

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

ORDER

Under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999

IN THE MATTER OF PACL LIMITED

In respect of PACL Limited and its Directors, viz., Mr. Anand Gurwant Singh, Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Nirmal Singh Bhangoo, Mr. Gurnam Singh (R/o P.O. Wazidpur), Mr. Uppal Devinder Kumar, Mr. Tyger Joginder, Mr. Gurmeet Singh and Mr. Subrata Bhattacharya

Date of Hearings: November 6, 2013, February 04, 2014, February 05, 2014, May 15, 2014, June 23, 2014, July 12, 2014

Appearances:

For PACL Limited, Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh, Mr. Subrata Bhattacharya : Dr. Abhishek Manu Singhvi, Senior Advocate
Mr. Pradeep Sancheti, Senior Advocate
Mr. Amrendra Saran, Senior Advocate
Mr. U.U. Lalit, Senior Advocate
Mr. Rajiv Nayar, Senior Advocate
Mr. Sandeep Parekh, Advocate
Mr. D.P. Mohanty, Advocate
Ms. Pallavi Sharma, Advocate
Mr. Ankit Thakur, Advocate
Mr. Amit Bhandari, Advocate
Ms. Nandita Bajpai, Advocate
Mr. H.K. Gautam, Advocate
Mr. V. Pankaj, Advocate
Ms. Meeta Sharma, Advocate
Mr. Shashank Patil, Advocate
Mr. Amit Pawe, Advocate
Mr. Abhishek A., Advocate
Ms. Prerna Singh, Advocate

For Mr. Nirmal Singh Bhangoo : Mr. S. Ganesh, Senior Advocate
Mr. Ramji Srinivasan, Senior Advocate
Mr. Gaurav Kejriwal, Advocate
Mr. Gaurav Choudhary, Advocate

For Mr. Gurnam Singh (R/o P.O. Wazidpur) : Mr. Gurnam Singh

For PACL Customer Association Limited : Mr. P.H. Parekh, Senior Advocate
Mr. Pavan Kumar, Advocate
Mr. Vishal Prasad, Advocate
Mr. Prithvi Pal, Advocate
Mr. Bhairo Singh Rajawat, Vice President, PACL

For Securities and Exchange Board of India : Ms. Anitha Anoop, Deputy Legal Adviser
Mr. Narendra Rawat, Deputy General Manager
Ms. Jyoti Sharma, Assistant General Manager
Mr. Pradeep Kumar, Assistant Legal Adviser

BACKGROUND OF THE CASE

1. During the early nineties, several entities had started mushrooming across the country for operating financial schemes in the market. Such entities ostensibly undertook plantation activities on commercial scale through various plans/ schemes and mobilized huge sums of money by issuing various instruments and offering plans with very high rates of return (inconsistent with the normal rate of return) in such schemes. The funds so mobilized were misutilized by such entities for the purposes not disclosed at the time of inviting the investments. During the mid nineties, such entities started defaulting in making payments to their customers/ investors. This not only caused huge losses to the investors who lost their life savings to such unscrupulous entities, but also eroded the confidence of the general public in financial savings. It was noticed that the promoters of such entities had themselves invested a minimal amount in such ventures and raised a majority of the funds for the plans/ schemes from ordinary small investors. Considering the high element of risk associated with such schemes, the Government of India felt that it was necessary to regulate such financial schemes and set up an appropriate regulatory framework for regulating such entities. Accordingly, the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') was amended vide Act 9 of 1995 and the following was added in Section 12 thereof:

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

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

With this amendment, a ban was imposed on a person carrying on any Collective Investment Scheme (hereinafter referred to as 'CIS'), unless a certificate of registration is obtained in accordance with the regulations framed by SEBI.

2. In order to protect the interest of the investors and to ensure that only legitimate investment activities are carried on, vide press release dated November 18, 1997, the 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 schemes under the provisions of the SEBI Act and directed Securities and Exchange Board of India (hereinafter referred to as 'SEBI') to formulate Regulations for the purpose of regulating these CISs. Thereafter, several press releases and newspaper advertisements/ notices were issued by SEBI from time to time in leading newspapers, bringing to the notice of the investors and the persons concerned, the various instructions issued by SEBI/ Central Government in respect of the functioning of the CIS. The press releases further stated that instruments such as agro bonds, plantation bonds should be treated as CIS, and are subject to the jurisdiction of the SEBI Act. More specifically, SEBI had issued a press release dated November 26, 1997, *inter alia*, stating that the regulations for CIS are under preparation and till they are framed and finalized, no person can sponsor any new CIS. It was further notified vide this press release that the persons desirous of availing the benefit provided under the *proviso* to Section 12(1B) of the SEBI Act, may send such information within 21 days. Thereafter, SEBI also issued another public notice dated December 18, 1997 and *inter alia* directed the existing schemes to comply with the provisions of Section 12(1B) of the SEBI Act and to send desired information to SEBI by January 15, 1998.

3. Meanwhile, a committee was formed by SEBI to examine and finalize the draft regulations for CIS and to structure a comprehensive regulatory framework. It was in this background that the SEBI (Collective Investment Schemes) Regulations 1999 (hereinafter referred to as 'the CIS Regulations') were framed and notified on October 15, 1999. Further, the definition of CIS was also provided in the SEBI Act through insertion of Section 11AA of the SEBI Act vide the Securities Laws (Amendment) Act, 1999 w.e.f. February 22, 2000. According to the definition, 'Collective Investment Scheme' means any scheme or arrangement which satisfies the conditions specified in Section 11 AA of the SEBI Act i.e.
 - (i) *the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;*
 - (ii) *the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;*
 - (iii) *the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;*

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

In terms of the Section 11AA(3), the following activities shall not be a CIS:

Any scheme or arrangement:

i. made or offered by a co-operative society

ii. under which deposits are accepted by non-banking financial companies

iii. being a contract of insurance

iv. providing for any scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund

v. under which deposits are accepted under section 58A of the Companies Act, 1956

vi. under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society

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;

The term 'securities' in Section 2(h) of the Securities Contracts (Regulation) Act, 1956 was also amended vide the said Securities Laws (Amendment) Act, 1999 to include units or any other instrument issued by any CIS to the investors in such schemes for the purposes of proper regulation of CIS and in turn to protect the interest of the innocent investors in such CISs.

In terms of the Regulation 3 of the CIS Regulations, no person other than a Collective Investment Management Company which has obtained a certificate under the CIS Regulations shall carry on or sponsor or launch a CIS. This clearly mandates that only entities which have obtained a certificate of registration can offer or launch CIS. Further, under Regulation 5, any person who has been operating a CIS at the time of commencement of the CIS Regulations was required to make an application to SEBI for grant of registration under the provisions of the said regulations, within a period of two months from the date of the notification.

4. In the meantime, it had come to light that a company, namely, PACL Limited (hereinafter referred to as 'PACL' or 'the company') was running CIS and was one of the companies which had failed to submit the information/ details with SEBI in terms of the press release dated November 26, 1997 and the public notice dated December 18, 1997. In view of such default, SEBI vide its letter dated March 04, 1998, had intimated PACL that it was not eligible to take the benefit under the *proviso* to Section 12(1B) of the SEBI Act and therefore could neither launch any new schemes nor continue raising funds under its existing schemes. In the said letter, the attention of PACL was also drawn to the press release dated February 24, 1998 made by SEBI, which directed that the existing CISs can

mobilize money 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.

PACL vide its letter dated March 23, 1998, replied to the SEBI and challenged the jurisdiction of SEBI, by stating that its transactions are in the nature of sale and purchase of agricultural land and thus outside the purview of the securities market.

5. A Public Interest Litigation (hereinafter referred to as 'PIL') was filed before the Hon'ble Delhi High Court by one Mr. S.D. Bhattacharya against SEBI and Anrs. in the year 1998, bringing into light, the activities of various agro-plantation companies who had duped the hard earned money of several investors. The petitioner also filed an application for impleading 478 agro-plantation companies in the matter. The Hon'ble Delhi High Court vide an order dated October 07, 1998, in the said matter, *inter alia* directed all plantation companies, agro companies and companies running CIS to get themselves credit rated from Credit Rating Companies approved by SEBI, restrained such companies from selling, disposing of and/ or alienating their immovable property or parting with the possession of the same. The order also restrained such companies from floating new schemes to raise further funds without the permission of the Hon'ble Court. As regards, the existing schemes, such companies were directed to strictly comply with the SEBI directive published on February 28, 1998 (*sic*) (to be read as February 24, 1998). The Hon'ble Delhi High Court also allowed the application of the petitioner to implead the said 478 companies as respondents and directed that notices be issued to such companies by publication in the newspaper.

It is pertinent to mention here that the name of PACL was also mentioned in the said list of 478 companies which were allowed to be impleaded by Hon'ble Court. PACL vide its application dated December 08, 1998, approached Hon'ble Delhi High court for deletion of its name from the list of respondents and for vacating/ modifying the *interim* orders passed by Hon'ble Delhi High Court. Hon'ble Delhi High Court vide another order dated May 26, 1999, had directed SEBI to appoint auditors for ascertaining the genuineness of the transactions executed by PACL. In compliance with the order of Hon'ble Delhi Court, an audit was conducted and the report thereof was submitted on February 22, 2000. This report, highlighted various deficiencies/ discrepancies such as the cost of the land was taken to be uniform irrespective of its location, huge commissions were being paid to agents by PACL out of the funds collected from the public, etc. Thereafter, on November

16, 2000, the Hon'ble High Court of Delhi appointed Justice K. Swamidurai (Retd.) to physically verify the genuineness of the agreement to sell and the transactions entered into and also to supervise the registrations of the sale deeds.

6. In the meantime, SEBI issued letter dated November 30, 1999 to PACL, alleging that PACL was operating CIS, wherein the funds of the investors were pooled and utilized towards the cost of land, registration expenses, developmental charges and other incidental expenses. Vide the said letter PACL was advised to comply with and abide by the provisions of the CIS Regulations.

SEBI also sent another letter dated December 10, 1999 to PACL advising it to comply with the CIS Regulations by December 14, 1999. PACL vide its letter dated December 13, 1999, replied to the letter of SEBI wherein it *inter alia* was stated that SEBI has no jurisdiction to scrutinize its transactions. According to PACL, it mainly deals in the sale and purchase of agricultural land and development of the land. It has been said that it had discontinued its scheme numbers 10 - 27 as there were certain operational problems in running of these schemes. It has also been said that 8 out of total 1,941 customers had opted to withdraw from the schemes who have been repaid.

PACL then challenged these letters of SEBI before the Hon'ble High Court of Judicature for Rajasthan at Jaipur by filing a Writ Petition, in December 1999, claiming therein *inter alia* that its scheme does not fall under the definition of CIS as defined under the CIS Regulation/ SEBI Act. Vide this Writ Petition, PACL also challenged the constitutional validity of the CIS Regulations.

While the Writ Petition filed before the Hon'ble High Court of Judicature for Rajasthan was pending, SEBI vide order dated June 24, 2002, held that the schemes floated by PACL fall squarely within the definition of CIS as defined under Section 11AA of the SEBI Act and required PACL to comply with the provisions of the CIS Regulations subject to the directions of the Hon'ble High Court of Judicature for Rajasthan at Jaipur.

7. On September 20, 2002, Justice K. Swamidurai submitted his final report stating therein that the transactions entered into by PACL with its customers were genuine. Thereafter, on March 03, 2003, the Hon'ble High Court of Delhi modified its earlier orders dated October 07, 1998, October 13, 1998, October 29, 1998 and allowed PACL to execute the sale deed in favour of the customers duly verified by Justice K. Swamidurai. The Hon'ble Court also

directed that future registrations may continue after the same were duly verified by Justice K. Swamidurai. As there were no representation by SEBI before the Hon'ble High Court of Delhi, when such directions were issued vide order dated March 03, 2003, SEBI filed an application for modification/ clarification of such order of Hon'ble High Court of Delhi. The Hon'ble High Court of Delhi considered the application of SEBI and vide order dated May 30, 2003 held that "*there was no adjudication of the status of the PACL India Limited. We clarify that neither this Court held PACL India Limited to be a CIS company nor it was held that it is not a CIS company. This would be for SEBI to decide and our order discharging notice would not stand in the way of SEBI to so decide. With this observation the application stands disposed off.*"

8. Subsequently, the Hon'ble High Court of Judicature for Rajasthan at Jaipur vide its order dated November 28, 2003 allowed the Writ Petition filed by PACL. The Hon'ble High Court *inter alia* held that the schemes of PACL were not CIS as they did not possess the characteristics of a CIS as defined under Section 11AA of the SEBI Act and quashed the letters dated November 30, 1999 and December 10, 1999, issued to PACL by SEBI.

SEBI preferred an appeal before the Hon'ble Supreme Court of India against the said order of Hon'ble High Court. The Hon'ble Supreme Court of India vide order dated February 26, 2013, **set aside the order of Hon'ble High Court** and ordered as under:

"... .. Having heard the learned counsel for the respective parties, we are convinced that the order of the High Court impugned in these appeals should be set aside and the proceedings dated November 30, 1999 and December 10, 1999 can themselves be treated as show cause notices apart from permitting the appellant to issue a comprehensive supplementary show cause notice to the first respondent Company within a period of three months after carrying out necessary inspection, investigation, inquiry and verification of the accounts and other records of the first respondent Company.

7. It is needless to state that the first respondent Company shall permit the appellant to have free access to the records and also the assistance of the Auditors for carrying out such inspection and verification of the records. On receipt of the supplementary show cause notice issued by the appellant, the first respondent Company shall submit its reply within six weeks from the date of receipt of such supplementary show cause notice. The appellant shall also extend an opportunity of personal hearing to the first respondent Company wherein it will be open to the first respondent Company to place all materials in support of its stand and also make its oral submissions. The appellant shall also furnish whatever material which it seeks to rely upon as against the first respondent Company to enable the first respondent Company to submit its reply within the six weeks' time granted to it. After the personal hearing is extended to the first respondent Company, the appellant shall pass orders within six weeks from the date of holding of the hearing to be afforded to the first respondent Company. The first respondent Company shall also furnish its e-mail address, contact nos. and other particulars as and when required by the appellant.

8. We also make it clear that the appellant shall pass fresh orders as regards the business activity of the first respondent Company as to whether it falls under the category of CIS or not and depending

upon the ultimate order to be passed it may proceed further in accordance with law. The appellant shall before taking any future action give prior notice to the first respondent Company.

9. We make it clear that such order shall be passed by the appellant uninfluenced by whatever stated by the High Court in the order impugned in these appeals as well as its own earlier orders including its order dated June 24, 2002."[emphasis supplied]

PROCEEDINGS

9. In compliance with the aforesaid directions of the Hon'ble Supreme Court, PACL was advised by SEBI vide its letter dated March 18, 2013, to submit the email address, contact numbers and other particulars. PACL vide its letter dated March 22, 2013, submitted the details of the contact person to SEBI. Thereafter, SEBI initiated investigation and issued various letters to PACL, *inter alia* seeking the following information/ details (since incorporation to till the date of respective letters):
- a. details of all schemes/ plans of PACL, soliciting investment from investors/ raising funds from the investors since incorporation, till date. The mode of payment (installment/ lump sum) available to the investor/ customer for the said schemes/ plan.
 - b. for each scheme/ plans of PACL, copies of the minutes of Board/ Committee meeting wherein the resolution was passed for raising funds from investors, tenure/ status/ terms and conditions of the schemes, application forms, brochures/ pamphlet/ other promotional material circulated, circulars issued to the agents/ agreements executed between PACL and its investor/ customer (highlighting the changes in the agreement, if any), year-wise quantum of funds raised through the scheme/ plan and number of investors/ customers (including the name, address, contact no. and identity proof), the list of the registered offices and branch offices for the purpose of soliciting investment through its scheme/ plan, year-wise details of the number of agents/ employees deployed for the scheme/ plan, details of structure of commissions/ incentives paid to the agents/ employees deployed for the scheme/ plans, etc.
 - c. details of area, location and price of the total land acquired for the scheme, area of land allotted/ sold to the investors, number of such investors who have been allotted/ sold the land, details of the development and the sale deeds executed, copies of the sale deeds on sample basis, year-wise list of investors who were allotted land and who had received payment on maturity, list of investors who have defaulted in making payment
 - d. year wise shareholding pattern of PACL, name of the promoters and directors, details of intimations of resignation of Directors to Registrar of Companies (hereinafter referred to as 'RoC')

- e. the details of the total business activities of PACL including turnover, employees, total profit from such activities, annual report filed with RoC.
 - f. sample copies of executed/ filled application forms, agreements, allotment letters, registered sale deeds and all documents concerning investments in the schemes, etc.
 - g. list of customers who have opted for development of land on their own.
 - h. details of development activities done by the company on the land allotted to the customers.
 - i. the details (including name and address) of seller, power of attorney (hereinafter referred to as 'PoA') of the seller, buyer, PoA of the buyer for land in khasra no. 01/4 in Ottudanpatti village of Thoothukudi district including the location map/ land demarcation, copy of agreement, sale deeds etc.
 - j. year wise details of the number of customers who were given compensation in the event of accidental disability/ death and the compensation disbursed, the number of customers who were given loan and the loans given, customers who did not avail the facility of development with regard to sale of land pursuant to expiry of the term of plan.
10. PACL replied to the letters of SEBI and submitted that it was incorporated with the name of Gurwant Agrotech Limited, subsequently, the name was changed to Pearls Agrotech Corporation Limited, later the name was changed to the current name i.e. PACL Limited. It also submitted the following details/ documents:
- a. list of its office, corporate office and customer service centers,
 - b. the details of the directorships of its directors, the addresses, PAN of promoters and directors, the date of appointment and resignation of directors,
 - c. copy of the memorandum and articles of association, list of the key management persons of PACL.
 - d. certified copies of balance sheets along with the annual reports for the financial years starting from the years 1996-97 to 2010-11, certified copies of Income Tax returns for the assessment years 1996-97 to 2012-13.

PACL also requested for time to submit the other information sought by SEBI on the ground that the records were voluminous and spread over several years. SEBI vide its letter dated April 11, 2013, intimated PACL about the timelines set by the Hon'ble Supreme Court for the issuance of the supplementary SCN and also granted a week's time to submit the information as sought. Upon this, PACL vide its letters dated April 18, 2013, April 26,

2013, May 06, 2013, May 14, 2013 and May 17, 2013 submitted the following documents/ information:

- a. details of the shareholding pattern since inception, copy of the balance sheet of the company for the financial year 2011-12, details of the shareholders of PACL as on March 30, 2002, December 30, 2002, December 31, 2003, September 30, 2005, December 30, 2006, details regarding the business plans of PACL since inception along with their name, closure, amounts mobilised in a tabular form, copies of rule book along with subsequent circulars as amended from time to time, extracts of minutes of board/ committee wherein the business plans and its subsequent amendment were duly considered and approved by the Board/ committee of PACL.
- b. sample copies of the application form, sample sale deeds executed in favor of the customers, agreement as amended from time to time along with the copies of the agreements.
- c. list of customers for last 5 years to whom land has been allotted, details of the advances received from the customers for the last 5 years, details of the total area of land allotted and number of customers for the last 5 year, year wise list of active customers who executed agreement with PACL, details of customers who opted out of the plot-buyer agreement in last five years and who preferred to receive refund of their consideration in lieu of land.
- d. list of customers to whom land has been allotted, details of advances received from such customers, details of customers who had opted out of the plot-buyer agreement and preferred to receive fund of their consideration in lieu of land since inception. The details were provided for the period since inception till 2006-07, year-wise list of active customers for the year 2005-06 and 2006-07 who executed agreement with PACL.
- e. details of the persons employed with PACL, field associates engaged for the promotion of the business, copies of circulars issued to the field associates, structure of commission/ incentives, year-wise details of commission/ incentives paid to the field associates, details of the field associates since inception till 2006-07, year-wise details of commission/ incentives paid to the field associates engaged in the business promotion activities of the company since inception till 2006-07, State wise details of land owned by PACL for its business purpose along with its holding pattern and price paid for the procurement of land effective from 2005-06 and 2006-07.
- f. list of customers' complaints,
- g. State wise details of land procured by PACL for business purpose along with the holding pattern and price paid,

- h. detailed note showing the basis of calculating estimated or expected value of land at the end of the tenure of the plan.
- i. tabular sheets showing month-wise status of customers' land liability vis-a-vis land availability in acres owned by PACL by way of sale deed, general power of attorney, agreement to sell, snapshot of land availability while booking of plots in different State of the country.
- j. details regarding the projects and marketing materials published by the companies with whom PACL executed the development agreement/ project management contract and the agreements
- k. year-wise number of customers who have been given compensation in the event of accidental disability/ death and compensation disbursed, customers who have been given loan along with loan amount disbursed.
- l. year-wise details of the land procured by PACL through sale deeds/ GPA/ ATS/ associate companies from 1996-1997 till 2011-2012, land allotted/ sold to the customers from 1996-97 till 2011-12, customers who opted out from the agreement.
- m. valuation report of the land owned by the company in some of the States.
- n. copy of notices published by PACL from time to time in the newspapers regarding circulation of un-authorized documents in the name of the company.

