above, I hold that he has violated Section 12 (1B) of the SEBI Act, 1992.

24.6.7. **Noticee no. 7**

24.6.8. I note that the Noticee no. 7 has contended that he was never appointed as a Director on the Board of Noticee no. 1 and had only given certain technical lectures. The Noticee no. 7, in his reply has submitted that a preliminary search on the website of Ministry of Finance, conducted by him, reveals that he was never appointed as Director of Noticee no. 1. The Noticee no. 7 further

contended that the first Form 32 intimating any change in the Directorship on the Board of Noticee no. 1 has been filed in the year 2001.

24.6.9. I have carefully considered the submissions of the Noticee no. 7 and I observe that the Noticee no. 1 was incorporated in the year 1996. Therefore, the first Form 32, with regard to the Directorship of the company, could not have been filed in the year 2001. The arguments of the Noticee no. 7, are thus rejected being totally misconceived and devoid of merit.

24.6.10. Furthermore, I do not have any reason to disbelieve the contents of the Investigation Report, which reflects that the Noticee no. 7 was a Director on the Board of the Noticee no. 1 for the period of August 10, 1998 to September 29, 1998. During such period, schemes of Noticee no. 1 under Plan Code no. 1 to 9 were in force and which continued even after the resignation of Noticee no. 7 and huge amount of money has been mobilized under such schemes.

24.6.11. Therefore, the inevitable conclusion of the aforesaid discussion is that the Noticee no. 7, while on the Board of the Noticee no. 7, by virtue of his capacity as a Director due to his capacity as a Director was directly/indirectly involved and instrumental in sponsoring and carrying on CIS and thereby illegally mobilizing money under such schemes. Therefore, I hold that he has violated Section 12 (1B) of the SEBI Act, 1992.

24.7. Noticee no. 8

24.7.1. I note that the Noticee no. 8, despite service of SCN and hearing notices has failed to file the reply or attend the hearing. Thus, principles of natural justice have been complied with as sufficient opportunities to file reply and appear in the proceedings were granted to the Noticee no. 8. However, the Noticee no. 8 has chosen to abstain from participating in the proceedings. Therefore, it can be safely presumed that the Noticee no. 8 do not have anything to submit.

24.7.2. I note that the Noticee no. 8 was the Director of Noticee no.1 from the period of September 5, 2005 to December 31, 2008. I further note that the schemes under Plan Codes 28-41 were in force and Noticee no. 1 had launched its various Schemes, viz., Plan Codes 42 to 55, and all such schemes remained in force during the tenure of the Noticee no. 8 as a Director of Noticee no. 1 and

even continued thereafter. The Noticee no.1 has mobilized huge amount in such schemes during such period.

24.7.3. In view of the above, I found that the Noticee no. 8 is directly/indirectly involved and instrumental in sponsoring and carrying on CIS and thereby illegally mobilizing money under such schemes.

24.7.4. As noted above, the Noticee no. 1 failed to comply with the Regulation 5, 68 and 69 of the CIS Regulation and during such time when the Noticee no. 1 was under an obligation to comply with the aforesaid regulations, the Noticee no. 8 was one of the Directors and person incharge of the Noticee no. 1.

24.7.5. Therefore, I hold Noticee no. 8 guilty of violating Section 12 (1B) of SEBI Act, 1992 and Regulations 5, 68 and 69 of the CIS Regulations.

25. **Issue IV: Whether the violations, if any, on the part of the noticees, attract penalty under Section 15 D of SEBI Act?**

a) From the examination of the material on record including the replies filed by the Noticees and the submissions made by them, it has been sufficiently proved that the Noticees have illegally mobilized funds by sponsoring/causing to be sponsored collective investment schemes without obtaining registration under the SEBI Act, 1992 and the CIS Regulations.

b) The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*.

c) In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15 D of the SEBI Act which reads as follows:

15D. 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;
(b) ...".

d) I note that Section 15 D was amended w.e.f October 29, 2002 and before such amendment was brought in force, the Section 15 D read as under :

15D. 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 not exceeding ten thousand rupees for each day during which he carries on any such collective investment scheme including mutual funds, or ten lakh rupees whichever is higher;
(b) ...".

Thus, the answer to the Issue IV is that the violations committed by the Noticees attract penalty under Section 15 D of SEBI Act, 1992.

26. **Issue V : If the answer to the Issue IV is in affirmative, then how much should be the quantum of penalty that should be imposed on the Noticees taking into consideration the factors mentioned in Section 15 J of SEBI Act?**

a) In order the decide the quantum of penalty, I note that I have to satisfy the ingredients of Section 15 J of SEBI Act, 1992 which enlist certain factors that need to be taken into consideration by adjudicating officer while adjudging the quantum of penalty. The said section reads as:

"Factors to be taken into account by the adjudicating officer.

15J. While adjudging quantum of penalty under section 15-I, 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."

b) I note that as per the records available, the Noticees have mobilized a huge amount of Rs 49,101,00,01,22,824/- (Rs Forty Nine Thousand One Hundred and One Crore One Lakh Twenty Two Thousand Eight Hundred and Twenty Four only) during the period of 1996 to 2014 (excluding certain period).

c) There are 10 noticees in this proceedings: one company and nine Directors. Amongst the Directors, there are persons who were Director prior to October 29, 2002, i.e. the date of amendment of Section 15 D. There are persons who acted as Director prior to the aforesaid amendment in Section 15D and continued even after the said amendment was brought in force. There is another class of Directors who joined and resigned after amendment of Section 15 D of the SEBI Act, 1992.

d) I note that huge amount to the tune of Rs 49, 100 crore has been mobilized under the collective investment schemes of Noticee no. 1 from large number of investors and the schemes continued for long period. Therefore, this act of Noticees call for imposition of maximum penalty, i.e., Rs 10,000 per day till October 28, 2002 and 1 lakh per day (subject to the maximum of Rs 1 crore) for the subsequent period. I also observe that if the scheme is launched or continued even after resignation as Director by any of the Noticee, such Noticee shall be liable for such a scheme till the scheme is closed or dissolved/wound up. This finding is for the purpose of calculation of the monetary penalty on the Noticees.

e) Accordingly, the amount of penalty for each of the Noticees is calculated hereunder:

ORDER:

27. In order to impose monetary penalty after considering the fact that the violations have been committed by the Noticees in both the period of pre-amendment and post-amendment of the Section 15D, the time duration is divided in two periods : (i) May 30, 1996 to October 28, 2002 and (ii) October 29, 2002 till June 15, 2014.

28. In view of the findings and justification recorded above, I in exercise of the powers conferred upon me under Section 15-I (2) of the SEBI Act read with Rule 5 of the Rules, hereby impose following monetary penalty on the Noticees:

a. Noticee no. 1

i. Noticee no. 1 has sponsored and carried on various collective investment schemes without obtaining registration and mobilized huge amount in such schemes which continued for a long period of time. The schemes of the Noticee no. 1 continued from the period of May 30, 1996 till June 15, 2014.

ii. It is noted that huge amount has been mobilized under aforesaid schemes of the Noticee no. 1 warranting maximum penalty of Rs 10,000 per day for the first block and 1 lakh per day (subject to a maximum of Rs 1 crore) for the second block. I note that for the first block of the period, the Noticee no. 1 is liable for penalty of Rs 2,34,30,000/- as the Noticee no. 1 sponsored and carried on its collective investment schemes for a total number of 2343 days.

iii. For the second block, the maximum penalty that can be levied is Rs 1 crore.

iv. I, therefore, impose a penalty of Rs 3,34,30,000/- (Rs Three Crore Thirty Four Lakh and Thirty Thousand only) on Noticee no. 1.