However, PACL failed to submit the complete information in all respects as sought by SEBI during the course of investigation vide the said various letters.

11. Thereafter, SEBI concluded its investigation and issued an SCN dated June 14, 2013 to PACL Limited and its directors namely Mr. Anand Gurwant Singh, Mr. Gurnam Singh (R/o P.O. Singh Bhagwant Pur), Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Nirmal Singh Bhangoo, Mr. Gurnam Singh (R/o P.O. Wazidpur), Mr. Uppal Devinder Kumar, Mr. Tyger Joginder, Mr. Gurmeet Singh and Mr. Subrata Bhattacharya (**hereinafter all collectively referred to as 'noticees'**) based on the material available on record. The SCN alleged that the features of the schemes/ plan of PACL are in the nature of CIS. Accordingly, it called upon the noticees to show cause as to why the schemes of PACL should not be declared as CIS and appropriate action including directions under Sections 11 and 11B of the SEBI Act read with Regulation 65 of the CIS Regulations, should not be issued against the noticees for the alleged violations. The noticees were advised to reply to the SCN, within six weeks (i.e. as per the order of Hon'ble Supreme Court) from the date of receipt thereof. It was also informed that in case of failure to reply, it would be

presumed that they had no explanation to offer and that SEBI shall be free to take such action in the manner as it deemed fit on the basis of the material available on record.

12. PACL vide its letter dated June 21, 2013, requested for the copies of the statement of Mr. Gurmeet Singh, Mr. Sukhdev Singh, Mr. Rajeev Gupta and Mr. K.K. Bakshi recorded before SEBI and the copies of '34' investors' complaints referred to in the SCN. The documents sought by PACL were provided to it vide SEBI letter dated July 03, 2013.

As the SCN issued to Mr. Tarlochan Singh, Mr. Anand Gurwant Singh, Mr. Uppal Devinder Kumar, Mr. Tyger Joginder and Mr. Gurnam Singh (R/o P.O. Singh Bhagwant Pur) returned undelivered, SEBI forwarded these SCNs to PACL, vide letter dated July 15, 2013, for serving the same on such persons. PACL vide its letter dated July 18, 2013, replied to SEBI and submitted that Mr. Devinder Kumar Uppal and Mr. Anand Gurwant Singh had ceased to be directors of PACL since September 29, 1998 and September 16, 1996 respectively and it is unaware of the present whereabouts of these two noticees. To proceed with the matter, SEBI initiated the steps for substituted services of the SCN by pasting it on the last known addresses of such noticees.

As regards, Mr. Gurnam Singh (P.O. Singh Bhagwant Pur) (noticee no. 3) it has been submitted by PACL that he was appointed as a director of PACL w.e.f. February 13, 1996 and he ceased to be a director of PACL from January 07, 1997, on his death. PACL vide this letter also forwarded a copy of the relevant form 32, which was taken on record.

13. PACL vide its letter dated July 23, 2013, forwarded copies of the sale deeds on sample basis under 'cash down payment plan' (hereinafter referred to as 'CDPP') and 'installment payment plan' (hereinafter referred to as 'IPP') for its clients to SEBI. As the documents were not legible, SEBI advised PACL to submit legible copies of such documents along with the reply to the SCN.

Mr. Gurnam Singh (R/o P.O. Wazidpur) and Mr. Nirmal Singh Bhangoo vide their letters dated July 24, 2013 and July 25, 2013 respectively, replied to the SCN. The noticees PACL, Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh and Mr. Subrata Bhattacharya submitted a common reply to the SCN vide letter July 26, 2013 and requested for an opportunity of personal hearing. The noticee namely Mr. Anand Gurwant Singh vide his letter dated August 06, 2013, intimated SEBI that he came to know that SEBI has issued the SCN to PACL and its directors including ex-directors and requested for a copy

of the SCN dated June 14, 2013. Vide letter dated August 08, 2013, Mr. Anand Gurwant Singh, while confirming the receipt of the SCN, stated that he would submit the reply within six weeks and requested for an opportunity of personal hearing.

14. During the proceedings, one PACL Customer Association (hereinafter referred to as 'the Association') vide its letter dated July 17, 2013, informed SEBI that the association was formed for the purpose of safeguarding the legitimate interests of the customers of PACL and was allowed to intervene in the writ petition filed by PACL against SEBI before the Hon'ble High Court of Judicature for Rajasthan and in the Special Leave Petition filed by SEBI before the Hon'ble Supreme Court of India. The Association requested to take part in the proceedings and requested for a copy of the SCN dated June 14, 2013 and the reply filed by PACL to it. It also requested for making submissions before SEBI through its counsel, as and when the hearing is granted and also to make its written submissions. Vide another letter dated September 13, 2013, the Association informed SEBI that the copies of the SCN and the reply filed by PACL have been supplied to it by PACL and requested for intimation of the date of personal hearing and permission to make the submissions. Although SEBI did not provide a copy of the SCN (issued to PACL), SEBI vide its letter dated September 20, 2013, advised the PACL Customers Association to file its submissions, if any in writing. In reply to the same, PACL Customers Association through its advocate vide letter dated September 24, 2013, requested for all the documents/ correspondence exchanged between SEBI, PACL and/ or any other persons. He also requested permission to attend the personal hearing granted to PACL.
15. In the meantime, PACL vide its letter dated September 09, 2013, requested for an inspection of the documents. Accordingly, an inspection of the documents was granted to PACL on September 17, 2013.

Before proceeding further, an opportunity of personal hearing was granted to the noticees on September 27, 2013. M/s. Parekh & Co. vide letter dated September 19, 2013, submitted vakalatnama for the noticees namely PACL, Mr. Sukhdev Singh, Mr. Tarlochan Singh, Mr. Subrata Bhattacharya and Mr. Gurmeet Singh and requested for an adjournment of hearing by four weeks for the reason that the inspection of the documents was carried out on September 17, 2013 and the notice given is short considering the voluminous documents. Mr. Nirmal Singh Bhangoo, vide his letter dated September 19, 2013, also requested for an adjournment of hearing by one month on medical ground.

The noticee, Mr. Anand Gurwant Singh, through its representative 'The Percept', Advocates & Solicitors vide letter dated September 19, 2013, requested for an adjournment of hearing and a complete set of documents that were relied upon.

The representatives of Mr. Gurnam Singh i.e. Rungta Associates, Advocate & Consultants vide letter dated September 19, 2013, expressed difficulty in attending the hearing on September 27, 2013 and requested for an adjournment.

16. As the request for adjournment came from almost all the noticees, it was acceded to and the matter was adjourned to October 18, 2013. This time again, Parekh & Co., (the representatives of PACL and its four directors) vide letter dated September 27, 2013, requested for an adjournment for the reason of unavailability of the senior advocate on the date fixed. SEBI vide its letter dated October 01, 2013, rejected the request of the advocates and intimated that as the matter is very old, it would not be desirable to incur any further delay in it. However, Parekh & Co., vide its another letter dated October 03, 2013, again made a request for adjournment. The request of the advocate was finally acceded to and the personal hearing was re-scheduled to November 06, 2013.
17. The Association vide its letter dated October 23, 2013, intimated SEBI that it has filed an application before the Hon'ble Supreme Court of India, requesting direction to SEBI for treating the Association as a party to the proceedings and give it all the relevant documents and an opportunity to make oral submissions as well as written submission. It also sought four weeks' time vide this letter for filing detailed reply to the SCN dated June 14, 2013.

In the meantime, Mr. Gaurav Kejriwal, Advocate on behalf of Mr. Nirmal Singh Bhangoo, vide letter dated October 17, 2013 requested for copies of the documents that were relied upon. To this, SEBI vide its letter dated October 24, 2013, informed Mr. Gaurav Kejriwal (the advocate for Mr. Nirmal Singh Bhangoo), Rungta Associates (the advocates for Mr. Gurnam Singh) and The Percept (the advocate for Mr. Anand Gurwant Singh) that the documents sought are voluminous and therefore these could be inspected on October 29, 2013. Although, SEBI had communicated the schedule for inspection to all the said three noticees, however, on the date fixed, only Mr. Gaurav Kejriwal appeared on behalf of the noticee namely Mr. Nirmal Singh Bhangoo and inspected the documents.

18. The authorised representatives for PACL and its four directors namely Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh, Mr. Subrata Bhattacharya, vide letter dated November 05, 2013, forwarded an affidavit dated November 04, 2013 of Mr. Sukhdev Singh, Managing Director, PACL, wherein, it was *inter-alia* said that during the course of investigation, while replying to one of the question i.e. question no. 33, he had given the information on the basis of the period when the company was executing joint sale deed. He also stated in the affidavit that the correct position is stated in the common reply of PACL and its four directors named above, dated July 26, 2013 and reiterated that the company does not enter into joint sale deed. It was further said that what was stated in the common reply to the SCN was correct and should be treated as his statement.
19. On the date fixed for the personal hearing i.e. November 06, 2013, the noticees namely PACL, Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh, Mr. Subrata Bhattacharya and Mr. Nirmal Singh Bhangoo appeared through their authorised representatives. During the course of personal hearing, the Association also desired to participate, although the notice for personal hearing was issued only to PACL and its directors. The Association was informed by SEBI that there is no SCN against it and the Hon'ble Supreme Court also had not mandated SEBI to afford any personal hearing to it.

To this, the Association argued that it is an interested party in the matter and its application for impleading itself was allowed by Hon'ble High Court of Rajasthan and the Hon'ble Supreme Court of India as well. It also referred to the application filed by it before the Hon'ble Supreme Court for a direction to SEBI to treat the Association as a party to the proceedings and for providing all the relevant documents along with the opportunity to make submissions.

Considering the submissions of the Association, and the 'no objection' from PACL and Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh, Mr. Subrata Bhattacharya and Mr. Nirmal Singh Bhangoo (the noticees who were present/ represented in the personal hearing), for allowing the Association to make its submission during the course of hearing and also to avoid any further delay in the proceedings, the Association was allowed to participate in the personal hearing and instruction were given to SEBI for providing the copies of all the relevant documents pertaining to the matter to the Association within 10 (ten) days' time. Thereafter, the matter was adjourned for further continuous hearing on December 20, 2013, December 23, 2013 and December 24, 2013. Vide SEBI letter dated

November 13, 2013, the Association was provided with all the relevant documents in the matter of PACL.

20. In the meantime, the personal hearing fixed for December 20, 2013, December 23, 2013 and December 24, 2013, had to be rescheduled due to certain administrative exigencies and it was suggested to PACL and its directors that the matter could be taken up on December 20, 2013 and December 21, 2013 instead. Upon this, Parekh and Co. vide its letter dated November 20, 2013, expressed their inability to appear for the personal hearing on the date suggested and requested for fresh dates in the month of February, 2014. Considering the circumstances and the specific request, the personal hearing was fixed from February 04, 2014 to February 06, 2014.

However, vide another letter dated January 23, 2014, Parekh & Co. again sought adjournment for the hearing scheduled for February 04, 2014 to February 06, 2014 citing reasons of non availability of the counsels appearing in the matter. This request of the advocates of PACL and its four directors was rejected and it was communicated that the hearing will be conducted as scheduled.

21. On the first day of personal hearing i.e. February 04, 2014, the noticees namely PACL, Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh, Mr. Subrata Bhattacharya and Mr. Nirmal Singh Bhangoo appeared through their authorised representatives and made submissions. The personal hearing in the matter was continued for the second day i.e. on February 05, 2014. During the course of hearing, the authorised representatives of PACL and its directors namely Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh and Mr. Subrata Bhattacharya filed written submissions, which were taken on record. The authorised representatives present during the personal hearing were advised to submit the following:
- a. the summary of the sale deeds verified by Justice K. Swamidurai and
 - b. the complete case file/ set of documents (starting from the respective application forms, respective agreements, respective details of payment made/ installment receipts, respective allotment letters, respective sale deeds, respective possession letters, etc.) in respect of 500 customers selected randomly, from the list of customers as submitted by PACL.

For submitting such details, the authorised representatives sought two months time which was duly granted. The authorised representatives also requested for one more opportunity

of personal hearing in order to make submissions on the documents/ details to be submitted.

During the personal hearings on February 04, 2014 and February 05, 2014, the Association was also present through its authorized representative who made oral submissions regarding protection of interest of customers of PACL. The Association's representative was directed to intimate SEBI, within one month as to what 'protection' the Association is asking for and for whom. It was also directed to submit the details to show as to how many customers/ investors the Association represents and the mandate of such customers/ investors along with the necessary documents. The Association also sought certain time to submit the details and requested for one more opportunity of personal hearing in order to make its submissions on the documents/ details so submitted.

22. The Association vide its letter dated March 04, 2014, through its advocate Mr. Pavan Kumar *inter-alia* submitted the details of its 2,14,530 members and also submitted that in case SEBI concludes that the submission made by PACL are correct/ valid in law and that the transactions in question do not require any approval from SEBI, then the members of the Association would not be adversely affected. In such circumstances, they will have no submission to make.

The Association vide another letter dated May 09, 2014, through its advocate, Mr. Pavan Kumar submitted an additional list of its 1,05,410 members.

23. Vide letter dated April 04, 2014, PACL through its advocate Parekh & Co. submitted the case details of 500 customers as asked for during the personal hearing dated February 04, 2014. Thereafter, as requested by PACL, and its directors, Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Nirmal Singh Bhangoo, Mr. Gurmeet Singh, Mr. Subrata Bhattacharya and the Association, a further opportunity of personal hearing, was granted to them on April 09, 2014. However, Parekh & Co. for PACL and its four directors, Mr. Gaurav Kejriwal (the advocates for Mr. Nirmal Singh Bhangoo) and Mr. Pavan Kumar (the advocate for the Association) requested for rescheduling of the personal hearing to May 27, 2014. Although, the request of the noticees was initially acceded to, SEBI thought it right, in the interest of expeditiously conducting the hearing, to pre-pone the same to April 25, 2014. The advocates for the noticees again requested for postponement of the personal hearing, stating the non-availability of counsels/ advocates. This time, the request of the noticees was acceded to and the hearing was rescheduled to May 15, 2014.

24. On the date fixed for personal hearing i.e. May 15, 2014, the authorised representatives of PACL, Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Nirmal Singh Bhangoo, Mr. Gurmeet Singh, Mr. Subrata Bhattacharya and PACL Customer Association appeared for the personal hearing and made submissions. They also filed written submissions citing case laws, which were taken on record. During the course of personal hearing, the authorised representative appearing for the noticee no. 6 (Mr. Nirmal Singh Bhangoo) was asked to submit certain details such as his age, profession, financial details, etc. Though SEBI had not asked specifically for the sample sale deeds as verified by Justice K. Swamidurai (as the noticees have already submitted the summary of verified sale deeds), the representatives appearing for PACL, Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh and Mr. Subrata Bhattacharya sought time for submitting the same. The representatives of the Association also sought time for filing additional written submission and certain documents. Considering the requests from all the noticees appearing and the Association, three weeks' time was granted for submitting the relevant documents/ written submissions. The noticees appearing for the personal hearing then requested for one more opportunity of personal hearing in order to make submission on the documents/ written submission to be filed by them. The request was considered and the matter was adjourned to be finally heard on June 23, 2014.
25. Thereafter, written submissions were filed vide letter dated June 03, 2014 on behalf of the noticees namely PACL, Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh and Mr. Subrata Bhattacharya. Vide another letter dated June 03, 2014, PACL through its advocate Parekh & Co. submitted the details of the fresh funds mobilised as asked during the personal hearing dated May 15, 2014. It was stated that a total of ₹ 4069,60,19,306 has been mobilized during the period of February 26, 2013 to April 30, 2014. Vide the said letter, it was also submitted that the details of the fresh funds received from the new customers from May 01, 2014 onwards will be furnished during the hearing on June 23, 2014.
26. On June 23, 2014, the authorised representatives of PACL, Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Nirmal Singh Bhangoo, Mr. Gurmeet Singh, Mr. Subrata Bhattacharya and the Association appeared and made submissions. A brief profile of Mr. Nirmal Singh Bhangoo was also submitted by his representative.

During the course of personal hearing, the counsel appearing for the noticees namely PACL, Mr. Tarlochan Singh and Mr. Sukhdev Singh submitted that they want some more time to submit a proposal for refund of the customers' advance received by the company under the various schemes to SEBI and requested for an adjournment. The counsel appearing for the noticees namely Mr. Gurmeet Singh and Mr. Subrata Bhattacharya also requested that they also want to make written submissions and requested for an adjournment for explaining the submissions so made. Considering the number of opportunities of personal hearing already granted to the noticees when they made elaborate submissions in the matter, the directions of the Hon'ble Supreme Court in the matter and the admitted fact that PACL is mobilizing huge funds from the public, instead of granting another opportunity of personal hearing, the noticees were afforded opportunity to submit written submissions/ their proposal, if any. However, on the persistent request of the noticees for one more opportunity of personal hearing for explaining the written submissions/ proposal, the matter was adjourned to July 12, 2014 for making final submissions.

27. PACL through its advocate Parekh & Co. vide its letter dated June 30, 2014, submitted the details of the fresh funds mobilised during the period of May 01, 2014 to June 15, 2014. It was stated by PACL that a total of ₹ 295,17,89,039 has been mobilized during the said period.
28. On July 12, 2014, the authorised representatives of PACL, and its directors, Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh, Mr. Subrata Bhattacharya and PACL Customer Association appeared for the personal hearing and made submissions. The Counsel appearing for the noticees namely PACL, Mr. Tarlochan Singh and Mr. Sukhdev Singh submitted a draft proposal which was stated to be without prejudice to all the contentions and submissions of the Company, in order to protect the interest of its customers and without getting into further litigation, the company submitted as under:
 - i. PACL will discontinue all the existing schemes/ plan(s) which are subject matter of the present proceedings. No new schemes/ payment plan(s) will be launched in future.
 - ii. As far as all existing customers/ agreements are concerned, the agreements of such customers will continue upto next five years or the end of their tenure. The Company will, as per the customers' choice provide the land as per the schemes/ plan or return the money as per the customers' choice.

- iii. As such, agreements with customers will keep terminating based on the tenure of the agreement and PACL such that all agreements will come to an end at the end of five years.

On July 12, 2014, the noticee namely Mr. Gurnam Singh also appeared for the personal and made oral submission on the lines of his written submissions dated on July 01, 2014.

The authorised representative of PACL and its two directors namely Mr. Tarlochan Singh and Mr. Sukhdev Singh requested for three weeks time for submitting the 'final proposal'. However, the said request of the noticees were rejected as the date of personal hearing was granted for submitting such proposal only. However, the noticees chose to file only a draft proposal. The counsel appearing for the noticees again requested that in the interest of justice, they should be given time for submitting the proposal. On repeated requests from the noticees, I was constrained to give three more weeks' time for submitting the proposal and further submissions, if any. I note that vide letter dated July 28, 2014, the noticees again requested for more time to submit such proposal. Thereafter, Parekh & Co., the advocates for the noticees namely PACL, Mr. Sukhdev Singh, Mr. Tarlochan Singh, Mr. Subrata Bhattacharya and Mr. Gurmeet Singh vide their letter dated August 11, 2014, had submitted the proposal for repayment to the customers.

- 29. At this stage, I note that as the hearing notices issued to the noticee namely Mr. Tyger Joginder could not be delivered, SEBI issued a public notice on March 08, 2014, in the newspapers advising him to collect the SCN and attend the personal hearing in the matter on March 24, 2014. Mr. Tyger Joginder vide his letter dated March 15, 2014, replied to the public notice and submitted that he had not received the SCN dated June 14, 2013 at his address. It was further informed that he came to know about SEBI notice from his friend Mr. Uppal Devinder Kumar (one of the noticees), who sent him a copy of the SCN through an email. I note that the SCN and the hearing notices were sent at the very same address as mentioned in the letter dated March 15, 2014 of Mr. Tyger Joginder, however, the same were returned as undelivered. Later, pasting was also done at the same address. The same suggests that Mr. Tyger Joginder is intentionally not taking delivery of the letters of SEBI in order to evade filing reply the SCN or appearing for the personal hearing as the hearing letters issued for personal hearings on May 15, 2014 and June 23, 2014, were also returned undelivered though sent at the very same address. From the same, it can be

concluded that the noticee namely Mr. Tyger Joginder is not keen in participating and presenting his stand in the proceedings.

The noticee namely Mr. Anand Gurwant Singh, has also failed to turn up for the personal hearings granted to him, he has even failed to avail the opportunity of inspection granted to him. From the same, it can be concluded that Mr. Anand Gurwant Singh is also not keen in participating and presenting his stand in the proceedings.

The noticee namely Mr. Uppal Devinder Kumar, also failed to turn up for the personal hearing on February 04, 2014 and February 05, 2014. However, he vide his email dated February 03, 2014 submitted that he was only a consultant with PACL for a period from October, 1998 to year 2000 and was never associated with the company as a director. It was also submitted by him that due to his advance age travelling is not very convenient. Considering the request of the said noticee, he was given one month time to submit his written submission along with the supporting documents, if any. However, no written submissions were filed by him.

REPLIES/ WRITTEN SUBMISSIONS

30. The submissions of the noticees in brief are as under:

- PACL and its four directors viz., Mr. Sukhdev Singh, Mr. Tarlochan Singh, Mr. Subrata Bhattacharya and Mr. Gurmeet Singh vide their common reply dated July 26, 2013 and written submissions dated February 04, 2014, May 15, 2014, June 03, 2014 submitted as under:
 - i. Its business 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 PACL are similar to that of a builder or a developer of property. PACL is purchasing lands from its own funds prior to inviting allotments for individual plots of land and is adding value to the land through its development activities. Based on such land banks customers approach PACL through its agents for the purchase of lands. PACL has prepared different plans under which these lands are sold wherein the prospective purchaser would pay the price of the land in one or multiple installments. The sale and development transactions contemplated in the agreements entered by PACL with its customers are not a 'scheme or arrangement'. Further, the use of the words 'scheme' or 'plan' by PACL in its handbooks, circulars, minutes or other documents are for the

administrative convenience as they help in categorizing the transactions between PACL and its customers on the basis of time taken for development, size of units of land and the method of payment opted for by the customer and these do not imply that the business of PACL involves running of any investment scheme or CIS. PACL has also said that the plots are not transferable till the execution of the sale deeds. No advertising is done for the sale of any of their lands, though, it has agents for the same.

- ii. PACL refers the land allotted to customers as units. PACL has till date introduced 67 schemes. PACL's business model is not limited to simple trading in barren agricultural land but to provide significant value addition to such low value barren land by developing it into productive agricultural land.
- iii. The land is held by various associate companies of PACL under the terms and conditions of a MoU entered into with PACL. The consideration for buying such lands is paid by PACL and it also pays the holding charges to such associate companies. Till date no dispute has arisen between PACL and its associate companies as the MOU provides adequate security and comfort to the customer that PACL can procure its associate companies to transfer the land to the customer without any delay. The ceiling laws apply to the holding of land by one entity and not aggregation of holdings by various entities.
- iv. PACL has not issued any instruments/ units/ security. Its relation with the customers is based only on the agreement and appended application form, without the operation of any other external factor. The terms 'unit' and 'plot' refers to a piece of land to be sold to the customers of PACL and cannot be interpreted to mean that any securities were ever issued by PACL to the customers. No units or securities are issued to any of the purchasers. On execution of the sale deed, the purchasers are free to deal with the property and the ownership comes to vest in them coupled with possession. The business of PACL cannot be regulated by SEBI as the same is not in a business that involves or relates to any 'securities'. The application form, agreement, allotment letter and the sale deeds are for the sale of plots of land by PACL to its customers and the same do not create any marketable securities. As per CIS Regulations the 'units/ any other instrument' of a CIS should be capable of being marketed on a stock exchange. The agreements executed by PACL are with regard to immovable assets and the term 'units' used by it refers to fixed size of plot of land and hence such documents can neither be considered to be movable assets nor are they capable of being listed/ traded on the stock exchanges. They are not 'instruments' or 'securities' deriving their value from underlying assets such as land, unlike the aforementioned agro bonds/ plantation

bonds/ schemes of plantation companies. Therefore, the transactions carried out by PACL cannot be held to be securities as defined under Section 2 (h) of the Securities Contract (Regulations) Act, 1956.

- v. The agricultural land falls within the domain of the State laws and only States have jurisdiction in this regard. CIS Regulations are not intended to regulate the sale and purchase of land.
- vi. The Dave Committee Report's mandate was to assist SEBI in evolving a framework for the regulation of schemes that issued instruments like 'agro and plantation bonds' and not the business activities relating to the development of land and agriculture activities. Due credence be given to the Dave Committee Report, while interpreting the provisions and determining the scope of Section 11AA of the SEBI Act and the CIS Regulations. Further the amendment for the inclusion of CIS units as a security was to regulate the then prevailing problem of plantation companies.
- vii. Justice K. Swamidurai (Retd.) was appointed by the Hon'ble High Court of Delhi to supervise the land sale transactions of PACL. He had scrutinized/ supervised the sale transactions and also carried out site inspections. Objections of SEBI before Justice K. Swamidurai were found untenable. The report filed by Justice K. Swamidurai was scrutinized by Hon'ble Delhi High Court and the notice against PACL was discharged. SEBI has not filed any objection to such reports. Vide another order dated May 30, 2003, Hon'ble Delhi High Court provided that the future sale deeds executed by PACL would duly be verified by Justice K. Swamidurai. The sale, purchase and development of land are fully validated by Justice K. Swamidurai in his final report dated September 20, 2002, pursuant to the directions of the Hon'ble Delhi High Court in the matter of *S.D. Bhattacharya & Ors. Vs. SEBI*, wherein he had observed that the sale and purchase transactions carried out by PACL are genuine. Justice K. Swamidurai has submitted reports from time to time, verifying the sale deeds executed by PACL. The findings of such reports incontrovertibly established the nature of transactions i.e. the sale and development of agricultural land. None of the verification reports contain any adverse findings against PACL. The sale deeds were validly executed before the competent authority, to his satisfaction, after complying with all the necessary formalities.
- viii. PACL does not promise any 'assured return' or 'profit' to the customer. There is no return assured to the customer on the amounts paid. The amounts are paid by the customer directly as 'consideration' for the sale of land and development services of PACL. In the case of PACL, the land is already available for the purchase prior to such

sale made by PACL and there is no scheme or arrangement being managed by PACL by virtue of which the customers receive profits/ property. The customer is the sole owner of the land. It is often the case that the customer profits from the development activities being carried out by PACL. The profits are natural consequence of owning the land, which appreciates considerably in value due to the extensive development services and good organisation. The 'estimated realizable value' is the price which the land will command upon completion of the development activities. The customers treat such estimated realizable value as a benchmark at the time of sale to third parties.

- ix. Every transaction with each customer is a separate transaction for sale and development of agricultural land. The transactions under similar property purchase plans have only the payment mechanism/ tenure of development/ unit of land, size as a common factor and it cannot be construed that these transactions are all part of a common 'scheme' of any kind. The monies received from the customers under similar property offerings are not 'pooled and utilized solely' for any common purposes. Each plot of land sold to customers is distinctly identifiable and the customer pays for purchase and development of such land. There is no common pooling of funds being done to provide a group of customers with undivided and unidentifiable shares in a large tract of land. Merely because PACL receives the consideration for development services prior to or while carrying out the development of land, there cannot be an implication towards 'pooling' of funds within the context of Section 11AA(2)(i) of the SEBI Act.
- x. PACL does not have any entitlement to control/ administer/ take charge of the property/ the monies paid by the customers. PACL is not in possession of the land and merely has a right of entry to provide development services. Even the marketing services provided by PACL at the end of the development period to help the customer sell the plot, are only provided at the request of the customer. A customer is free to retain the plot of land or sell it by himself, as if he wishes. Therefore, PACL is a service provider, providing development services or marketing services to the customer in accordance with its contractual obligations and in no way 'managing' the property of the customer. The customer, at no point, hands over the management of his property, but merely conveys limited rights of entry to the same to PACL for the purpose of development in accordance with the agreement. There is no question of managing any 'contribution or investment' as the sums paid by the customers are simply the consideration for the land allotted to them and fees for development services provided by PACL. Therefore, the activities carried out by PACL cannot be construed as

management of either property or of contributions and investments. PACL is engaged in the business of 'developing' plots of land. PACL provides its services to add value to the land and to bring it into full use. For the purpose of carrying out the developmental activities, PACL accorded some level of discretion; however, this is not akin to 'management' of properties.

The prospective customers are made fully aware, either through PACL's agents and field associates or through the application form, of the scope of the un-severable services which are being provided to the customer. The customers are informed about the composite nature of the contract, i.e. transfer of title of a piece of land and the development of the land by PACL. The development and maintenance, for a certain period, represented by the tenure of the agreement, of such land, forms an integral and conjoined service offered to the applicant. As PACL has the expertise and experience in developing the land, it prefers to do the same without undue interference from the customers. The customers have the right to tender suggestions in regard to the development and maintenance of the land.

- xi.** The property purchase plans bearing no. 10-27 were discontinued with effect from December 15, 1997 due to operational problems faced by PACL in running them. These facts have been judicially noticed by the Hon'ble High Court of Delhi in its order dated April 29, 1999 (in the matter of *S.D. Bhattacharya Vs. SEBI*) and as per the directions of the Hon'ble Delhi High Court of Delhi, PACL provided the customers covered under the said plan code no. 10-27 with an option to withdraw and to take refund/ return of their monies. The majority of the customers opted to withdraw from the plan and were refunded their monies and the affidavit has been filed before the Hon'ble Delhi High Court in this regard. Further, the press release dated November 26, 1997 was not a directive which was legally binding on PACL in any manner whatsoever.
- xii.** PACL has submitted the details of the active customers vide letter dated April 18, 2013 and also information about the customers who had applied for purchase of plots under different payment plans vide its various letters.
- xiii.** PACL only issues advertisements to furnish details of the company and its range of activities. The information regarding the plans of PACL are spread through word of mouth only. The 'rule book' was not promotional material and the same was merely used as an internal guideline for maintaining the procedure and the best practices method by which the business was to be conducted by the agents and field associates. The buy-back options, expected returns and aggregate expected returns are no longer

part of any property purchase schemes offered by PACL. These may find mention in the 'Rule Book' of 1996. The rule book is no longer updated to reflect the current policies of PACL. It is an archaic document and is no longer in force. Instead, PACL uses the book 'Pearls National Network' which is an internal training program manual for the agents and field associates of PACL. None of the circulars issued by PACL are addressed to customers, they are addressed to functionaries within PACL, including regional managers/ divisional managers/ field seniors, etc. Therefore, these cannot be termed as marketing document. It had certain packages for the purchase and development of agricultural land which are furnished to prospective customers to enable them to take an informed and conscious decision.

- xiv.** The details in the agreement cum application are not inconsistent with the actual payment plans being provided by PACL and the application forms are common for all the payment plans. The customer, while filling the application form, has to specify the plan name and number. There have been absolutely no instances where a customer, after opting for a certain payment plan has been forced by PACL to follow a different payment plan.
- xv.** On completion of tenure, the customer either retains the land or PACL attempts to facilitate sale of the developed land for the customer through its marketing services, if requested by the customer. It has also been said that the customers are not permitted to transfer any right, title or interest in the property before the execution of sale deeds. However, after the execution of the sale deeds, the purchasers are free to deal with the property as they deem fit and ownership comes to vest in them coupled with the possession.
- xvi.** The website of PACL was made functional from the year 2009 and since then it is under constant maintenance and upgradation. The allegation that the information on the website of PACL is an 'eyewash' is without any basis.
- xvii.** PACL uses agents to carry out its business. Depending on the years of experience, the agents are entitled to various designations. The agent in turn engages field associates who interact with the potential customers and explain the plans for purchase of land. As the business of PACL is propelled through word-of-mouth, it is important to incentivize the agents and field associates appropriately by way of commission. In the process, PACL often makes payment to the field associates directly as per the understanding with the agent in order to ensure that the field associates are not deprived of their commission, after deducting the requisite amount from the commission paid to

the relevant agents. The large amount of commission, reflected in the balance sheet not only constitutes the commissions paid to the agents/ field associates, but also other commissions paid in relation to the procurement of the land by PACL and sale of spaces in residential and commercial projects developed by PACL in the ordinary course of business.

The customer advances are mixture of two types of land link plans i.e. CDPP and IPP. On CDPP, it pays commission @ 10.50% to 12.50% of the total consideration paid by the customer depending upon the duration of the plans. In IPP, it pays commission for customer advance received in various years on an average finally comes between 6.6% to 10.25%. Its total customer advances as on March 31, 2012 is ₹ 14,331 crores, out of this amount ₹ 11,719 crores belong to 1st and 2nd year of customer advances for which commission rates are 35% and 6.5%. The amount of ₹ 4,182.14 crore include other items like pre-paid brokerage, pre-paid expenses, rent advance, etc. 90% of the PACL's revenue is from the sale of land, flats, commercial space etc. It has other business activities like sale of farm produce. It has provided the customer advances and commission data as on March 31, 2012. The total customer advance and the prepaid commission upto March 31, 2012 is ₹ 44,736.23 crores and ₹ 8,874.15 crores respectively. The calculation of percentage of prepaid commission over customer advances comes to 19.83% which is due to more weightage of 1st and 2nd year business where commission rates are 35% and 6.5% respectively. The commission paid upto March 31, 2012 is ₹ 7,893.80 crores.

xviii. The land is allotted to the customer in the State of his choice on the basis of the availability. In any event the plots of land available are very similar to each other, being mostly pre-development barren land acquired by PACL. The non-availability of land suitable for agriculture, in view of rapid urbanization is a challenge and this is being addressed through acquisition of land in States where the rate of urbanization is relatively lower. It has also been said that a person who makes substantial purchase of land, remits a significant amount and avails the development services, cannot be said to be finding it difficult to visit the plot of land so purchased.

For the convenience, peace of mind and the sense of security, PACL requires the execution of a Special Power of Attorney (hereinafter referred to as 'PoA') by the customers in favour of a representative of PACL. The attorney is tasked with the completion of several time-consuming formalities on behalf of the customer and this is an added feature in the bouquet of services being provided by PACL. This PoA is

executed to provide certain amount of flexibility to facilitate the execution of sale deeds, especially in cases where the customer is not residing in the same State where the plot is situated. PoA form is part of the booklet containing the application form and agreement. The customer is at full liberty to not to execute the PoA and to actually present himself for the execution of the agreement and for other formalities. Due to large number of customers, PACL has not maintained the list of customers who have opted not to execute the special PoA. Identifying these customers would be extremely resource intensive and time consuming exercise. All the customers are provided with the option of not executing a special PoA and are clearly informed about this option. PACL appoints an individual to go and execute sale deeds on behalf of the customers in a particular State for a particular period of time.

- xix.** The practice of entering joint sale deeds has been discontinued by PACL since the year 2000. The current application forms and agreements do not contain the clauses of joint sale deed. The customer may have undivided shares along with other customers in a certain plot of land. However, the right of each customer are recorded in separate sale deeds and not in 'joint sale deeds'. It is possible to achieve '**joint holdings**' of land through single sale deeds evidencing title of each customer. All sample sale deeds have an appendix which contains the schedule of property, map indicating boundaries and certificate evidencing no encumbrance. The plots are adequately described in the sale deeds in the schedules through written descriptions, description of the boundaries, survey numbers and/ or maps. Sale deed is registered in favour of the customer pertaining to his share in un-partitioned agricultural land and hence the plot allotted to him/ her is surrounded by other plots.

The clause relating to joint holdings with other customers has been inserted in the agreement keeping in mind the laws regarding land fragmentation as applicable in different parts of India. It has introduced the concept of symbolic possession in order to ensure that PACL is able to carry out developmental activities prior to handing over of actual possession of the plots to its customers, upon the expiry of the terms of the agreement. PACL holds a first charge over the land, as security for the pending installments and other amounts due under the agreement from the customer.

- xx.** PACL at all times maintains the list of active customers. It does not keep any record of the customers whose agreement tenures are over by virtue of expiry of tenure of the plan or termination by PACL or in case of opting out by the customers itself as practically it is not possible for PACL to maintain the data of all the customers since the

inception, more so for customers whose agreement tenure has expired. Therefore, the company has provided to SEBI list of active customers and those customers to whom land was allotted. If SEBI insists that the said information is pertinent, PACL would make best efforts for retrieving the details from old record and requested for reasonable time. PACL has customers from all over the country. Further, it has also been said that there is no necessity for PACL to maintain plan-wise data. PACL had submitted the year-wise funds mobilized under various plans. The increase in the amount of customer advances is a result of the cumulative effect of several concurrent property offerings schemes by PACL.

- xxi.** PACL has provided SEBI with all the information regarding the application forms, agreements and amendments thereto. If any insufficiency in data provided exists, including minor details, the same does not indicate that PACL is attempting to conceal any information or mislead SEBI. A chart showing all the relevant changes made in the sample application forms and agreements has also been submitted by it. Sample application forms and agreements which formed part of court records till 2011 were provided to SEBI on April 18, 2013, as these were dim, to make them legible highlighting was done in certain parts. The portions which could not be made legible by highlighting were overwritten. The legible/ clear copies as well as the typed copies of the agreements and application forms were again submitted to SEBI on May 06, 2013. As regards the corrections referred, the same were probably made and executed by both the parties at the time of execution.
- xxii.** PACL in order to discharge its obligations under the agreements, imposes certain reasonable restrictions on the customer's right to create encumbrance, alienate or transfer the property in question. As a service provider with experience in developing agricultural land, it is the prerogative of PACL to determine the modalities of development and maintenance of the land in accordance with the terms of the agreement. There is *consensus ad idem*, where full disclosure is made upfront to the potential customers. The customers have been informed of the composite nature of the contract, which not only carries with it the transfer of title of a piece of land, but also the development of land by PACL. The scope of the agreement is non-severable. The development and maintenance, for a certain period of time which is represented by the tenure of the agreement, of such land, forms an integral and conjoined service which is offered to the applicant. PACL is in better position than the customer to assess the local conditions and availability of resources, in order to make appropriate decisions

regarding the development and maintenance of the land. The encumbrance, alienation/ transfer of the property may give rise to third party rights on such land and/ or lead to repudiation of the agreement with PACL by such third party etc. leading to a situation where PACL's position may be compromised. As per Section 11 of the Transfer of Property Act, 1882, any restrictions on transfer imposed on the customer in PACL's agreement to sell are not enforceable under law. At most, a breach of such provisions could be construed to be breach of the contract with PACL. Further, the agreement to sell is not a registered document and hence any restrictions on alienation or transfer of the immovable property in the agreement to sell, is not a valid restriction under law.

- xxiii.** After the expiry of the tenure during which the development of the land takes place, the customer is free to retain and enjoy the developed land/ transfer it to third party for the purposes of transfer of land to the third party and the customer may avail the marketing services of PACL, free of any additional charges.
- xxiv.** PACL has started providing its customers with the option to self-develop the land from 2011. Prior to 2011, the business model of PACL did not permit self development of land by the customer. If the customers were developing all the plots, PACL would merely be engaged in the activities of land trading. However, the value proposition being offered by PACL lies in the development of the agricultural land, thereby increasing the potential sale price of the land manifold at the time of expiry of the agreement. The development charges forms a major part of the total consideration received from the customers, as the land initially is barren and a range of activities need to be carried out by PACL to make the land cultivable over the period of the plan which involves considerable amount of funds.
- xxv.** The civic facilities for agricultural operations have been developed for the common usage of the plot-owners and are not a property owned in absolute by the respective customers. As per the 'principle of commons', the ownership of such shared property is beyond 'individual', 'private' or 'exclusive' ownership. Its developmental activities catering to multiple plot owners are meant to develop and facilitate use of such essential common resources. All such facilities are freely available for use and enjoyment by the customer during the tenure of the agreement.
- xxvi.** PACL is an aggregator of large land banks and is in a position to fix the price of land units offered to their customers across the country at a uniform rate. It attempts to make purchases of similar land parcels (barren agricultural land) across all States and then carries out extensive development works across all its plots in an effort to raise the

productivity of the plots across the country to a uniform high standard. The valuation of the land when it is sold to the customer is based on the end product received by the customer upon expiry of the tenure and on the income that the customer can expect to generate from such developed land. With this, PACL is able to maintain a standard price for its plots of land.

- xxvii.** The application forms and agreements for the last few years provide the customers with an option to select the State. The cases where the location of the land is required to be changed, the prior consent of the customer is necessarily sought and taken in advance. Even if, there is a change in the location of the plot, the customer would have no cause for concern, as the land would be uniformly barren at the acquisition stage, and similar development activities would be carried out thereafter to deliver a uniform product of arable land, regardless of location.
- xxviii.** The title deeds pertaining to the sale of the plots would be kept in the safe custody of the trustee(s) appointed by PACL for proper record keeping. A certified copy of the said title deed is made available to the customer and he/ she is also informed about the details of the trustee with a liberty to verify the title deeds during normal working hours on any working day, on furnishing a written request, 15 days in advance. In case of installment payment plans it is imperative to keep the title deeds till the entire payment has been made to protect PACL against any payment defaults. The customer is free to take the original title deeds into his/ her own custody after the expiry of the agreement.
- xxix.** PACL pays all the government taxes and public dues during the tenure of the agreement on behalf of the customer, which is reimbursed by the customer on expiry of the tenure. The agreement as the one entered into by PACL with its customers is a consensual act in which the parties are free to settle on any terms as they please. Where a bargain in the form of legally sound contract has been entered into between two parties, SEBI being a regulatory authority has no *locus standi* to challenge the validity or question its authenticity. Each agreement between PACL and its customers (when the terms are complied with) is backed by the allotment of an identified plot of land and/ or sale deed. Each agreement, of varying development periods is genuine, backed by consideration for reciprocal promises and is not a subterfuge to defraud. SEBI cannot question the existence or adequacy of consideration or make it a subject of adverse inference against parties to a contract.