b. Noticee no. 2

Noticee no. 2 has acted as Director of Noticee no. 1 for a period of more than 7 months. During such period, the schemes under Plan Codes 1 to 27 were launched and schemes under Plan Codes 1 to 9 continued till September 30, 2002. I note that the Noticee no. 2 had not taken any steps to comply with the law during the time he acted as a Director of Noticee no. 1. Any step towards compliance of the extant law would have resulted into closure of all schemes of Noticee no. 1, which continued till September 30, 2002, i.e,. for a period of 2315 days. The Noticee no. 2 had sponsored and carried on collective

investment schemes for 2315 days and is thus liable for penalty upto Rs 10, 000/- per day or Rs 10 lakhs, whichever is higher. As huge amount has been mobilized in such schemes, I deem it fit to impose maximum penalty on Noticee no. 2. I, therefore, impose a penalty of Rs 2,31,50,000/- (Rs Two Crore Thirty One Lakh Fifty Thousand only) on Noticee no. 2.

c. Noticee no. 3

i. Noticee no. 3 has acted as Director of Noticee no. 1 for a period of more than 11 years. During his tenure as a Director, schemes of Noticee no. 1, viz., Plan Code 1 to 9 were in force and Plan Code 28 to 55 were launched. In order to impose penalty after considering the fact that the violations have been committed by the Noticee no 3 in both the period of pre-amendment and post-amendment of the Section 15D, the time duration is divided in two periods : May 30, 1996 to October 28, 2002 and October 29, 2002 till June 15, 2014.

ii. It is noted that huge amount has been mobilized under aforesaid schemes of the Noticee no. 1.

iii. I note that the Noticee no. 3 had not taken any steps to comply with the law during the time he acted as a Director of Noticee no. 1. Any step towards compliance of the extant law would have resulted into closure of all schemes of Noticee no. 1, which continued till September 30, 2002. Further, new schemes under Plan code 28 to 55 were launched when the Noticee no. 3 was acting as a Director of Noticee no. 1.

iv. Therefore, the act/omission of Noticee no. 3 warrants maximum penalty of Rs 10,000 per day. I note that for the first block of the period, the Noticee no. 3 is liable for penalty of Rs 2,34,30,000/- as the Noticee no. 1 sponsored and carried on its collective investment schemes for a total number of 2343 days.

v. For the second block, the maximum penalty that can be levied is Rs 1 crore.

vi. I, therefore, impose a penalty of Rs 3,34,30,000/- (Rs Three Crore Thirty Four Lakh and Thirty Thousand only) on Noticee no. 3.

d. Noticee no. 4 and Noticee no. 5

i. Noticee no. 4, Noticee no. 5 have acted as Directors of Noticee no. 1 from its incorporation till the time of conclusion of investigation. All

the schemes have been launched by Noticee no. 1 when the Noticee no. 4 and Noticee no. 5 were Directors of Noticee no. 1.

ii. In order to impose penalty after considering the fact that the violations have been committed by the Noticee no 4 and Noticee no.5 in both the period of pre-amendment and post-amendment of the Section 15D, the time duration is divided in two periods : May 30, 1996 to October 28, 2002 and October 29, 2002 till June 15, 2014.

iii. It is noted that huge amount has been mobilized under aforesaid schemes of the Noticee no. 1.

iv. I note that the Noticee no. 4 and Noticee no. 5 had not taken any steps to comply with the law during the time they acted as a Director of Noticee no. 1. Any step towards compliance of the extant law would have resulted into closure of all schemes of Noticee no. 1, which continued till September 30, 2002. Further, new schemes under Plan code 28 to 67 were launched when the Noticee no. 4 and Noticee no. 5 were acting as a Director of Noticee no. 1.

v. Therefore, the act of Noticee no. 4 and Noticee no. 5 warrants maximum penalty of Rs 10,000 per day. I note that for the first block of the period, the Noticee no. 4 and Noticee no. 5 are liable for penalty of Rs 2,34,30,000/- each as the Noticee no. 1 sponsored and carried on its collective investment schemes for a total number of 2343 days.

vi. For the second block, the maximum penalty that can be levied is Rs 1 crore.

vii. I, therefore, impose a penalty of Rs 3,34,30,000/- (Rs Three Crore Thirty Four Lakh and Thirty Thousand only) each on Noticee no. 4 and Noticee no. 5.

e. Noticee no. 6

Noticee no. 6 has acted as Director of Noticee no. 1 for a period of around 1 year and 8 months. During such period, the schemes under Plan Codes 1 to 27 were continuing and out of which schemes under Plan Codes 1 to 9 continued till September 30, 2002. I note that the Noticee no. 6 had not taken any steps to comply with the law during the time he acted as a Director of Noticee no. 1. Any step towards compliance of the extant law would have resulted into closure of all schemes of Noticee no. 1, which continued till September 30, 2002. The Noticee no. 6 had sponsored and carried on collective investment schemes for 2315 days and is thus liable for penalty

upto Rs 10, 000/- per day or Rs 10 lakhs, whichever is higher. As huge amount has been mobilized in such schemes, I deem it fit to impose maximum penalty on Noticee no. 6. I, therefore, impose a penalty of Rs 2,31,50,000/- (Rs Two Crore Thirty One Lakh Fifty Thousand only) on Noticee no. 6.

f. Noticee no. 7

Noticee no. 7 has acted as Director of Noticee no. 1 for a period of around 50 days. During such period, the schemes under Plan Codes 1 to 27 were continuing and out of which schemes under Plan Codes 1 to 9 continued till September 30, 2002. I note that the Noticee no. 7 had not taken any steps to comply with the law during the time he acted as a Director of Noticee no. 1. Any step towards compliance of the extant law would have resulted into closure of all schemes of Noticee no. 1, which continued till September 30, 2002. The Noticee no. 7 had sponsored and carried on collective investment schemes for 2315 days and is thus liable for penalty upto Rs 10, 000/- per day or Rs 10 lakhs, whichever is higher. As huge amount has been mobilized in such schemes, I deem it fit to impose maximum penalty on Noticee no. 7. I, therefore, impose a penalty of Rs 2,31,50,000/- (Rs Two Crore Thirty One Lakh Fifty Thousand only) on Noticee no. 7.

g. Noticee no. 8

Noticee no. 8 has acted as Director of Noticee no. 1 for a period of more than 3 years. During such period, schemes of Noticee no. 1 under Plan Code no. 28 to 41 were in force and schemes under Plan Codes 42 to 55 were launched. I note that the Noticee no. 8 had not taken any steps to comply with the law during the time he acted as a Director of Noticee no. 1. Any step towards compliance of the extant law would have resulted into closure of all schemes of Noticee no. 1 and would also have stopped further launching of scheme by Noticee no. 1 without obtaining registration. Therefore, I impose a penalty of Rs 1 crore (Rs One Crore) on Noticee no. 8.

h. Noticee no. 9 and Noticee no. 10

Noticee no. 9 and Noticee no. 10 have acted as Director of Noticee no. 1 for around 6 years. During such time, schemes under Plan Code 28 to 55 were in force and schemes under Plan Codes 56 to 67 were launched. I note that the Noticee no. 9 and Noticee no. 10 had not taken any steps to comply with the

law during the time they acted as Directors of Noticee no. 1. Any step towards compliance of the extant law would have resulted into closure of all schemes of Noticee no. 1 and would also have stopped further launching of scheme by Noticee no. 1 without obtaining registration. Therefore, I impose a penalty of Rs 1 crore (Rs One Crore) each on Noticee no. 9 and Noticee no. 10.