The authorised representative of noticee namely **Mr. Gurmeet Singh and Mr. Subrata Bhattacharya** also submitted additional written submissions during the personal hearing

on July 12, 2014, which were taken on record. In brief the written submission were as under:

- i. The company acquires large parcels of land preferably non-cultivable and waste land on ownership/ leasehold basis. The land is then sold to plot holders in varying sizes with a minimum of 150 sq. yds. The development work of land is undertaken on behalf of the plot owners for nominal charges. Once the lands are fully developed, the plots are sold/ transferred to the investors after the payments is complete. The transfer is affected to respective owners once the entire land is developed, as State laws prohibit transfer of fragmented agricultural land holdings.
- ii. The plot holders are then at liberty to sell the plot of land to any third party without recourse to the Company. The only formality that the plot holder is required to comply with is to obtain a 'No Objection Certificate' in respect of the said land in order to ensure that there are no out-standings.
- iii. While relying on two legal opinions, it has been argued that the business/ activities of PACL did not amount to dealing with 'securities' in the manner defined under the Securities Contract (Regulations) Act, 1956 and in any event, the nature of activity/ business did not fall within the purview and definition of CIS.
- iv. Mr. Gurmeet Singh and Mr. Subrata Bhattacharya were appointed as directors w.e.f. February 01, 2009. Prior to their joining PACL, they had conducted adequate due diligence and with their understanding these were able to reasonably conclude that the business of the Company was not covered within the purview of the CIS. The SCN dated June 14, 2013, does not disclose any involvement or complicity of the noticees in either sponsoring or in continuance of any CIS. Mr. Gurmeet Singh and Mr. Subrata Bhattacharya cannot be held responsible in any manner whatsoever. The shareholding of Mr. Gurmeet Singh has varied from 0.5% to 0.6% whereas Mr. Subrata Bhattacharya did not hold any share at any point of time. They did not have any pecuniary interest in the company and were appointed because of their expertise and skills. These were mere salaried directors of the company and cannot be held responsible.
- v. From the order of Hon'ble Supreme Court of India dated February 26, 2013, it is abundantly clear that SEBI shall pass orders in two phases i.e.
 - (i) whether the business of PACL falls within the purview of CIS or not; and depending on the out come
 - (ii) SEBI proceed to take further action in accordance with law.

It has also been argued that prior to taking any action penal or otherwise, SEBI has to first conclusively determine as to whether the activities/ business of the Company constitutes CIS.

- vi. Till the time SEBI does not come to a conclusion as to whether the activities/ business of PACL fall within the ambit of the definition of CIS, no examination can take place as to who are the persons responsible if at all for the sponsoring, running or continuance of the scheme. In order to fix responsibility on any person, it is incumbent that liberty be given to such person to meet the exact charges or role which can be attributed to such person in either sponsoring the scheme or the continuance thereof.
 - vii. For fixing liability of a director not only a specific role has to be attributed to these directors but it is also to be shown as to how these directors were connected with or were in charge of the conduct of the business of the Company. In this regard, reliance is placed on the order of Hon'ble Supreme Court of India in the matter of *National Small Industries Corporation Limited Vs. Harmeet Singh Paintal and Anrs.* [(2010) 3 SCC 330]. These have also relied upon the order of Hon'ble Securities Appellate Tribunal in the matter of *Ketan Parekh Vs. SEBI* [decided on July 14, 2006], *Vijay Remedies Vs. SEBI* [decided on February 11, 2005]
- The noticee namely **Mr. Gurnam Singh** vide his letter dated July 24, 2013 submitted that he was associated with PACL only for the period between January 10, 1998 and February 05, 2009. During the said period, he never sponsored or caused to sponsor or carried out any CIS. He has also argued that vague allegations have been leveled against him in the SCN dated June 14, 2013. Mr. Gurnam Singh, in his written submission dated July 01, 2014 stated that he is not aware as to when he was appointed and relieved as director of PACL. It has also been said that on receipt of the SCN from SEBI, he had called up PACL to enquire about his tenure as director. He is not aware about the financials of PACL and have no involvement/ knowledge about its business activity. Mr. Gurnam Singh also said that the earlier letter dated July 24, 2013 was forwarded by PACL to SEBI and he had only signed the letter that was drafted by PACL. Further, the lawyer representing him was engaged by PACL and he had never met the said lawyer.
 - **Mr. Nirmal Singh Bhangoo** vide his letter dated July 25, 2013 has submitted that he was associated with PACL for a short span of time i.e. from June 03, 1996 to February 03, 1998. He never sponsored or caused to be sponsored or carried out any CIS and was associated with PACL only in the capacity of Non-Executive Director and his role was

limited only to the extent of providing valuable inputs to the Board of Directors on the issues concerning real estate sector of the Country.

Mr. Nirmal Singh Bhangoo vide his written submissions dated June 23, 2014, submitted the details as asked during the personal hearing on May 15, 2014 and submitted that he had started his career by working as an agent for the Peerless General Finance Co. Limited. In the year 1983, he had promoted one PGF Limited and had worked as its Chairman cum Managing Director. It has also been said that due to his knowledge and experience with regard to agricultural land and real estate business, he was invited to join the board of PACL as an Advisor. Thereafter, during the period of 1996-1998, he was attached to PACL as an Advisor. The SCN has been wrongly issued to him, as he has ceased to be a director of PACL in the year 1998 i.e. prior to the coming into being of the CIS Regulations. Further, it has been said that apart from being associated with PGF Limited, he trades in real estate in his individual capacity by buying and selling properties. He draws salary from PGF Limited and also earns living from the income derived from such trading of property. As per the Income Tax Returns for the last three assessment years i.e. 2011-2012 to 2013-2014, his average yearly income is about ₹ 10-11 crores per annum.

It has also been said that he was neither a party to the proceedings before the Hon'ble Rajasthan High Court nor before the Hon'ble Supreme Court of India and as such he was not aware of the proceedings before the two courts. He was also not a party to the notices issued by SEBI on November 20, 1999 (sic) and December 10, 1999. Further, the SCN dated June 14, 2013, did not disclose any specific case against him. During his tenure in PACL, he was neither involved with the day to day management and affairs of the Company in any manner whatsoever nor has he sponsored or caused to be sponsored any CIS.

In order to hold a person vicariously liable as being a person who is either sponsored or caused to be sponsored any CIS, specific averments ought to be made against such person. He has relied upon the orders of the Hon'ble Supreme Court of India in the matter of *State of Haryana Vs. Brij Lal Mittal* [(1998) 5 SCC 343] wherein the Hon'ble Court inter alia has said that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a Company arises if at the material time he was in charge of and was also responsible to the Company for the conduct of its business. Similar view was taken by the Hon'ble Supreme Court of India in the matters of *S.M.S. Pharmaceuticals Limited Vs. Neeta*

Bhalla & Anrs. [(2005) 8 SCC 89] and *State of NCT of Delhi Vs. Rajiv Khurana* [(2010) 11 SCC 469].

- **Mr. Devinder Kumar Uppal**, vide his email dated February 03, 2014 submitted that he was associated with PACL as technical consultant for the period of 1998 to 2000. During his tenure as technical consultant, he did not attend any meeting of the Board of Directors, and have not been associated with any policy decision of PACL. Hence, he had no connection with any of the matters mentioned in the SCN and is not answerable for any of the acts of PACL done without his knowledge.
- **Mr. Joginder Tyger** vide his letter dated October 28, 2013 and March 15, 2014, has submitted that he joined PACL in the year 2006 and had resigned from the Board of Directors in the same year. During this period he had not attended any meetings of the Board of Directors and was not associated with any policy decision, transactions or monetary matters of PACL. He has no connection with any of the matters mentioned in the notice and is not answerable for any of the acts of PACL done without his knowledge and consent and requested for withdrawal of SCN.
- **PACL Customer Association** was not a party to whom the present SCN relates. However, for the reasons stated in the preceding paragraphs, it was also allowed to make its submissions before me. The submission of the Association vide its letter dated January 29, 2014, March 04, 2014 and written submissions dated June 04, 2014 are summarized hereunder:-
 - i. The Association has a strong support of customers and many members who have not joined the Association also take help and advice from it. The schemes helps middle class and lower middle class people to own a parcel of land is under the schemes of PACL, the customers can get agricultural land at a very reasonable price. The customer engages the Company for development of their land in view of the considerable infrastructure, manpower, technical know-how available to it to develop the land.
 - ii. Each plot of land, even where the plot is part of an undivided plot of larger land, is clearly identifiable by way of a schedule of property, description of the boundaries, survey numbers or a map. Once the allotment is carried out in favour of the Customer, the land is completely transferred to him/ her and PACL has no title/ right/ claim in the property.

- iii. PACL has been regularly and diligently allotting plots in favour of its customers as and when the customer is entitled for allotment. PACL also helps the customers who are interested in selling their plot in getting a prospective/ potential buyer. The Customers of PACL in general are happy and satisfied with the transactions in question and therefore their interest may be taken into consideration
- iv. The association has not received any complaint against PACL by any of its member, except some minor issues which have been resolved.
- v. Various transactions entered between the customers and PACL i.e. agreement, allotment letter and sale deed are legal transactions and they convey the proper and rightful title of the property in favour of the customers.
- vi. The Association is committed to work to safeguard and enforce the rights and claims of the customers, settle their grievances, mediate and settle the disputes with PACL, visit and watch the development of land, verify the genuineness of the title documents, giving suggestions on customer plot registration application, educate the customers regarding the brochure of PACL.
- vii. The transactions between the PACL and its customers are being examined by Justice K Swamidurai and their genuineness cannot be further examined by any authority. The agreement between PACL and its customers are purely individual and there is no requirement of any third party. If need be, the agreement between customer and PACL can be suitably modified in the interest of the customers.
- viii. There is no irregularity/ non compliance by PACL in the course of its business and therefore the interest of customers requires to be protected **by not disturbing the agreements executed by them.**
- ix. Prior to the appointment of Justice K. Swamidurai, advertisements were issued, letters were sent to the customers to the effect that as per their wish they could seek withdrawal or opt out of the scheme selected by them. Only 8 of the customers opted to withdraw from the scheme. The customers have confidence in the business activity of PACL.
- x. Any direction issued by SEBI should be made applicable to the agreements which are entered into after the date of final decision by SEBI in the present proceedings.
- xi. In view of the order dated December 21, 1999 of Hon'ble High Court of Rajasthan, staying the operation of Regulation 69 and 73 of the CIS Regulations in the Writ Petition filed by PACL, the customers are continuing to enter into agreements in various schemes and new customers were being inducted from time to time.

- xii.** In case, SEBI comes to a conclusion that the submission made by PACL are correct and valid in law and the transaction in question do not require any approval from SEBI, the Association would not be adversely affected and therefore they will have no submissions to make. However, in case SEBI takes up the view that certain steps were required to be taken by PACL which have not been taken, then SEBI may make its order operative prospectively from the date of such order i.e., the contract entered into after the final order passed by SEBI.
- xiii.** The customers have invested their hard earned money and they are getting the fruits of appreciation of the value of the land and they would prefer to continue with the agreements which were contracted by them from time to time.
- xiv.** It has requested to hold the transactions entered into by the customers with PACL is in accordance with law and enforceable by the members of the Association. If any irregularity is there in the transactions entered into, the same be regularized either unconditionally or on such reasonable terms as may be deemed necessary.
- xv.** It has also been said that the interest of the members of the Association and similarly situated customers deserves to be protected as they have bonafidely entered into the agreements with PACL and directions may be issued that agreements entered into till the date of decision in the present matter should be upheld as valid and should be protected till completion of all rights and liabilities are fulfilled.
- xvi.** It also requested that if it is held that any approvals were necessary, then the said approvals may be given retrospectively from the date the agreements. In the alternative, SEBI may make its order applicable in respect of agreements which will be entered into after the date of decision of SEBI and to declare that all agreements entered into till the date of the decision of SEBI shall remain valid, legal and enforceable by the customers.

CONSIDERATION OF ISSUES

- 31.** I have considered the SCN issued to PACL and the other noticees, the oral and written submissions made by PACL, the documents furnished by PACL and the material available on record. The main allegation as against PACL is that the plans/ schemes operated by it are in the nature of CIS and that PACL is offering these CISs without obtaining registration from SEBI for carrying on or launching such CISs in contravention of the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations read with Section 11AA of the SEBI Act. The directors of PACL, both present and past have

also been alleged to be responsible for the conduct of the business of PACL which is in violation of the aforesaid provisions.

32. Before proceeding with the merits of the case, let me address the preliminary objection taken by PACL, that the business of PACL cannot be regulated by SEBI as it is not relating to any 'securities' as defined in Section 2(h) of the Securities Contract (Regulation) Act, 1956. It has been argued that the SEBI Act and the regulations made thereunder deal with securities which are marketable on securities market and relates only to movable assets such as shares, bonds, derivatives, units of mutual fund scheme, etc. and the same can never relate to the immovable assets. The sale/ title deeds transferring the plots of land, the development and maintenance agreements cannot be considered to be 'securities' as these are not capable of being marketed on any stock exchange or other securities market. It has been said that such documents issued to the customers are not instruments deriving their value from the underlying assets. The agreements executed by PACL are with regard to immovable assets and the term 'units' used by it refers to fixed size of plot of land, such documents can neither be considered to be movable assets nor are they capable of being listed/ traded on the stock exchanges. PACL has also argued that CIS Regulations are not intended to regulate the sale and purchase of land. The entry 18 of List II under the 7th Schedule of the Constitution of India read with Article 246(3) thereof (which gives the State, the exclusive powers to legislate over all matters enumerated under List II), demonstrates that the power to make laws relating to land (especially agricultural land), lies with the State. The extent to which SEBI and CIS Regulations seek to regulate PACL's arrangements which involve transfer of agricultural land to the customers by PACL and the development of such lands, are *ultra vires* the Constitution of India. While making such submission, the counsel appearing for PACL also relied upon the order of Hon'ble Bombay High Court in the matter of *Norman J. Hamilton & Anrs. Vs. Umedbhai S. Patel & Ors.* [1979 (81) BOMLR 340].

I have considered such contentions. Before proceeding, the relevant provisions of the SEBI Act are required to be discussed in brief. Section 11(1) of the SEBI Act and its preamble spell out the duty of SEBI to protect the interests of investors in securities, to promote the development of securities market, to regulate the securities market. Section 11(2)(c) of the SEBI Act empowers SEBI to *inter alia* register and regulate the working of CISs. Section 11AA of the SEBI Act provides the definition of 'collective investment scheme'. In terms of Section 12(1B) of the SEBI Act, 1992, no 'person' shall sponsor or

cause to be sponsored or cause to be carried on a CIS unless he obtains a certificate of registration from the Board in accordance with the Regulations. I note that the word 'securities' as defined in Section 2(1)(i) of the SEBI Act read with Section 2(h)(ib) of the Securities Contracts (Regulation) Act, 1956, includes '*units or any other instrument*' issued by any 'collective investment scheme' to the investors in such schemes.

SEBI has framed the CIS Regulations to regulate the activities of CISs, in exercise of the powers conferred under Sections 30 and 11 of the SEBI Act. Regulation 3 of the CIS Regulations provides that no person other than a Collective Investment Management Company which has obtained a certificate under the said regulations shall carry on or sponsor or launch a CIS. Therefore, the launching/ floating any 'collective investment scheme' by any person without obtaining a certificate of registration in terms of the provisions of the CIS Regulations is in contravention of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. The SCN, has alleged that the schemes/ plan of PACL are *prima facie* in the nature of CIS, however, it has not complied with the applicable provisions of SEBI Act and CIS Regulations. In view of the above, the arguments of PACL are without any merit.

In addition to the above, I refer to the judgment of Hon'ble High Court of Punjab and Haryana in the matter of *P.G.F. Limited Vs. Union of India & Anrs.* [MANU/PH/0314/2004], wherein, under similar facts and circumstances as that of present case, the Hon'ble High Court held that the Section 11AA and CIS Regulations were intended for 'investor protection' and the same falls within the residuary clause i.e., Entry 97 of the Union List under the 7th Schedule of the Constitution of India. The relevant extract of order has been brought out below:

"90. The contention of the learned counsel for the petitioners, to the effect, that the activity of the PGFL i.e. sale and purchase of agricultural land and/ or development of agricultural land cannot be regulated by a legislation enacted by Parliament, as it covers a subject enumerated under the State List, is in our view based on a misconceived foundation. The pith and substance rule is relatable to the objects and reasons of a legislation, and not to the activities of a party. The activities of a party are totally irrelevant, to the applicability, of the pith and substance rule. Stated in other words, while examining the issue of legislative jurisdiction, it is the pith and substance of the legislation, and not the pith and substance of the activities of a party, which are relevant. 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 quarry, 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. According to the decision rendered by

the Apex Court in McDowell & Co. case (supra) an incidental trenching, beyond the competence of the concerned legislating body, does not amount to encroaching upon the field reserved for the other body. It will also be relevant to note that in D.H. Nazareth's case (supra) the Supreme Court repelled a contention, similar to the one raised in the instant case, by holding that the Gift Tax Act, 1958 did not transgress into the subject matter covered by Entry 18 of the State List, as the object of the legislation was levy of gift tax i.e., an object which had no relevance to the aforesaid entry. The same position was expressed by the Apex Court in respect of Entry 18 of the State List in Harbhajan Singh Dhillon's case (supra) wherein it was concluded that Entry 18 of the State List was not relatable to the pith and substance of the Wealth Tax Act, 1957. It would be pertinent to mention, that in both the cases referred to above, as is clear from the factual/contextual narration recorded above (in reference to the aforesaid two cases), the legislations in question incidentally trespassed into the subject-matter covered by Entry 18 of the State List. 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.

91. For the same reasons, as have been noticed hereinabove (in respect to Entry 18 of the State List), Entries 82, 86, 87 and 88 of the Union List and Entries 6 and 7 of the Concurrent List, which were relied upon by the learned counsel for the petitioners, would be irrelevant for the determination of the issue in hand.

92. The contention of the learned counsel for the respondent to the effect, that the subject of the legislation in question falls within the residuary clause i.e., Entry 97 of the Union List, in our view merits acceptance. We have concluded, hereinabove, that the pith and substance of the Legislature in question does not fall under the subject covered by Entry 18 of the State List. It is not the case of the learned counsel for the petitioners that the subject of "investor protection" falls in any other Entry under the State List. Therefore, in view of the legal position laid down by the Supreme Court in the decision rendered in Harbhajan Singh Dhillon's case (supra), Kartar Singh's case (supra) and Naga Peoples Movement of Human Rights case (supra), namely, that in case the subject-matter of legislation does not fall in any entry under the State List, Parliament alone will have the authority to legislate thereon. Since no Entry under the State List and the Concurrent List in the Seventh Schedule of the Constitution of India, relates to the subject of "investor protection", we find the ascertainment on behalf of respondent No. 1, to the effect that Parliament had the right to legislate on the subject in hand, under Article 248 of the Constitution of India, read with Entry 97 of the Union List in the Seventh Schedule of the Constitution, because Entries 1 to 96 of the Union List also do not cover the instant subject of legislation.

93. In view of the conclusions recorded hereinabove, we find no merit in the contention of the learned counsel for the PGFL on the issue of vires of Section 11AA of the SEBI Act." **[Emphasis supplied]**

The petitioners in the above referred matter had challenged the findings of Hon'ble High Court before the Hon'ble Supreme Court of India by filing a civil appeal. Hon'ble Supreme Court while deciding the appeal in the matter of *P.G.F. Limited & Ors. Vs. Union of India and Anrs.* [(2013) AIR SCW 2420] observed as under:

"43. By no stretch of imagination the above factors, which weighed with the Parliament to introduce Section 11AA can be held to be done with a view to affect any particular category of business activity much less the activity of agriculture... .. In the light of our above conclusions on this ground it will have to be held that Section 11AA is a valid provision, not suffering from any infirmity, as it does not intrude into the specific activities of sale of agricultural land and its development. In other words,

there is no scope to apply Entry 18 of List II of Seventh Schedule in order to strike down the said provision on the ground of legislative competence.

...

...

53. We, therefore, hold that Section 11AA of the SEBI Act is constitutionally valid. We also hold ... the sale and development of agricultural land squarely falls within the definition of collective investment scheme under Section 2(ba) read along with Section 11AA (ii) of the SEBI Act and consequently the order of the second respondent dated 06.12.2002 is perfectly justified and there is no scope to interfere with the same. [Emphasis supplied]

In view of the above, it is clear that PACL would be amenable to the jurisdiction of SEBI, if it is determined that its schemes are in nature of CIS as defined under Section 11AA of the SEBI Act.

33. Having considered the preliminary objections, now, I proceed further to consider the primary issue that arises in the present matter i.e., Whether PACL is operating a CIS without obtaining registration from SEBI?
34. **Whether PACL is operating a CIS without obtaining registration from SEBI?**

- a. I note that PACL was initially incorporated as Gurwant Agrotech Limited on February 13, 1996. The name was changed to Pearls Agrotech Corporation Limited and then to PACL India Limited. Finally on October 12, 2011, the name of the company was changed to the present name i.e. PACL Limited. As per the Memorandum of Association of PACL, the main objects of the company, *inter-alia*, are as under:

"... ..