For the sake of clarity, I now sum up my findings on the quantum of penalty:

Sr. No.	Noticee	Provisions Violated	Period of violation and number of Days	Amount of penalty for 1st block (i.e. prior to 29/10/2002) (A)	Amount of penalty for 2nd block 9 (i.e. 29/10/2002 onwards) (B)	Total Amount (A+B)
1.	Noticee no. 1	Section 12 (1B) of SEBI Act and Regulation 5, 68, 69 of CIS Regulations	May 30, 1996 till June 15, 2014 (2343 days)	Rs 2,34,30,000 (Rs 10,000 for each day for a total of 2343 days)	Rs 1,00,00,000	Rs 3,34,30,000/- (Rs Three Crore Thirty Four Lakh and Thirty Thousand only)
2.	Noticee no. 2	Section 12 (1B) of SEBI Act	May 30, 1996 till September 30, 2002 (2315 days)	Rs 2,31,50,000 (Rs 10,000 for each day for a total of 2315 days)	Nil (Not applicable)	Rs 2,31,50,000/- (Rs Two Crore Thirty One Lakh Fifty Thousand only)
3.	Noticee no. 3	Section 12 (1B) of SEBI Act and Regulation 5, 68, 69 of CIS Regulations	May 30, 1996 till June 15, 2014 (2343 days)	Rs2,343,00,00 (Rs 10,000 for each day for a total of 2343 days)	Rs1,00,00,000	Rs 3,34,30,000/- (Rs Three Crore Thirty Four Lakh and Thirty Thousand only)
4.	Noticee no. 4	Section 12 (1B) of SEBI Act and Regulation 5, 68, 69 of CIS Regulations	May 30, 1996 till June 15, 2014 (2343 days)	Rs2,34,30,000 (Rs 10,000 for each day for a total of 2343 days)	Rs1,00,00,000	Rs3,34,30,000/- (Rs Three Crore Thirty Four Lakh and Thirty Thousand only)
5.	Noticee no. 5	Section 12 (1B) of SEBI Act and Regulation 5, 68, 69 of CIS Regulations	May 30, 1996 till June 15, 2014 (2343 days)	Rs2,34,30,000 (Rs 10,000 for each day for a total of 2343 days)	Rs 1,00,00,000	Rs 3,34,30,000/- (Rs Three Crore Thirty Four Lakh and Thirty Thousand only)
6.	Noticee no. 6	Section 12 (1B) of SEBI Act	May 30, 1996 till September 30, 2002	Rs 2,31,50,000 (Rs 10,000 for each day for a total of 2315 days)	Nil (Not applicable)	Rs 2,31,50,000/- (Rs Two Crore Thirty One Lakh Fifty Thousand only)

			(2315 days)			
7.	Noticee no. 7	Section 12 (1B) of SEBI Act	May 30, 1996 till September 30, 2002 (2315 days)	Rs 2,31,50,000 (Rs 10,000 for each day for a total of 2315 days)	Nil (Not applicable)	Rs 2,31,50,000/- (Rs Two Crore Thirty One Lakh Fifty Thousand only)
8.	Noticee no. 8	Section 12 (1B) of SEBI Act and Regulation 5, 68, 69 of CIS Regulations	October 01, 2002 till June 15, 2014 (4276 days)	Nil (Not Applicable)	Rs1,00,00,000	Rs 1,00,00,000/- (Rs One Crore only)
9.	Noticee no. 9	Section 12 (1B) of SEBI Act and Regulation 5, 68, 69 of CIS Regulations	October 01, 2002 till June 15, 2014 (4276 days)	Nil (Not Applicable)	Rs1,00,00,000	Rs 1,00,00,000/- (Rs One Crore only)
10.	Noticee no. 10	Section 12 (1B) of SEBI Act and Regulation 5, 68, 69 of CIS Regulations	October 01, 2002 till June 15, 2014 (4276 days)	Nil (Not Applicable)	Rs1,00,00,000	Rs (1,00,00,000/- Rs One Crore only)

29. The amount of penalty is commensurate with the defaults committed by the Noticees.
30. The Noticees shall pay the aforesaid monetary penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Deputy General Manager, Investment Management Department, Securities and Exchange Board of India, Northern Regional Office, 5th Floor, Bank of Baroda Building, 16, Sansad Marg, New Delhi- 110001.
31. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.
32. This order of adjudication is made and passed on 2nd day of February 2016 at New Delhi.

Amit Pradhan
Adjudicating Officer