2. To act as agents for purchasing, selling and letting on hire, land whether agricultural or otherwise and houses whether multistoreyed commercial land/ or residential buildings on commission basis and to execute the business in joint ventures with any companies or any other agency in India or abroad.

... ..

5. To purchase, take on lease or otherwise acquire any land (including waste land, barren land, etc.) or plantations of afforestation estates and to work, develop and to maintain the same on their own and on behalf of others and to subdivide the land into units or marketable lots or in any manner whatsoever either in its prepared or raw state and to sell, lease out or otherwise dispose of any land (including waste land or barren land etc.) developed lands, estates to any persons including tridical persons, firms, companies in any quantum or in any marketable lots or units or in any manner whatsoever.

... ..

7. To acquire, construct, develop, utilize, grow, plant, cultivate, produce and to exploit any estate or land, know-how for agriculture, floriculture, plantation, drip irrigation, tissue culture, sericulture and farming purposes and industrial projects advertisement to carry on business as producers, planters, growers, cultivators, traders, dealers and sellers, importers, contract farmers, agents, consultants, store keepers and distributors, importers and exporters for any ordinary or specialized floricultural, agricultural, horticultural, tissue-cultural, sericulture dairies and agro industrial products and commodities, including flowers, fruits, orchards, vegetables, food grains, pulses, seeds, cash crops,

cereal products, flora, ornamental plants, herbs, medicinal aromatic and other plants, producers whatsoever and fishing and manufacturer or drinks, aerated mineral water, alcoholic or otherwise including beverages produced from such products or otherwise.

*8. To carry on the business of cultivators, growers, crop developer, manufacturers, estate owners, planters, millers, grinders, rollers, processors, cold stores, canners and preserves and dealers of food grains live stock and other agricultural, dairy horticulture and poultry products, vegetables, herbs, medicines, flowers, drinks, fluids, gases and fresh and preservable products.
... .."*

A reading of the main, the incidental or ancillary objects and other objects as stated in the Memorandum of Association shows that the same are very vast and covers almost all kinds of business activities. As far as the present case is concerned, I note that PACL in its reply has submitted that its business is similar to a builder/ developer of a property i.e., buying and selling of the agricultural land and development of such land into cultivable one. PACL has strenuously argued that it is not engaged in the business of CIS.

- b. PACL has further submitted that it acquires the barren land through its agents/ representatives from the land owners on payment of the due consideration. It has an admitted arrangement/ understanding with its associate companies by which it exercises the exclusive rights to develop the land owned by such associate companies and require them to transfer such land to its customers as and when requested. According to PACL, either on its own or through the aforesaid arrangement/ understanding with its associate companies, it has ownership/ control over the land banks in several States across India.

It has been said by PACL that all the business transactions between PACL and its customers are by way of independent agreements for purchase of land/ plot and development of the same during the tenure of the agreements. Once the allotment is carried out in favour of the customer, the land is completely transferred to the customer and PACL has no title/ right/ claim in the property. As per the submissions of PACL, it transfers the land by executing the sale deeds in favour of its customers in conformity with the relevant provisions of the Transfer of Property Act, 1882, Indian Stamp Act, 1899 and Indian Registration Act, 1908. It has also been said that each plot of land, even where the plot is part of an undivided plot of larger land, is clearly identified by way of a schedule of property, a description of the boundaries, survey numbers or a map. The only right that PACL retains is the right to enter the property in order to develop it, if the customer requests PACL.

According to PACL, the customers engage it for the development of land in view of its infrastructure, manpower, technical know-how to develop the land and the confidence due to the track record of PACL in providing highly productive and profitable developed plots of land as per the terms of the agreements. PACL *inter alia* puts in considerable efforts i.e. by renewing the top soil layer, testing the soil and water that drains over such soil, using a mix of fertilizers suitable for the soil and crops, mulching and planting the right mix of crops over a few crop cycles in order to ensure that the soil regains sufficient nutrients to support agriculture, implementing various irrigation methods depending on the water requirement, arranging electricity to the land/ plots in order to ensure that the common facilities which run on electricity can be utilized properly, etc. PACL has argued that such development activities require considerable amount of time and on the basis of it, the tenure of the agreements are entered into with the customers. On expiry of the tenure, during which development of the land takes place, the customer is free to either retain and enjoy the developed land or transfer it to a third party. For the purpose of transfer of land to a third party, the customer can avail the marketing services of PACL for identifying a third party purchaser, free of any additional charges.

c. Let me examine *in seriatim* the schemes/ plans operated by PACL, the documents executed by PACL to its customers (like application form, agreement, registration letter, allotment letter, receipt, special power of attorney, sale deed, etc.), the complete case file/ set of documents of 500 customers selected on sample basis, the reports submitted by Justice K. Swamidurai, the sale deeds executed by PACL, etc.

d. **Schemes/ Plans operated by PACL:** I note that PACL is continuing with its business activity since the year 1996. It has floated various schemes/ plans as detailed hereunder:

Table - A

S. No.	Name/ Plan code	Date of inception	Date of closure
1	Plan Code 1 to 3	30/05/1996	30/09/2002
2	Plan Code 4 to 9	30/05/1996	30/09/2002
3	Plan Code 10 to 27	30/05/1996	15/12/1997
4	Plan Code 28 to 33	01/10/2002	-
5	Plan Code 34 to 41	01/10/2002	-
6	Plan Code 42 to 45	01/03/2007	-
7	Plan Code 46 to 49	01/09/2007	-
8	Plan Code 50 to 55	01/09/2007	-
9	Plan Code 56 to 59	01/05/2009	-
10	Plan Code 60 to 67	01/05/2009	-

The main difference in the schemes/ plans floated by PACL was with regard to the tenure of the scheme, plot size and the returns. It is observed that plans with codes 1 to 27 had provided for accidental benefits and the buy back option to the customers.

- The the plan with codes 10 to 27 of PACL had provided for a single installment regular income scheme as illustrated hereunder on sample basis:

Table - B

Single Installment Regular Income Scheme No. 11

Land unit size in sq. yards	Total Investment	Regular Returns After						Amount payable under buy back option (expected returns)	Aggregate expected return during the entire period	Accidental benefits
		1st YR.	2nd YR.	3rd YR.	4th YR.	5th YR.	6th YR.			
150	5,000	-	715	715	715	715	715	7,000	10,575	7,500
300	10,000	-	1,430	1,430	1,430	1,430	1,430	14,000	21,150	15,000
... ..										

I note from the above that there is a mention about the regular returns. However, PACL in its reply dated July 26, 2013, has denied giving such regular returns and informed that the plan codes 10 to 27 were discontinued due to operational difficulty in running such plans.

In this regard, I observe that PACL had provided its customers under plan codes 10 to 27, with an option to withdraw and to take refund/ return of their monies as per the directions of Hon'ble High Court of Delhi. As per PACL vide its reply dated July 26, 2013, the majority of the customers had opted to withdraw from the plans and were accordingly refunded their monies. However, I note that PACL vide its letter dated December 13, 1999, had submitted that 8 out of a total of 1,941 customers had opted to withdraw from the schemes who have been repaid. The above two submissions of PACL are contrary to each other. I observe from the circular bearing no. 83/97 dated November 22, 1997 of PACL that the following was mentioned 'in view of some proposed regulation, scheme no. 10 to 27 were withdrawn w.e.f. December 15, 1997' for discontinuing the said plans.

At this stage, I note that Government of India vide its press release dated November 18, 1997, had notified its decision that schemes through which instruments such as agro bonds, plantation bonds etc, issued by the entities would be treated as schemes under the provisions of SEBI Act and directed SEBI to formulate regulations for the purposes of regulating such CISs. Thereafter, SEBI also came out with a press release dated November 26, 1997, *inter alia*, stating that regulations for CIS are under preparation and

till they are framed and finalized, no person can sponsor any new CIS. It was further notified vide the said press release that the persons desirous of availing the benefit of proviso to Section 12(1B) of the SEBI Act, may send such information within 21 days. The discontinuing of the plan code 10 to 27 by PACL appears to be an outcome of such press releases.

With respect to the above allegation in the SCN, I have seen that PACL has taken an argument that the press release by SEBI was not a directive which was legally binding on PACL. This argument is not at all valid as those press releases were issued by the Government of India for the purposes of regulating CISs and for formulating regulations for regulating CIS. These press releases would apply all the entities that offered plans in the nature of CISs. PACL would also be covered under such stipulations if its activity was in the nature of CIS. Further, the fact that PACL discontinued plans with codes 10-27 because of 'some proposed regulation' could show that the PACL apprehended that its plans could be termed CIS requiring registration from SEBI.

- It is observed that PACL under the other plan code 46 to 67 had started providing the bifurcation of 'consideration' element of the schemes into two parts i.e., one towards cost of plot, stamp duty, registration fee, miscellaneous expenses and another towards the development charges. Further vide circular dated July 16, 2010, all the prevailing plans, i.e. plan code 28 to 67 were re-classified and the consideration was bifurcated into two i.e. the cost of plot and development charges. The expected value of land at the end of the agreement period was also revised by PACL for all its plans. Such bifurcation of consideration has been illustrated below:

Table - C

Installment Payment Plan (Development Agreement term 72 months) Plan Code 050								
Plot size (in sq. yards)	Consideration (₹)			Installment (₹)				
	towards plot, stamp duty, registration	Development & charges	Total	Yearly (6)	Half Yearly (12)	Quarterly (24)	Monthly (72)	Projected/ Expected value
500	20,000	30,000	50,000	8,335	4,290	2,175	735	77,100
1,000	40,000	60,000	1,00,000	16,670	8,580	4,350	1,470	1,54,100
... ..								

Table - D

Cash Down Payment Plan (Development Agreement term 72 Months) Plan Code 060				
Plot size (in sq. ft.)	Cost of plot (₹)	Development & other charges (₹)	Total cost	Projected/ Expected plot value on expiry of agreement term
9,000	72,000	1,28,000	2,00,000	4,13,700
18,000	1,44,000	2,56,000	4,00,000	8,27,400

- From the above, I note that out of the total consideration, 36% of the consideration is taken towards cost of the plot and 64% was towards the development and other charges for the existing plans. In certain instances, the consideration towards cost of plot is 40% and 60% is towards the development and other charges. Thus, it can be seen that the cost of development of land is more than the cost of the plot itself. I note that as regards development, PACL in its reply dated July 26, 2013, has submitted that it puts considerable amount of effort for ensuring the transformation of the barren land by testing the soil, removing the top soil layer if found toxic, providing irrigation facilities, electricity, fertilizers, mulching and planting the right mix of crops over a few crop cycles, etc. In my view, the methods stated by PACL are normal activities which are done for making the land irrigable and the same definitely cannot exceed the cost of plot itself as is happening in the present case.

e. **Rule Book:** PACL in its reply dated July 26, 2013, has submitted that it uses **no promotional material and all the information regarding the plans are spread through word of mouth only**. Pursuant to the order of the Hon'ble Supreme Court, during the course of the investigation by SEBI, PACL submitted that it had adopted a rule book in the meeting of its board held on May 30, 1996, for inviting investments from the public in the land related schemes. It was said that the rule book contains all business plan and guidelines of PACL and the same is not given to the customer. They also submitted that a total of 8 circulars have been issued subsequent to the issue of rule book pertaining to the business plan and all the schemes/ plans that have been floated by PACL were based on the said rule book and the circulars and the rule book were still in force. Further, it was said that the rule book is not a promotional material but was only maintained for articulating the procedure and the best practices method by which the business was to be conducted by the agents and field associates. Rule book is akin to a manual containing the standard operating procedure and is issued to each agent/ field associates. However, PACL in its reply dated July 26, 2014 to the SCN, has stated that rule book is no longer the reference document for agents and field associates and as such it is not updated to reflect the current policies of PACL. Further, since the rule book was archaic, a book namely Pearls National Network (hereinafter referred to as 'PNN') is being used as an internal training program manual for the agents and field associates of PACL. It is being used to train agents regarding interaction with customers and to consummate the property purchase transactions.

I note that until the filing of reply to the SCN, PACL had always referred to the rule book and it did not mention anything about 'PNN'. It is also noted that PACL had not mentioned anywhere during the course of examination by SEBI (pursuant to the order of Hon'ble Supreme Court) that the rule book is not in force rather it always talked about the rule book and circulars issued from time to time. I note the mention of PNN in its circular dated November 24, 2005. However, PACL has not submitted the so-called PNN (Pearls National Network) book to SEBI till date. PACL is thus, contradicting itself when it comes to the promotional material, which they call it 'manual containing the standard operating procedure and is issued to each agent/ field associates'. Viewed from another angle, the so called manual coupled with its articulation by the agents is nothing but a promotional material. At this juncture, let me consider the relevant portion of the sample of the 'rule book' which *inter alia* contains the following clauses:

"3. METHODOLOGY

(a) Agro Farm

The Company generally acquires land on long term lease or on ownership basis for and on behalf of unit holders. Preference is given for waste land development The company applies hightech means to retrieve and develop the waste lands at a very faster pace.

... ..

(d) Security

Ownership of land unit is transferred in the name of the unit holder on the completion of payment schedule as per the applicable scheme. The necessary paper work, legal documents will be completed within a short span of time. Since the unit holder is the owner of the land unit, the investment is fully secured.

... ..

7. HIGHLIGHTS OF THE SCHEMES OFFERED BY PEARLS

(a) Higher Returns

A unique features of these schemes are that the longer you invest/ wait the better higher benefits you get from these schemes i.e. your income grows in higher proportions as every year passes.

(b) Fully Secured

The land ownership is transferred in your name within a reasonable period generally not exceeding 270 days. It safeguards your interests and as such the investment is fully secured.

... ..

(e) Buy Back Option

The Company offers buy back option at the end of the term opted by the unit holders on the prices notified under the aggregate expected return column under various tables which are subject to change without prior notice by the Company under the relevant scheme(s). The unit holder has the option to sell off his unit holdings back to the Company on expiry of the term. However, it is not obligatory for the unit holder to sell the units to the Company.

Unit holder has to notify 180 days before the expiry of the agreement date for exercising the buy back option.

... ..

(g) Joint Holding

Since the land unit will be smaller in size and the land laws prohibit land's division into smaller units or alternatively its division into smaller sizes may not be otherwise feasible or practicable, the ownership of the land will be transferred to the Applicant/Land unit holder in joint holdings out of the larger land units as may be permissible/ feasible/ practicable (as the case maybe).

(h) Regular Income

The Company offers schemes which have provision of annual payment of returns from the end of second year onwards. On expiry of the term the unit holder has the option to sell the unit under the buy back option whereby he gets the higher value for the land until vis-a-vis the standing plants/ trees.

... ..

14. LAND UNIT HOLDER'S OWNERSHIP OF PROPERTY

The ownership of land unit holder shall be limited to only the schedule property, the saplings, plants, trees, crops thereon, the produce out of it to the extent of aggregate expected return. The land unit holder will not have any claim over any permanent, semipermanent or moveable things situated whether inside or outside the scheduled property.

15. EXTENSION OF AGREEMENT

The agreement can be extended for further period(s) on mutually agreed terms and conditions and in accordance with the rules then prevailing.

16. ASSURANCE TO LAND UNIT HOLDER

PACL assures the land unit holder that even in the event of any shortfall in crop contrary to the expectation PACL will make good such shortfall from its own share of produce.

... ..

27. CUSTODY OF ORIGINAL TITLE DEED

The original title deeds shall be kept in safe custody of the Trustee(s) appointed by the company for the said purpose. The certified copy of the title deed shall be supplied to the unit holder through the Trustee(s). The unit holder shall be at liberty to verify and see the original title document if they so desire during the normal working hours on working days except sundays and public holidays. The name and address of the Trustee(s) shall be notified separately.

28. BUY BACK OPTION

At the end of the scheme the unit holder has the option to sell off the unit to the Company at the price notified by the company from time to time. However, it is not obligatory for the unit holder to sell the land unit(s) to the Company, he is free to sell elsewhere after obtaining NO OBJECTION and NO DUES CERTIFICATES from the company.

29. BUY BACK PROCEDURE

The unit holder must make an application for selling/dispersing of his unit under the buy back option at the Company's specified price along with all original receipts, original title papers, original unit registration letter and such other prescribed documents like deeds, Will, undertakings, discharge receipts, agreements, GPAs/SPAs etc. Where the original title paper are lying under the custody of trustees, a letter addressed to trustees for delivery of title papers should be appended with the application. The land unit holders opting for buy back scheme shall give a notice in writing atleast 180 days before the expiry of the term. The Company shall not be liable for any interest or damages, if the option is not being exercised within the stipulated time. The payment of the buy back amount is linked with transfer of the ownership of units in favour of the Company or the buy back agency (ies)/ nominee(s).

30. GENERAL TERMS AND CONDITIONS

... ..

(f) Unit holder's receipt/ registration letter duly discharged alongwith all such papers, documents, deeds, arrangements, GPA's/ SPA's/ undertakings/ will etc. shall be submitted to the company at least 30 days before the expiry of the term.

... ..

(o) The company will have first charge on the units on account of its services /development charges and for other incidental expenses incurred by the company, the unit cannot be sold, assigned, mortgaged, pledged or alienated without obtaining NO OBJECTION/ NO DUES CERTIFICATE from the company.

... ..

31. NOTIFICATION

The management reserves the right to discontinue or amend/modify or alter any of the rules/regulations and investment plans/ schemes and introduce new plans/schemes table(s) at any time at its sole discretion with or without further notice.

32. ARBITRATION

In case of any dispute the decision of the Chairman/Managing Director of the company or any other person(s) nominated by him shall be final and shall have a legal binding on the applicant /unit holder, who shall have not objection to the appointment of any officer(s) of the company as the sole arbitrator / arbitrators."

Having considered the relevant clauses quoted from the rule book as above, one can say that the same is addressed to none other than the prospective customers and was used with the sole aim of soliciting/ inviting investments. In view of the same, I find that the rule book as alleged in the SCN is nothing but promotional material either in its own right or coupled with the further action of agents in verbally canvassing the prospective customers and the contention of the noticees that it only contain the guidelines for business plans and the standard operating procedure is incorrect.

f. Analysis of various documents sought/ submitted by PACL during the proceedings: While proceeding further, it is observed that in order to become a customer of PACL, an applicant has to execute various documents including application form, agreement, registration letter, allotment letter, special power of attorney (SPA), sale deed, etc. I observe that the application form and agreement, has been used for all its prevailing plans.

PACL during the course of investigation has submitted 5 samples of the application form cum agreements. PACL has claimed to have submitted the samples which were filed by them before the Hon'ble High Court, the Hon'ble Supreme Court of India and also a sample of an existing agreement. The amendments made in the application form cum agreements from time to time, I note, have not been clearly highlighted in the sample agreements provided by PACL. It is also informed that the original application form cum agreements of such samples are not available with the company and hence the copies of such documents forming part of the court records have been provided to SEBI.

I note that the application form cum agreements as provided by PACL does not mention the dates as to when these were made applicable, there were certain over-writings and corrections and most of the pages of these are not legible. I note that PACL in its reply has stated that sample application forms and agreements submitted were dim and to make them legible, highlighting was done in certain parts. Further, where certain parts could not be made legible by highlighting, they had overwritten the terms of the clauses to make them legible. They also said that such corrections were probably made and executed by both the parties at the time of execution. As per the submission of PACL, the application form has a column where the plan number and name of the plan is to be filled in order to identify which plan is taken by a particular customer. After submitting the application form and agreement, the customers/ investors get himself registered with the company. Thereafter, a registration letter is issued to the customer/ investor incorporating various details about the plan, installments, nominee, etc. Pursuant to these, allotment letters are issued which contains the details of the property such as its location/ place and area. The documents referred by PACL need to be examined in the light of the submissions made.

To begin with, let me take up the samples of the documents such as application form, agreement, registration letter, allotment letter, etc. from the 500 complete case files as submitted by PACL vide its letter dated April 04, 2014, pursuant to the personal hearing held on February 04, 2014 and February 05, 2014. I would like to give the detailed analysis of two sets of documents belonging to two different customers, out of the 500 samples mentioned above. Firstly, I deal with the set of documents of a particular customer, named Ms. Agrahari Kusumlata R., who is a resident of Mumbai and has submitted the application on December 31, 2001. The second sample which I am considering is that of Ms. Suraj Pal Singh, a resident of Hathras, Uttar Pradesh who has submitted the application on November 29, 2004:

A. the first document in the sets contains the 'application form' which has the details such as the name and father's name of the applicant, address, plan opted, payment details, etc. I note that it is a pre-printed document which contains the following clause:

"I/We hereby apply to you for allotment of plot(s) of agricultural land and for development and maintenance of the same.

...

GENERAL TERMS AND CONDITIONS

... ..

2. The land shall be allotted in the name of Customer, in the case of Cash Down Payment Plans, after receipt of full payment within a reasonable period generally not exceeding 270 days,

and in the case of Installment Payment plans within a reasonable period generally not exceeding 90 days after the final receipt of 50% of total amount of installments. Subject to foregoing, the land ownership would be ordinarily transferred in the name of Customer within a reasonable period after allotment.

... ..

3. In case of Installment Payment Plans, if Customer makes a default by not paying one or more installments for a period of 12 consecutive months from the due date, such default shall be treated as Breach of Agreement.

A. If such breach occurs before allotment of plot(s), the payments received under Plan before the allotment shall be refundable after the expiry of 12 months from the due date of last installment only on furnishing specific written request therefore by the Customer, after deducting 6.25% of total consideration comprising various costs and other incidental expenses, if any, and other incidental expenses, if any, and shall be subject to the following terms and conditions.

... ..

B. In case of Installment Payment Plans, if such breach occurs after the allotment of the said property, PACL shall be entitled to appropriate 20% of total consideration for cost development charges and all other expenses incidental thereto and that PACL shall have first charge on plot for its dues. Where, however, breach occurs after registration of sale deed, PACL shall be entitled to recover, in addition to the aforesaid 20%, the balance amount, if any, of original land cost outstanding from him together with simple interest @ 15% per annum and liquidated damages @5% per annum for the delayed payments, subject to the specification that PACL shall have first charge on the said property for its dues.

... ..

5. Under Cash Down Payment Plans the Customer(s) has the facility to opt out before the allotment of said property in his/ her favour. This option can be exercised by the Customer(s) by submitting a specific written request to PACL to that effect. The payments received under said plan shall be refundable immediately to Customer(s) after deducting 20% of Consideration comprising various costs and other incidental expenses and shall be subject to the following terms and conditions:

a. 20% of consideration shall be adjusted towards cost and other incidental expenses.

... ..

6. If Customer(s) after duly subscribing to any Plan or Plans of PACL, fails or refuses to submit necessary documents papers, photographs/ to complete the necessary formalities and execute the documents required for the purposes of effective transfer and maintenance of his/ her/ their Plot(s) by PACL the same shall be construed as a case of opting out. ... PACL shall be entitled to invoke the terms of the aforesaid and appropriate 20% of the Consideration, comprising various costs and incidental expenses. PACL shall give 60 days notice to the concerned customer(s) for compliance, before his/her/ their case is treated as a case of opting out

... ..

... ..

11. The Customer shall be the owner-in-possession of the said property. The possession of the said property shall rest in the hands of PACL for the limited purpose of developing, and/or, wherever considered appropriate by PACL for cultivating raising crops, trees,

...

13. The Customer has the right to retain or sell the said property as he/ she may deem fit on expiry of the tenure of this agreement. To facilitate easy liquidity, PACL provides to Customer(s) the marketing services for sale of developed plots. In case Customer decides to avail PACL's aforesaid services, he/ she must notify PACL to that effect at least 180 days before the expiry of period of the agreement. The sale can be made only at the end of the tenure of this agreement at such price as may mutually be agreed upon.

Customer must submit photocopies/ originals of the following/ all relevant documents to Corporate Office of PACL at least 30 days before the completion of the term:

(i) A letter addressed to the trustees(s) for delivering the title papers

(ii) Receipt (s) (photocopy)

(iii) Certified copy of title deeds/ papers (photocopy)

(iv) Registration letter (photocopy)

(v) All other documents in original viz: Deeds, Wills, undertakings, Discharged receipts, Agreements SPAs etc. as applicable from time to time.

... ..

15. The management of PACL reserves the right to discontinue/ change/ amend/ modify or after prospectively any of the rules/ regulations and plans and introduce new plans at any time at its sole discretion with or without any notice."

From the above, I note that PACL offers two kinds of plans i.e. CDPP (cash down payment plan) and IPP (installment payment plan). As per the agreement, the customer has an option to choose from the aforesaid two plans. Under the CDPP plan, the land is allotted to the customers within a period, generally not exceeding 270 days from the date of receipt of the consideration, while under the IPP the land is allotted within a period, generally not exceeding 90 days from the date of receipt of 50% of the consideration amount. It is observed that PACL does not take any identity proof from the applicants at the time of accepting the application in order to check the basic identity which is most essential for identification throughout the scheme. I also note that PACL has extended the facility of 'opting out' only to the customers who had made the investment under the CDPP. Further, the customer who wishes to sell his/ her land/ plot and decides to avail the marketing services of PACL, has to notify the Company at least 180 days before the expiry of the period of agreement. **It has also been said that the sale can be made only at the end of the tenure of the agreement**. I further note that PACL reserves its right to discontinue/ change/ amend/ modify plans at its sole discretion.

I now examine the sample blank 'application form' as submitted by PACL vide its letter dated April 18, 2013 during the course of investigation, to SEBI and note the same provides for three plans i.e. CDPP, Cash Down Flexi Payment Plan and IPP. The samples for the year 2001 and 2004 as discussed above only provides for two plans i.e. CDPP and IPP.

B. The second document in the sets is a pre-printed agreement which contains the name and address of the applicant. The same also contains the following terms and conditions:

"Whereas PACL is engaged in the business of real estate and the development of agricultural land at various places.

WHEREAS PACL organizes the sale of agricultural land of different sizes, to prospective buyers and undertakes the development and maintenance of the same.

WHEREAS PACL is in process of making arrangements for purchasing/ procuring the land, forming part of various plans launched by PACL with clear and marketable titles.

AND WHEREAS the CUSTOMER(S), by means of an Application, which is the basis of this Agreement and which contains the salient terms and condition of the various Plans, has/ have expressed his/ her/ their desire of buying the said agricultural land.

AND WHEREAS the CUSTOMER(S), has/ have requested PACL to arrange for sale of the said agricultural land ... in his/ her/ their favour, and to develop and maintain the same by rendering various services in accordance with the said Plan.

AND WHEREAS PACL has agreed to arrange for the sale of the SAID PROPERTY in favour of the CUSTOMER(S), and to develop and maintain the same by rendering various services as aforesaid.

... ..

1. SALE OF PLOTS

The customer shall be entitled for allotment of said property and subsequent transfer of title and possession of the same in his favour by means of registered sale deed, within such period, after receipt, by PACL of full consideration in case of Cash Down Payment Plans/ 50% of the consideration in case of Installment Payment plans Since fragmentation into smaller size of Plot(s); lands may not be practicable, feasible or permissible under the relevant revenue laws, the Customer shall have the requisite share alongwith other allottees/ transferees in a particular piece of land. ... 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 PACL to implement this agreement during the relevant period. ...

... ..

3. DEVELOPMENT AND MAINTENANCE

PACL shall have the right to develop and maintain the SAID PROPERTY and CUSTOMER shall not ordinarily interfere, with the method and mode of development
The Customer shall have the right to tender suggestions in regard to the development and maintenance of the SAID PROPERTY.

... ..

5. POSSESSION

As aforesaid, the Customer shall be the owner-in-possession of the SAID PROPERTY. The possession of the SAID PROPERTY shall rest in the hands of PACL for the limited purpose of developing

... ..

9. SALE OF PRODUCE

Unless specifically directed otherwise by the Customer, PACL shall be responsible for arranging the sale of the product, if any, out of the SAID PROPERTY on behalf of the customer. For the purposes of arranging the sale of the produce as aforesaid, PACL shall have sole discretion to decide as to whether the produce shall be sold in the wholesale market, and/ or

10. SALE PRICE

The task of sale of the produce, undertaken by PACL under the provision of the aforesaid clause 9, shall be subject to the condition that depending upon the grade of the produce harvested from SAID PROPERTY, market conditions and other relevant factors, PACL may decide to sell the produce at such price which may deem fit and reasonable in the circumstances prevailing at that point of time. The net sale proceeds, so obtained by PACL from the sale of the said produce shall be accepted as final by the Customer and no dispute shall be raised in respect in the same.

11. NET SALE PROCEEDS

It is agreed that during the course of development of allotted/ sold plot(s) of land no saleable produce from the land under development is foreseen, the CUSTOMER shall not make any claim for any produce during the period of first six years. ...

12. CUSTOMER'S OWNERSHIP OF PROPERTY

... .. The CUSTOMER shall not have any claim over common facilities provided by PACL, such as, irrigation pipelines, drainage systems and electrical lines etc. which may be passing through the said property, whether overground or underground. PACL shall ensure that the said common facilities run along the boundary of the said property.

... ..

15. WASTAGE

Both PACL and the CUSTOMER agree that in the process of arranging for the sale of the produce if any, pursuant to the aforesaid Clause 9, there will normally be a percentage of wastage at the time of harvesting PACL shall keep such percentage of wastage at such nominal levels as practicable and this shall be applicable to every harvest in general without any reference to the produce harvested.

... ..

21. OPTING OUT

This facility is available only under Cash Down Payment Plans before the allotment of SAID PROPERTY in favour of CUSTOMER(S). Under this Scheme, CUSTOMER(S) can exercise his option to opt out of Plan, on his submission of a specific request to PACL to that effect. The payments received under said Plan shall be refundable immediately to CUSTOMER(S) after deduction 20% of Consideration comprising various costs and other incidental expenses and shall be subject to the following terms and conditions:

a. 20% of consideration shall be adjusted towards cost and other incidental expenses.

... ..

22. FAILURE/ REFUSAL TO COMPLETE NECESSARY FORMALITIES

If CUSTOMER after duly subscribing to any Plan of PACL, fails or refuses to submit necessary documents papers, photographs/ to complete the necessary formalities and execute the documents required for the purposes of effective transfer and maintenance of the SAID PROPERTY by PACL, the same shall be construed as a case of opting out. ... PACL shall be entitled to invoke the terms of the aforesaid and appropriate 20% of the Consideration, comprising various costs and incidental expenses. PACL shall give 60 days notice to the concerned CUSTOMER for compliance, before his case is treated as a case of Opting Out

... ..

24. SALE OF DEVELOPED PROPERTY

The CUSTOMER has the right to retain or sell the SAID PROPERTY, as he/ she may deem fit, on expiry of the tenure of this Agreement. To facilitate easy liquidity. ... In case CUSTOMER decides to avail PACL's aforesaid services, he/ she must notify PACL to that effect at least 180 days before the expiry of period of the Agreement. The sale can be made only at the end of the tenure of this Agreement at such price which maybe mutually agreed between the parties.

Customers intending to avail PACL's 'Marketing Service' for selling/ disposing off his/ her said developed property shall submit an application in writing atleast 180 days before the expiry of the term authorising company to sell his/her said developed property such price as may mutually be agreed upon. This may be noted that PACL provides such marketing services at the end of the tenure of this Agreement.

The CUSTOMER must submit photocopies/ originals of the following/ all relevant documents to Corporate Office of PACL at least 30 days before the completion of the term:

(i) A letter addressed to the trustees(s) for delivering the title papers

(ii) Receipt (s) (photocopy)

(iii) Certified copy of title deeds/ papers (photocopy)

(iv) Registration letter (photocopy)

(v) All other documents in original viz: Deeds, Wills, undertakings, Discharged receipts, Agreements SPAs etc. as applicable from time to time."

- The 'agreement' states that PACL is in the process of 'making arrangements for purchasing/ procuring the land'. A reading of this suggests that PACL does not own the land on the date of application/ agreement. Further, at the time of accepting the applications, PACL is only making arrangements for purchasing/ procuring the land. The provision in the 'agreement' that possession is handed over in a 'symbolic' manner further strengthens this observation. PACL in the 'agreement' states that as the fragmentation of land/ plot into smaller sizes may not be practical/ feasible/ permissible under the relevant revenue laws, the customer shall have the requisite share alongwith other allottees/ transferees in a particular piece of land. The right of development and maintenance is retained by PACL. Further, PACL also retains the right of arranging the sale of produce. The net sale proceeds, obtained by PACL from the sale of such produce are required to be accepted as final by the customers and he has no right to claim for any produce during the period of first six years of agreement. PACL agrees to pay the land tax and other public dues/ levies, payable on the land/ plot to the appropriate authorities on behalf of the customer and it is entitled to get the same reimbursed from the customer. All these factors strongly indicate that even though a customer has subscribed to a plan, the possession of the property if and when it comes into existence is more with PACL than with that customer.
- Further, the 'agreement' gives the facility of opting out to the customers who have applied under CDPP only on a specific written request to PACL. In case of opting out, the payment received by PACL shall be returned to the customer after deducting 20% of the consideration i.e., being the various costs and other incidental expenses. Further, the customer is given the option of availing the marketing services of PACL for which he/ she has to notify PACL at least 180 days before the expiry of the period of agreement.

Further, the agreement to sell, places an obligation on the PACL to provide for common facilities and services, such as, irrigation and drainage system, pipe lines, electrical lines, motor pump sets, temporary sheds, structures etc. The customer, even though stated to be an absolute owner and in exclusive possession of the agricultural land, sold to him, has no exclusive ownership rights over the aforesaid facilities, and

in fact, has been barred, from interfering with the aforesaid facilities and services in any manner, by the terms and conditions recorded in the sample agreement to sell and the sample sale deed.

I note the clause in the agreement that '*on execution and registration of the sale deed, the customer shall become and be the absolute owner-in-possession of the plot*'. A reading of these makes it clear that by the very admission of PACL, the land allotment does not give any land ownership rights to the customers, it is only through the sale deeds that the land ownership rights are transferred to the customers.

- Now let me refer back to the sample 'agreement' submitted by PACL vide its letter dated April 18, 2013, to SEBI. I note the same is more or less similar to the samples discussed for the year 2001 and 2004, as discussed above.

C. The third document in the set of documents is a '**registration letter**'. I have perused the copy of the 'registration letter' which contains the details such as the name and father's name of the applicant, address, registration number, plan opted, plot size, consideration, installment details, nominee details, etc. I note that the 'registration letter' provides the expected value of the land as ₹ 50,340 (in the case of first sample) and ₹ 18,600 (in the case of second sample) although it neither specify the exact location of the plot/ property nor the State where the land will be allotted. This document is more in the nature of a deposit advice, recording the investment made by the customer and the appreciated value available on completion of the term, if opted for the same.

D. The fourth document is a '**Letter of Allotment of Plot(s)**' which as per the submission of PACL is issued to the customers in the case of CDPP, within a period of 270 days on receipt of full consideration amount and in case of IPP, within the period of 90 days (later changed to 270 days) after having received the 50% of the consideration amount.

I note from the sample of Ms. Agrahari Kusumlata (who had become the customer of PACL in the year 2001) that the 'Letter of Allotment of Plot(s)' has been issued by PACL on July 20, 2005, containing the details of plot such as number of plot(s), area, khasra number, plot number, village name, tehsil name, district name and State name. The allotment letter also states that the sale deed in respect of the plot(s) allotted shall

be executed and registered shortly. The 'Letter of Allotment of Plot(s)' also contains the following clauses:

"..... PACL reserves the right to change the location of this allotment and allot you an alternate site at any other place.

Upon registration, the original title deeds shall be handed over to the custodial services company, Pearls Tech-Services (P) Ltd.,, which shall be holding the same in trust. A certified copy of the registered sale deed shall be supplied to you by the said custodial services company. You shall have the right to verify the original title deeds on any working day, after sending a formal request in writing 15 days in advance.

This allotment and the subsequent conveyance of the aforesaid Plot(s) to you shall remain subject to the 'General Terms and Conditions' contained in Application form signed by you

... .. These appropriations shall cover the cost of procuring the said property and conveying it to you, developing the same, planting the required saplings, plants, trees, crops etc., management fees and other ancillary expenses incidental thereto."

On perusal of the allotment letter in the sample of Ms. Agrahari Kusumlata (out of the sample of 500 customers as sought by me), I note that the customer is not made aware of the location of the plot till the stage of issuing of the allotment letter which in the present sample has been allotted after four years. It is also seen that even after allotment of land, PACL reserves the right to change the location of the allotment. The 'letter of allotment of plot' also states that the original title deeds shall be retained by the custodial services company of PACL and that the customer will only get a certified copy of the sale deed. The contents of the allotment letter of the second sample are also similar.

Another important observation which I wish to record here is that as per the Letter of Allotment of Plots, PACL reserves the right to change the location of the land and allot another land at a different location that what was chosen by a customer in the first instance. This kind of right is never seen in a pure real estate transaction. The change of location (chosen by a customer) unilaterally by PACL without referring such proposal to the customer, could be seen as a means to force a customer to 'opt out' and move away with the returns promised by it, rather than allowing a customer to hold on to the site for which he makes the payment.

E. The next document in the set of documents is a '**receipt**'.

- In the first sample the receipt is signed by the applicant at Kurla in December 2007, which reads as under:

"RECEIVED A SUM of Rs. 50,340/-, in cash/ through A/c payee cheque/ demand draft no. dated January 08, 2008 drawn on Kurla from Aspen Farm Developers Pvt.

Limited as the total consideration for assignment of my rights under an agreement with PACL as the prospective vendee of 900 sq.yds. of agricultural land situated in"

I note that the figure of ₹ 50,340 exactly matches with the amount stated in the registration letter and the ledger as expected value of property.

- However, in the second sample of documents of belonging to Mr. Suraj Pal Singh. I observe that the applicant has signed on a blank receipt in February 2010.

F. There are certain other documents in the sample sets as submitted by PACL vide its letter dated April 18, 2013, which is said to be a part of the application form i.e. special power of attorney, will, consent letter, etc. It is observed that the same are not made part of the samples selected for the discussion i.e. of Ms. Agrahari Kusumlata and Mr. Suraj Pal Singh. I note that the **'Special Power of Attorney'** is a pre-printed format wherein the customer gives his right to the attorney do the following acts, deeds and things on behalf of the customer to his attorney:

"1. To be present before sub-registrar of registrar for getting sale deed in respect of said plot executed in my favour and for getting the same registered.

2. To do all such things as may be necessary for such execution and registration.

3. To apply to the revenue authorities for the mutation of said plot in my name.

4. To take possession of the said plot from the vendor or his / her nominee / agent attorney in such manner as may required in the circumstances or as may be appropriate.

5. To sign application, complaints, affidavits, indemnities and such other papers and documents pertaining to the said plot, and appear and act on my behalf in the registrar office, and in any other office of Government or district board, municipal board or notified area, housing board, income tax and income tax appellate officer, tribunal, urban land tax and ceiling officers, town planning officer or any local or municipal authority or corporation or any other office(s) of similar nature.

6. To appoint advocate or revenue agent or any other legal practitioner for pursuing the legal cases brought against me or for filing and pursuing legal cases for or on behalf in respect of said plot of land.

7. To do all acts incidental to and collateral with the above purpose."

PACL in its reply has said that in order to address the concerns of customers regarding undertaking travel and incurring expense for execution of the sale deed and for other incidental matter, etc. the 'Special Power of Attorney' is executed by the customers in favour of a representative of PACL. The attorney is tasked with the completion of time consuming formalities on behalf of the customer and this is an added feature in the bouquet of services being provided by PACL.

I also note from the statement of Mr. Sukhdev Singh, Managing Director, dated May 14, 2013 that in most of the cases a power of attorney is given to PACL by the customer and

PACL authorizes any of its employees for executing the sale deed on behalf of the customer. In this regard, I note that PACL has failed to provide the list of customers who had not given Power of Attorney to PACL. In the absence of such list, it can be concluded that PACL takes Power of Attorney from all its customers.

g. Analysis of the documents relating to sample of 500 customers, submitted by PACL

Having considered the above said documents, let me give a comprehensive analysis of the entire set of 500 samples submitted by PACL, pursuant to the personal hearing held on February 04, 2014 and February 05, 2014. I note that the sample of such 500 clients was selected from the list of customers provided by PACL, who according to PACL were allotted land in the year 2005-2006. This year was selected for the sample with an understanding that the tenure of the agreement of such customers of PACL would have been completed and the sale deeds would have been executed as on the date of hearing. PACL while providing the case file of the sample 500 customers has categorized these as under:

- i.** In respect of **394 customers**, the **tenure of the agreement was completed**. These customers were allotted land by PACL, however, as per PACL these were not keen to retain their allotted land and therefore, their rights were assigned under the agreement with PACL in favor of the prospective vendee. As per the submission of PACL such customers had received the total sale consideration.
- ii.** Another **28 customers** had **preferred to opt out of the agreement**. As per the submissions of PACL, such requests of opting out were considered and the customers had received the refund of their deposits as per the terms and conditions of the agreement.
- iii.** In respect of the **remaining 78 customers**, it has been submitted that these are the customers whose **tenure of agreement has not yet been completed**. It has also been said that out of these 78 customers, only 45 customers have submitted their duly countersigned agreement and they have not submitted their complete set of documents necessary for the execution of the sale deed. For such reason, the sale deed could not be executed for such customers. For the balance 33 customers, it has been said that they have not sent their duly signed agreement till date to PACL, despite reminders for the completion of further necessary formalities.

I would now like to note down my observations on these samples:

- A.** From the sample of 500 customers, it is noted that the land was claimed to be allotted to these for their investments made during the period of March 2001 to December 2005, however, none of these have culminated in the execution of sale deed and as per the submission of PACL and 421 customers have taken their money back till the date of submitting the details to SEBI.
- B.** Out of the total 500 customers, 334 customers had opted for CDPP plan and 165 customers had opted for IPP plan. In respect of the remaining one customer, plan details could not be determined.
- C.** While examining the complete case file/ set of documents as submitted in respect of 500 customers, it is noted that PACL has not submitted the following:
- the application form cum agreement in the case of **248 customers**,
 - the registration letter in the case of **11 customers**,
 - the receipt with regard to the repayment in the case of **157 customers**.
- D.** It is further noted that in the application form of about 19 customers, FD/ RD is mentioned in the space provided for the plan name. This again reinforces the earlier observation that the monies are taken as deposits/ investments with promise of return at a later date
- E.** As stated by PACL, 394 customers were not keen to retain their allotted land and preferred to assign their rights under the agreement in favour of the prospective vendee and had received back the total sale consideration. However, a perusal of the complete set of documents submitted with regard to the said 394 customers, it is seen that there are no written requests found to have been made by such customers in this regard. Out of the said 394 customers (who had completed the tenure of agreement according to PACL), 252 customers had opted for CDPP plan, still sale deeds were not executed for a very long period (even beyond the contractual period). As per the submission of PACL, the execution of sale deed happens within a reasonable period from the allotment of plot in such plans. However, there is nothing on record that shows proof of such sale as actually happening.
- F.** I also note that PACL had sent letters for execution of the sale deed to only 78 customers (whose tenure of agreement has not yet been completed). PACL has not sent any letters to the said 394 customers for execution of the sale deed.
- G.** As per the agreement executed between PACL and its customers, the opting out facility was only available under the CDPP plan and that also before the allotment of the land in favour of the customer on submission of a specific written request to PACL, to that

effect. As per the terms of the agreement, the payments received under the said plan shall be refundable immediately to the customer after deduction of 20% of the consideration comprising various costs and other incidental expenses. PACL has said that 28 customers out of the total 500 customers had preferred to opt out of the agreement and their request have been considered and refunds have been made to these customers. Out of the said 28 customers, it has been found that 23 customers had opted for IPP plan and still they have been provided option of opting out whereas, as per the agreement, opting out option is not available in case of IPP.

Thus, PACL has submitted the facts that are contrary to its own submission that the 'opt out' facility will be provided to the customers under CDPP plan, whereas it actually provided such facility to customers who had opted for IPP (Installment Payment plan) also. This indicates that 'opt out' feature is not restricted to only CDPP plan as put forth by PACL and is available across all the plans. The same shows that PACL seems to be eager in seeing a customer opting out as it had given such option to persons under IPP as well.

H. Upon perusal of the documents for the said 28 customers (who had preferred to opt out of the agreement), it is noted that the customer had made the entire payment, however, the sale deed has not been executed even in a single case. I also note that in 3 instances, no money has been repaid to them. A brief of summary of such 3 instances is brought down hereunder:

Table - E

Name of customer	Application date	Plan	Allotment	Amount repaid
Mr. Sitaram Sahu	May 2005	Cash Down Payment	January 2006	July 2011
Mr. S. Maha Lingam	May 2001	Installment Payment	July 2005	
Ms. S Manjula	September 2002	Installment Payment	July 2005	

I note that in the case of Mr. Sitaram Sahu, no sale deed has been executed though the full amount remained with PACL during the period of 2006 to 2011 although he had stately applied and paid under the Cash Down Payment Plan. In this regard, I refer to the terms of the agreement between PACL and its customers that the customer shall be entitled for the allotment of the said property and subsequent transfer of the title and possession of the same in his favour by means of registered sale deed, within such period, after receipt by PACL of the full consideration, in case of cash down payment plan/ 50% of the consideration in case of installment payment plan. As regards the customer namely Mr. S. Maha Lingam (who is a customer in IPP plan), it is noted that

he had made the entire payment in October 2006. PACL has submitted that this customer had requested for repayment vide its letter in December 2006 and sanction letter was issued in January 2007. However, no such request letter or payment receipt could be found from the documents submitted. Same is the case with Ms. S. Manjula who had made the entire payment in January 2008. Based on the above, one is more inclined to conclude that there has not been effective repayments as claimed by PACL.

I. Further, in the instances noted below, the customer had not made full payment as per the plan and preferred to opt out, however, they have been repaid the amount which is more than what they had paid to PACL:

- Ms. Y. Rosemerry paid ₹ 6,240 but was repaid ₹ 6,543.
- Mr. Chama Nayaka paid ₹ 2,880 but was repaid ₹ 2,949.
- Mr. A. Arjunan paid ₹ 16,380 but was repaid ₹ 17,207.
- Mr. Puranlal Patel paid ₹ 7,500 but was repaid ₹ 7,986.
- Mr. Jag Singh Netam paid ₹ 4,095 but was repaid ₹ 4,333.
- Mr. Manharan Das Vaishnav paid ₹ 3,750 but was repaid ₹ 5,365.
- Ms. C. Lilly Pushpam paid ₹ 9,760 but was repaid ₹ 13,104.
- Mr. Mansingh Markam paid ₹ 4,095 but was repaid ₹ 4,333.

Opting out facility has been provided in IPP, whereas as per the agreement, opting out facility is available only in case of CDPP. As per the agreement, 20% of the total consideration paid would have been deducted, in case the customer is opting out. However, in the above instances PACL has repaid more than the amount paid by the customers and the same appears to be a portion of interest.

PACL has submitted 'sanction letters' in the cases of the abovesaid 28 customers, who preferred to opt out, wherein, *inter-alia*, the sanction letter refers to the letter received from the customers requesting for opting out. However, the set of documents submitted by PACL does not contain the copies of such request letters. Further, the sanction letters in all such 28 instances refers to some customer letter number. In the normal course, the individual does not give any letter numbers. Further, the set of documents of such clients does not contain any proof of dispatch of cheque/ DD or proof of receipt of payment by such customers.

J. Out of the sample of 500 customers, PACL had issued letters to 78 customers to submit agreement duly signed and complete along with certain documents for execution of the sale deed. The said letters were issued within 1-8 months of the allotment of plot in the case of the said 78 customers (who had a valid tenure of agreement with PACL) only and reminders were also issued by PACL within 3-12 months of the allotment made in such cases. However, in the case of other 422 customers, no such letters were produced

by PACL, in spite of the customers having completed the respective tenures of agreement.

At this stage, I refer to terms of the agreement wherein it has been said that "*if customer after duly subscribing to any plan fails or refuses to submit necessary documents, papers, photographs to complete the necessary formalities and execute the documents required for the purpose of effective transfer and maintenance of their plot by PACL, the same shall be construed as a case of opting out. In the event of such failure or refusal, PACL shall be entitled to invoke the terms and appropriate 20% of consideration comprising various costs and incidental expenses. PACL shall give 60 days notice to the concerned customer for compliance, before their case is treated as a case of opting out and dealt with accordingly.*" I note that in the case of such 78 customers, neither such notices have been sent by PACL nor has repayment been done to them.

A perusal of such letters for execution of the sale deed reveals that it is a standardized letter, wherein, it has been mentioned that the documents in the agreement are incomplete. It is important to note that the reason given by PACL for non-execution of sale deed is strikingly same for all its 78 customers.

In the instances of the 78 customers, wherein sale deed were to be executed, the agreement is shown as incomplete by PACL. I note that the documents that should have been collected at the time of registration i.e. photographs, ID proof, address proof are collected by PACL only after the allotment of land and at the time of execution of the sale deed.

- K.** Discrepancies such as 'khasra no.' in four instances differing from the allotment letter *vis-a-vis* the details provided by PACL for such customers is also noted. Mr. Shumbhul Shavan one of the customer of PACL has himself signed as a witness, in his own agreement.
- L.** The plots have been resold by the customers majorly to only 2 entities (stated to be prospective vendees) viz., Aspen Farm Developers Limited and Ivy Farm Developer Pvt. Limited having their registered office in Chennai.

From the discussions in the sub-paragraphs above, I observe that PACL has not followed the uniform practice while dealing with its customers in returning the money to them and has therefore deviated from its own terms/ clauses in the agreement. The rights in the land allotted are said to have been assigned by the customers to the prospective vendees, however, in the absence of any sale deeds, the fact remains that the customer gets neither the possession, nor the legal rights in the land (said to be allotted by PACL) to transfer the same to prospective vendee.

h. Letters were also issued to all the 500 customers asking for certain details. The status of such issued letters is as under:

- i.** Letters in respect of 292 customers were delivered and the signed acknowledgements in respect of these have been received.
- ii.** Acknowledgements in respect of 5 customers have been received as unsigned.
- iii.** Letters in respect of 75 customers have been returned as undelivered with remarks like 'address incomplete', 'address not correct', 'no such person', etc.
- iv.** No intimation has been received in respect of 128 letters.

I note that out of the 292 letters which were delivered to the customers, only eleven (11) customers have replied back to SEBI. A summary of the details pertaining to the nine relevant cases are given below:

- Ms. Kempama and Mr. Ramchandra Telavade replies are in the nature of complaints wherein, it has been stated that they have not received the invested amount back. From the set of documents as submitted by PACL in respect of 500 customers, it is noted that these two customers have been shown to be refunded the amount as their tenure of the agreement was complete. PACL in its submission has also said that these customers were allotted land by it, however, since they were not keen to retain the land allotted, therefore, they have assigned their rights in favour of the prospective vendee and had received the total sale consideration. In support of such submission, PACL has submitted the copy of the receipt of payment in respect of one of the customers. A perusal of such receipt shows that the same bears the thumb impression of the customer; however, the authenticity of the same cannot be verified as PACL has failed to provide the application form of such customer. As regards, other customer, PACL has not provided any proof of payment made.
- Yet another customer namely Mr. Munnawer Hussain has replied and submitted that he has not applied for the purchase of plot, hence, he does not have any receipt or any application form with regard to the investment made therein. However, I note from the details provided by PACL that the same customer had paid ₹ 30,000 and has been allotted 600 sq. yd. under CDPP. PACL in its support has submitted the receipt of payment of ₹ 62,700. However, I note that the signature on the receipt cannot be verified as PACL has failed to submit the application cum agreement form of such customer.

- Another customer Mr. Kalpana D. Kadam has informed that she had applied for the plot and the plot was allotted in Andhra Pradesh and on maturity the certificate was deposited in the branch of PACL. A perusal of the details/ documents submitted by PACL, it is noted that this customer was allotted land in Tamil Nadu.
- One of the customers namely Mr. Durg Singh has informed that he had purchased land for ₹ 10,000 and with the help of PACL, it has sold the said plot at ₹ 20,900. I note that the said customer has not attached anything to his letter to show that plot was sold by him. PACL in its submission has said that this customer was also allotted land by it, however, since he was not keen to retain the land allotted, therefore, he has assigned his rights in favour of the prospective vendee and had received the total sale consideration.
- Yet another customer namely Mr. Kocharla Sankara Rao has informed that after the expiry of the term, he had submitted all the documents in original to PACL and got the total amount of investment for the land along with the development charges.
- One customer namely Ms. Sadhmati Sonwani has informed that she has invested in 3 bond papers of PACL amounting to ₹ 40,000 which is maturing on December 30, 2014 and that he has not received any plot, allotment letter or possession of any plot. PACL in this regard has submitted that they have sent two letters to the said customer to execute sale deed.
- I further note that customer namely Mr. Ram Pravesh Choudhary has informed that he has paid ₹ 10,000 for the land and the agreement expires in 2015 and that he shall take formal steps for completing all the formality for executing the sale deed. PACL in this regard has submitted that they have sent two letters to the said customer to execute sale deed.

From the above, I note that there are several discrepancies in the version of PACL *vis-a-vis* the replies of the customers to my letters. I note that out of the 500 letters only 292 have been delivered and of which only 11 have chosen to reply. I note that certain replies are in the nature of complaints as against PACL, which have been forwarded to PACL for resolution. PACL, however, is unable to identify these customers and has asked SEBI for their further details.

i. Observations in respect of the documents for 500 samples

Before proceeding further, let me recapitulate my observations in respect of the documents for 500 samples and the analysis for the set of documents submitted for such customers, *vis-a-vis* other records available and discussed by me.

- In the application form at the place of plan, FD/ RD is written, which gives an impression that the scheme operated by PACL were nothing but money mobilization schemes.
- PACL invites investment in terms of the rule book, under which one of the aims of PACL is to offer maximum return on investment and benefits to the customers.
- PACL pools the money of the customers for procuring the land. The rule book also says that the PACL acquires the land on long term lease or on ownership basis for and on behalf of unit holders. I note that had the transaction of PACL been real estate transaction, PACL would have disclosed the location of the land/ land availability at the time of application itself. By not providing such details at the time of application and informing about the same after passage of substantial time indicates that PACL pools the money received from the customers for the purchase of the land.
- The registration letter mentions the expected value of the land, although the land is not allotted even at such stage and the location of the plot/ land remains undisclosed. Even the name of the State (where the property is located) has not been disclosed in the registration letter. PACL has argued that it does not promise any 'assured return' or 'profit' to its customers, rather the 'estimated realizable value' referred in the registration letter is a benchmark value, which the customers use at the time of sale to third parties. It has also been said that none of its customers has sold their land at a value below the estimated realizable value, till date. PACL has submitted that the 'expected value'/ 'estimated realizable value' is the price which the land commands on completion of the development activities. I note that PACL has provided the criteria to fix the estimated/ expected value of land, which consists of the development activities, market forces, price inflation index and past experience of management and has further submitted that there is no specific method for determining the estimated value of land.

Before concluding on the same, let me consider the above criteria to calculate the expected land value in the words of PACL. I note that the **development on the land** will be carried out on certain future dates. Such activities cannot be said to be carried out at all places where PACL owns the land. Other factors such as **price inflation index and past experience of management** is also of no relevance as on the date of issuing registration letter, the plot/ land is not identified. Considering these, PACL

could not have fixed the expected value of the land, with the kind of precision it has done. Such definite 'expected value' of the land can be calculated only by a mathematical formula. However, the value of land varies according to the market conditions and location.

- PACL allots the land and reserves the right to change the location of the allotment. It has been argued that customers would not have any cause for concern with regard to the change of location as the land would uniformly be barren at the acquisition stage. Based on the submissions of PACL, it is inferred that even at the stage of allotment, the development on the tract of land has not started.

From the submissions of PACL, it is not clear as to how two pieces of land can uniformly be barren, especially in cases where the land belongs to different States like Punjab and Rajasthan. In my opinion, the value of each piece of land usually varies on the basis of location, quality and infrastructure such as the land suitable for sowing certain 'cash crops', its proximity to natural water source, it falls in the State wherein regular electricity supply is there, in such cases, the piece of land will definitely command higher price. Further, if a person in Madhya Pradesh is initially promised land in his home state and thereafter, PACL changes the location to say Tamil Nadu, it cannot be said that the customer will not be aggrieved by this change. In such a case, he is forced to take the realizable value. As mentioned above in this Order, the agreements give a unilateral right to PACL to change the location of land.

- PACL by its own admission has said that only symbolic possession of the plots are handed over to the customer, as the fragmentation of land/ plot into smaller sizes may not be practical or permissible under the applicable revenue laws.
- PACL earlier had not provided the option of choosing the State to its customer and developing the plot.
- I observe from the statement of Mr. Sukhdev Singh, M.D., PACL dated May 14, 2013 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 plans.*' The same was also confirmed by Mr. Gurmeet Singh, Director, PACL who had submitted that the development of agricultural land sold to its customers is done by PACL only. Mr. Gurmeet Singh has also submitted that the provision of choosing land has been provided to the customers only 2-3 years back. However, it has not been explained as to how this is being achieved (i.e. the customer will develop the land) as only symbolic possession is given to the customers.

- The right of maintenance, development and sale of produce are retained by PACL. The customer gets no right to claim for any produce out of the plot/ land for first six years of the agreement, even in the CDPP opted plan, wherein the customer pays the entire consideration at the time of agreement itself. It is mentioned in the agreement that the customer shall be the owner in possession of the said property at all times. PACL in its agreement states that the customer cannot claim from the produce of land for the first six years. It is not clear as to how the customer then becomes 'owner in possession' at all times. In spite of paying full consideration including development charges in CDPP plans, the customer has to wait for six years to get his share from the produce.
- Further, PACL while repaying the customers who had preferred to opt out has repaid almost exact amount of the expected value without making any deduction of 20% as stated in the agreement. PACL has not explained as to what happened to the taxes or other dues which it had borne on behalf of such customers.
- The customer who wishes to avail the marketing services of PACL has to notify the company at least 180 days before the expiry of the agreement and the sale happens only at the end of the tenure of the agreement at a price that is fixed well in advance. However, a perusal of the documents available on record shows that there was no mutual agreement about the price. The price was fixed by PACL in the registration letter ('estimated realizable value') at the time when the customer has initially entered into the agreement. Further, the said 394 case files made available to SEBI do not contain any notification/ communication of customers to PACL regarding the price.
- The land ownership and possession is said to be transferred by means of sale deed which as per the submissions will be executed within a reasonable period after allotment of plot/ land.
- On execution of the sale deed, PACL has stated that, the sale deeds are held with its custodial services company and that the customers only gets a certified copy of the sale deed. PACL has argued that as the tenure of the agreement is continuing and further installments are yet to come, the sales deeds are retained with its custodial services company. The argument of PACL, however, is of no relevance in the case of CDPP (as per the samples submitted by PACL, out of the 500 samples 334 customers had opted for CDPP), as the entire consideration is received by PACL at the beginning of the agreement itself, where no installments are further due to PACL.
- The Special Power of Attorney ('SPA') admittedly is given to PACL by the customers. According to PACL, the SPA has been executed to address the concerns of customers

regarding undertaking travel and incurring expenses of execution of sale deed and other incidental matters. However, I note that the PACL has submitted neither the total number nor the details of the investors who have not executed the Special Power of Attorney. I note such details are crucial for PACL for the day-to-day conduct and management of its affairs.

- In the absence of the details of the customers who have not opted for signing Special Power of Attorney even after specifically asking for it, I am compelled to draw an adverse inference and note that PACL has taken the Special Power of Attorney from all its customers. It appears that PACL used to take the Special Power of Attorney from all the customers as the same helps it to keep the transactions within its own control.
- I note that the allotment letter is only a document issued by PACL and that the same does not entail any legal right in the land to the customer. As per Section 54 of the Transfer of Property Act, 1882, the sale of immovable property is complete on execution of the sale deed or on delivery of the property, whereas in the selected samples admittedly not a single sale deed has been executed. In the absence of any legally enforceable document, I note that the customers have no title in the land and therefore the question of assigning the same to the prospective vendee does not arise.
- For argument sake, even if, one were to assume that there were certain rights available to the customers, then also, the customers are not entitled to transfer these as the possession and ownership both remained with the PACL. The same are admittedly transferred, only on the execution of the sale deed and completion of the tenure, which has not happened in any of the sample cases before.
- PACL in its submissions has said that it has started giving the option of development of land to its customers since 2011. I note from the scheme details submitted by PACL, that the total cost of plot is inclusive of the development cost, indicating that the development is part and parcel of the agreement. It is also not clear as to how the total cost would be adjusted in case the development is not opted by the customer, as it is nowhere mentioned in the schemes/ plans of PACL.
- By its own admission, the agreement entered between PACL and its customers along with the application form is not a registered document and hence any restrictions on alienation or transfer of the immovable property are not a valid restriction under law. These words of PACL exposes the myth underlying the so-called title and rights said to be transferred by PACL to its customers under their agreement.

- Not a single applicant out of the 500 samples selected has registered a sale deed of the land he had proceeded to purchase in the first instance. This gives rise to a clear conclusion that the real estate business that the Company proclaims to carry on is a facade and sham to camouflage their activity as CIS.
- All the facts described above and the proposal of repayment as submitted by PACL suggests that PACL is operating nothing but a money mobilizing scheme.
- As stated above, no sale deeds were executed for all of the 500 customers selected on sample basis. Therefore, no possession of lands were handed over to such 500 customers. In view of the same, there was no need for any field visit to verify whether the customers of PACL actually received the lands or not.

j. Table of changes made in the agreements: I note that PACL along with its reply has provided a table showing the details of the changes made in the agreement from time to time. One of the changes as stated is that the provisions of the joint application is changed to single applicant in the agreement filed in the year 2000 and 2004. However, it is noted from the sample application form and agreement submitted for the years 2001 and 2004, that the application for the year 2004 does not have provision of seeking details of second and third applicant as was available during the years 2001, 2002 and 2003. It is further noted that the agreement submitted in the year 2004 still refers to 'joint applicants' (such as that at para 26 of the agreements). PACL has also intimated that the provisions for accidental disability/ death benefit and emergency loan were omitted in '2000 and 2004'. I have seen the application form cum agreement pursuant to the year 2000 i.e. for the years 2001, 2002, 2003 and 2004. From the same, it is noted that the application form and agreement for the years 2001, 2002 and 2003, have the provisions for accidental disability/ death benefit and emergency loan. The clauses relating to these have been omitted only in the year 2004.

PACL has also submitted that in the years '2004 and 2011', the application format was modified and an option regarding development and preference of State was added. I have considered this submission of PACL and perused the application forms and agreements for the years 2004 and 2005 and note that the same do not have such option of choosing development and the preference for a particular State. In view of the above, I note that the table of relevant changes as provided by PACL along with its submissions, does not give a complete picture of the alterations/changes made and is vague.

k. Verification of sale deeds by Justice K. Swamidurai

At this stage, I note from the argument of the noticees that Justice K. Swamidurai (Retd.) who was appointed by the Hon'ble High Court of Delhi vide order dated November 16, 2000 to supervise the land sale transactions of PACL has scrutinized/ supervised the sale transactions and also carried out the site inspection. PACL has said that the sale, purchase and development activities by itself are validated by Justice K. Swamidurai in his final report dated September 20, 2002 and he is still verifying all the sale deeds executed by PACL as per the order of Hon'ble High Court of Delhi. I note that Hon'ble Delhi High Court in its order dated March 03, 2003, in the matter of *S.D. Bhattacharya* case has *inter alia* stated that:

"... All transactions to be carried out by the Company should be carried out as per the report of Justice K. Swamidurai. Future registrations may continue after being duly verified by Justice K. Swamidurai and this will be done at the expense of the company."

- I observe that, Justice K. Swamidurai has verified 19,284 sale deeds, by April 2013. In other words, PACL has executed 19,284 sale deeds till date and all these are verified by Justice K. Swamidurai in compliance with order of Hon'ble High Court of Delhi. As noted above Justice K. Swamidurai, in his reports had advised PACL to apply and obtain the encumbrance certificate issued by the concerned Sub Registrars. However, I note that PACL has not produced any documents/ details to show that it has taken any steps towards procurement of such documents. From the same, I note that PACL although was executing sale deeds in favour of the customers and getting these verified through Justice K. Swamidurai, however, has not taken any steps to ensure that the subject land is encumbered in the real owners' name as required by Justice K. Swamidurai. I also note that PACL has not brought on record a single instance where the mutation has happened in the favour of any of the customers of the schemes.
- Further, I note from the submissions of PACL that it operates from 15 regional offices covering around 308 locations. It has 33,48,656 field associates during the year of 2011-12. From the same, I note that PACL had large scale of operation. By its own admission, PACL has **2.06 crore total customers** (details provided for the year 2005-2012). Further, from the available records, it is also noted that since inception till 2012, PACL has allotted land to about 1.22 crore customers.
- At this stage, I note from the details submitted during the course of investigation that PACL had mobilized funds from its customers to the tune of ₹ 44,736 crores till March

31, 2012. Further by its own admission, it has collected ₹ 4364,78,08,345 from 39,97,357 customers during the period of February 26, 2013 to June 15, 2014. **The total amount mobilized comes to a whopping 49,100 crore.** This figure could have been even more if PACL would have provided the details of the funds mobilized during the period of April 01, 2012 to February 25, 2013. The collection of such huge funds suggests that PACL has many more customers than the stated 1.22 crore. In this regard, I also refer to the proposal of PACL and its directors as forwarded to SEBI through their advocates and note that it has 4,63,13,342 customers to whom the land has not yet been allotted. **Thus, a quick calculation of the total number of the customer of PACL comes to around 5.85 crore** which includes the customers who said to have been allotted land and who are yet to be allotted the land.

- PACL while replying to the SCN and making submission during the personal hearings has heavily relied on the reports of Justice K. Swamidurai. I have considered the main defense of PACL that Justice K. Swamidurai has verified and validated the sale deeds executed by it. In order to verify the claim of PACL, I had asked it provide a summary of the sale deeds as verified by Justice K. Swamidurai. A gist of the details as submitted by PACL in this regard are as under:

Table - F

S.No.	Date of reports of Justice K. Swamidurai	No. of sale deeds registered in respect of customers
1.	January 05, 2002 and September 20, 2002	14,150
2.	August 30, 2007	1,102
3.	December 08, 2007	1,404
4.	November 13, 2009	2,367
5.	June 30, 2010	215
6.	December 10, 2011	30
7.	April 04, 2013	16
Total		19,284

There is no question of commenting on the transactions verified and validated by Justice K. Swamidurai. However, I note from the table above that PACL till the date of submitting information to SEBI had executed only 19,284 sale deeds. I note that as per its own admission, it had allotted land to 1.22 crore customers till 2012 without executing sale deeds. PACL has stated in its proposal that it is yet to allot land to around 4.63 crore customer as on March 31, 2014. This shows that the customer base of PACL has multiplied since the order of Hon'ble High Court of Delhi, however the number of sale deeds executed every year has come down significantly. It is seen that in the year 2000-2002

PACL had executed sale deeds in respect of '14,084' customers whereas the number of sale deeds executed has come down to mere '16' in the year 2013.

Further, PACL out of the sample of 500 customers, is not able to show a single transaction wherein the transaction would have been completed by execution of the sale deed. These facts raise serious doubt the real estate business that PACL claims to carry out. The available facts on record suggest that PACL by relying on certain sale deeds which in fact is less than 0.16% compared of its total customer base of 1.22 crore (customers to whom PACL claims that land has been allotted till 2012) claims that it is in the business of sale and purchase of agricultural land. If the executed sale deeds are compared with the total number of customers, i.e. about 5.85 crore as discussed in the paragraph above, the same is even more miniscule. This also corroborates my earlier conclusions that PACL is running a CIS and is promising returns to its customers in the guise of offering/ allotting lands. By stipulating the condition w.r.t. change of location (i.e. PACL reserves the right to change the location of the land till the stage of execution of sale deed) and stating that all its customers have 'opted out' and have been paid the promised sum indicated in the registration letter ('estimated realizable value') without deducting the 20% charges (which it claimed would be done in case a customer opts out), the 'real estate theory' put forth by PACL fizzles out. Thus it turns out that the schemes/ plans of PACL are nothing but a money mobilization scheme as detailed in the paragraphs above.

- 1. Samples of Executed Sale Deeds:** I observe from the information submitted by PACL, that initially when the schemes were introduced the lands were allotted by it in the State of Punjab only. Thereafter, it had allotted lands in Tamil Nadu, Andhra Pradesh and Orissa also. In 2005-06, PACL allotted land in Chattisgarh as well. PACL started allotting land in Rajasthan and Madhya Pradesh during the year 2006-07. An analysis of the details available shows that since inception PACL has allotted lands in 8 States only, out of which majorly the land has been allotted in Rajasthan, Tamil Nadu and Madhya Pradesh. I further note that during the year 2010-11, 99.90% of the customers were allotted land in 3 States only namely Rajasthan, Tamil Nadu and Madhya Pradesh. It is sheer coincidence that the 19,284 sale deeds which were verified by Justice K. Swamidurai were for the lands in these three States only.

I have seen the copies of the executed sale deed submitted by PACL on a sample basis. For an independent analysis, I have taken certain samples for detailed examination and noted as under:

Table - G

Name of Customer	Application year	Date of sale deed	City/ State of customer	Total Area [Area sold to customer]/ Consideration (₹)	PoA holder of Customer	City/ State of Customer's PoA	State where land is situated	If land belongs to PACL	Land in the name of	Land purchased on	Authorised representative who have signed on the sale deed	City/ State of PoA
Ms. Marriet Pinto	2005	December 08, 2007	Manglore/ Karnataka	140 Bigha, 11 Biswa [1001 sq. yds.]/15,000	Suresh Sinha, Sr. Assistant, PACL	Noida/ U.P.	Rajasthan	No	Chailbihari, R/o Allahbad, U.P.	June 18, 2007	Manoj Kumar	Delhi
Panna Lal Bairwa	2006	October 24, 2011	Dausa/ Rajasthan	1.31 Cts.* [0.20 ³ / ₄ Cts.]/ 10,375	S. Karthikeyan	Pondicherry	Tamil Nadu	No	PVG Developers P. Ltd.	October 20, 2008	Gurunathan	Madurai / Tamil Nadu
Banwari Lal Nagar	2006	February 14, 2012	Baran/ Rajasthan	1.70 Cts. [0.20 ³ / ₄ Cts.]/ 10,375	S. Karthikeyan	Pondicherry	Tamil Nadu	No	World Wide Real Estate P. Ltd.	March 30, 2009	Gurunathan	Madurai / Tamil Nadu
Ms. H. Rajina Begam	2006	April 09, 2009	Perambalur/ Tamil Nadu	5.016 Hectare [0.084 Hectare]/ 15,000	Manoj Kumar	Delhi	Madhya Pradesh	No	Narendra Sharma	-	Kamalveer Tyagi	Delhi

* 1 Cts (Cent) = 0.004046856 Hectare

Having examined the samples selected, my observation on the same are as under:

- The 'power of attorney' holder has executed the documents on behalf of the customers. The power of attorney (PoA) given by the customers have been notarised at New Delhi i.e. a place none of the customers have any relation except that PACL has its registered office at New Delhi. Given this fact, it could also be inferred that the PoA was used for 'changing location' and thereafter to 'opt out' on behalf of the customer than for registration of the sale deed on behalf and in favour of the customer.
- The land sold is not in the name of PACL. It has been stated in the sale deeds that PACL is in agreement with such land holders. However, I note that no such agreement have been made part of the sale deed. The same suggests that PACL does not own the land even on the date of sale deeds.
- The date of purchase of land by sellers and the date of sale deed are close. For e.g. in the case of the customer namely Ms. Marriet Pinto, the land was purchased on June 18, 2007, the same was transferred in the name of the customer on December 08, 2007, i.e. just after 6 months. The same shows that PACL pools in the money for the purchase of land and does not do any development of the land. However, this type of cases are very negligible.
- The land allotted are located at places which are far off from the places where the customers are generally residing.

- Customers have been given very small portion out of a large tract of the land and the consideration is said to have been taken in cash on the date of the sale deed execution, which bears a common survey number. I note that PACL has sold only a portion of land to its customers out of one huge piece of land which bears a common khasra/ survey number.
- In the schedule of the property, only boundary details with serial number of the adjoining plots have been given. The schedule does not specifically identify the plot given to the customers. The sale deeds do not have the diagram depicting the demarcation of the plots sold/ map for the ease of identification of the plot. The above findings are in contrast with the submission of PACL that the plots are adequately described in the sale deeds.

PACL in its submissions has said that the practices of entering into 'joint sale deeds' has been discontinued since the year 2000. It has also been submitted that the sale deeds registered in favour of the customers pertain to their share in an un-partitioned agricultural land and hence the plot allotted to such customers are surrounded by other plots. The agreement forming part of the sample application form as discussed elaborately contain the following under the heading 'Sale of Plot':

"... Since fragmentation into smaller size of plot(s)/ lands may not be practicable, feasible or permissible under the relevant Revenue laws, the customer shall have the requisite share along with other allottees/ transferees in a particular joint holding with other customers. 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 PACL to implement the agreement during the relevant period The right, title and interest of the customer to the land herein demised, shall remain inviolate, subject to the reciprocal rights and obligations of the customer herein and PACL."

Further, PACL has also submitted that only symbolic possession of plots are handed over to the customers as fragmentation of land/ plot into smaller sizes may not be practical or permissible under the applicable revenue laws. I note that PACL in the sale deed has not mentioned how the customers will access/ use such un-partitioned agricultural land.

A reading of the above observations on the sample of documents submitted by PACL gives an inference that the transaction of PACL are not simple real estate transaction or land sale/ purchase transaction. While proceeding further, I also note that PACL vide its letter dated May 10, 2013, had submitted ten copies of different executed agreements, application forms, allotment letters, executed and registered sale deeds. The allotment letter in such samples contained the khasra number and plot number along with village, tehsil,

district and State name. A perusal of the respective sale deed shows that the plot number as mentioned in the allotment letter is not there in the sale deed.

m. Commissions paid by PACL and its financials: While proceeding further with the matter, I note that the SCN has alleged that a large proportion of the amount received as advances from customers by PACL is used towards payment of commissions and incentives to its agents. PACL in its reply has admitted that for carrying out its business, it uses agents and pays commissions to these and the field associates also who are appointed by agents. PACL in its reply has submitted that in CDPP, it pays commission @ 10.50% to 12.50% of the total consideration paid by the customer depending upon the duration of the plans. In IPP, it pays commissions from advances received from customers through several years and the same is in the range of 6.6% to 10.25%. It has also been said that the total customer advance and the prepaid commission upto March 31, 2012 is ₹ 44,736.23 crores and ₹ 8,874.15 crores respectively. The calculation of percentage of prepaid commission to customer advances comes to around 19.83%. PACL has further submitted that the commission paid upto March 31, 2012 is ₹ 7,893.80 crores. I note that in simple real estate transaction, the commission is generally fixed on the cost of the land. However, in the instant case the payment of commission to the agents does not seem to be made on the basis of cost alone. Rather, the payment of 19.83% of the total customer advances towards pre-paid commission suggest that the same was calculated on the basis of total amounts mobilized including the development charges also. However, it cannot be understood as to what role an agent can have in respect of development of land for which commission has been paid.

I have seen the details of the commission paid by PACL to its agents as submitted during the investigation, the same has been reproduced as under:

Table - H

Financial year	Amount Paid
1996-1997	1,12,23,818.86
1997-1998	6,00,46,682.88
1998-1999	6,51,90,054.53
1999-2000	6,18,05,900.28
2000-2001	10,31,33,043.45
2001-2002	19,48,00,742.68
2002-2003	31,24,87,763.87
2003-2004	45,13,59,663.53
2004-2005	107,33,42,001.05
2005-2006	364,14,00,910.72

2006-2007	657,75,16,858.12
2007-2008	950,00,04,002.94
2008-2009	1118,22,17,766.22
2009-2010	1285,21,04,794.64
2010-2011	1731,74,64,064.83
2011-2012	1553,39,30,463.93

By the own admission of PACL, the major source of revenue (more than 90%) is from the sale of land. In this regard, I note that PACL has collected funds under the CDPP and IPP plan and as stated earlier has allotted land to around 1.2 crore customers. The head 'sale of land' in the balance sheet, covers the funds from such customers of PACL who according to it had applied for a plot of land and opted for the plan of CDPP and IPP. However, it has executed only 19,284 sale deeds. Although PACL shows the funds collected from its customers (*including the customer advances*) under the head 'sale of land', it actually allots the land to its customers and transfer the actual rights only in negligible cases. Further, PACL vide its letter dated August 11, 2014, has submitted that it has collected another ₹ 29,420.65 crore from 4,63,13,342 customers to whom it is yet to allot land.

PACL in its submission has argued that the amount of ₹ 4,182.14 crore (i.e. pre-paid commissions and other expenses as on March 31, 2012) as alleged in the SCN, includes other items like pre-paid expenses, rest advances, etc. I note from the asset details as mentioned in the balance sheet as on March 31, 2012, of PACL that the pre-paid commission and incentives are treated as 'loans and advances and other assets'. It is seen that as on March 31, 2012, 'the loans and advances and other assets' (i.e. ₹ 9,350.33 crore) include ₹ 4,182.14 crore, i.e., the prepaid commission and other expenses (i.e. more than 40% of loans and advances and other assets) which is a very high amount in proportion to the total sales value.

A perusal of the balance sheet of PACL also shows that certain amounts are appearing as prepaid commission/ expenses. Mr. Gurmeet Singh, the Executive Director, Finance of PACL, in his statement dated May 15, 2013 has submitted that '*... whenever we pay commission we book in pre-paid expenses and when actual sale is booked, we transfer this amount from pre-paid expenses to commission account, ...* .' Such submission of the director of PACL is not in line with the practice followed by the normal real estate companies which pay to their agents only on bringing the customers. It has also not made clear as to when the actual sale is booked.

I note that PACL has paid the commissions in advance to its agents, the same is not in line with then general practices wherein the commissions are calculated on the business brought out by an agent. The sequence of events suggests that PACL has released huge incentives to its agents, that too in advance. The above manner of incentivizing the agents suggests that PACL indulges in paying such huge commissions to its agents in order to please them for getting more and more clients. More clients would mean, PACL has more money (i.e., investments) at its disposal.

- n. Lists of Customers:** I further note the submission of PACL that it maintains the list of active customers only and does not keep any record of the earlier customers, whose agreement tenures have expired either in terms of the plan or on termination by PACL. There were lot of cases where the customers had chosen to opt out by themselves. According to PACL, it is practically impossible for it to maintain the data of all the customers since the inception of the company, more so for those customers whose agreement tenure has expired. Further, it has also been said that there is no necessity for PACL to maintain plan-wise data.

PACL requested SEBI to grant a reasonable time for submitting other lists such as list of total customers and separate lists of customers who have opted for CDDP/ IPP plan, customers who have opted for developing the plot themselves etc., considering the work involved. However, PACL has been mobilizing money from public and the scheme of PACL were alleged to be in nature of CIS since 1996. PACL has been litigating before various fora on this issue and the numbers and details of its customers are vital and crucial in deciding the nature of its activities. Therefore, I fail to understand how PACL has chosen not to keep the relevant details till date.

- o. Proposal of PACL filed pursuant to the personal hearing dated July 12, 2014:** PACL through its advocates has submitted a proposal for repayment dated August 11, 2014, and submitted that it is engaged in two types of real estate businesses i.e. sale and purchase of agricultural plots as well as carrying out development activities pertaining to the agriculture on behalf of the customers to whom the plots of land are sold. It has been said that without prejudice to all the contentions and submissions made, in order to protect the interest of the customers and without getting into further litigation, PACL is submitting a proposal for repayment of the money to the eligible customers.

PACL has also submitted that as on March 31, 2014, it had 4,63,13,342 customers and an amount of ₹ 29,420.65 crore stands outstanding as against these. It has also been said that the value of total lands in the form of 'stock-in-trade' as on March 31, 2014 is ₹ 11,706.96 crores which comprises of two categories: i.e. agricultural lands (₹ 7,322.11 crores) and commercial lands (₹ 4,384.84 crores). PACL has requested for a period of 5 years for execution of the repayment proposal.

The company has only lands worth ₹ 11,706.96 crore [i.e. agricultural lands (₹ 7,322.11 crores) and commercial lands (₹ 4,384.84 crores)] out of which it has not only to satisfy the claim of 4.63 crore customers who have deposited 29,420 crore with it but also to satisfy 1.22 crore customers to whom the land has been allotted but sale deeds have not been executed. Further, PACL has also not given the complete details of the land it claims to hold. In view of the above, the proposal does not appear to be serious and reasonable.

p. Land holding of PACL: PACL is not the registered owner of all the plots sold to its customers as the seller of the plots in majority of the cases are entities other than PACL. In this regard, Mr. Sukhdev Singh in his statement dated May 14, 2013 submitted that '*The land stated in the balance sheet is owned by the PACL, through registered sale deed/ General Power of Attorney/ agreement to Sale and associates of the company with whom the company has entered into MoU, for which the company is also paying the custodian charges for holding the land by those companies in favor of PACL.*'

Year-wise details of the land purchased by PACL, holding through registered sale deed, general power of attorney, agreement to sale and through its associate companies with whom it has entered into Memorandum of Understanding (MoU) are as under:

Table - I

(Area in acres)

Year	Direct holding through Sale Deed (A)	Holding through General Power of Attorney/ agreement to sale (B)	Holding through Associate Companies (C)	% of direct holding by PACL to the total land purchased (A/A+B+C x 100)
2005-06	243.8436	13733.8874	-	1.74
2006-07	37776.9900	18286.1744	-	67.38
2007-08	2615.4976	11668.3945	744.3532	17.4
2008-09	10058.0998	47816.2024	13286.7797	14.13
2009-10	1327.1698	50156.3718	4528.8882	2.3
2010-11	704.7548	44426.3894	13618.1568	1.19
2011-12	1164.33	28851.76	3314.13	3.49

From the above, it is noted that PACL has very limited stock of lands in its name and that most of the lands are held through General Power of Attorney/ through Agreement to Sale/ through associate companies. PACL in its reply has informed that the said associate companies are controlled by its friends and nears and dears of the management of PACL. I observe that PACL enters into an MoU with the associate companies for the purchase of land. The MoU *inter-alia*, states that as PACL is unable to purchase the land in its own name beyond certain limits due to the land laws and other applicable laws of the land in different States of the country, PACL has nominated the associate company to purchase the land for PACL and get the sale deed executed in the name of associate company.

Mr. Gurmeet Singh, Executive Director, Finance of PACL, in his statement dated May 15, 2013 has said that "*We do not hold some of the land in our name due to land ceiling laws of different states. The purchase consideration of the land is paid by PACL directly to the seller/ vendor and the associate companies are holding the title of the land on behalf of PACL under custodian agreement and the land is in the possession of PACL that is why the same is shown as stock in trade. The associate companies are controlled by the friends and nears and dears of the management of PACL. The land which is held by these companies is protected by custodian agreement and the custodian charges are paid to these companies. In the event of any dispute, this custodian agreement will be the support for PACL to claim the land or money from the associate companies. Money goes directly to the seller from PACL and not to the associate companies. There are around 250 associate companies.*"

From the above discussion, I find that there is a clear admission by PACL and its directors that it has made arrangements to purchase the land through its 250 associate companies, in order to circumvent the applicable laws of land ceilings as it could not have held such huge stock of land through its direct holding. It is a matter of serious concern for the State Authorities as well and a reference in this regard is required to be forwarded to the concerned State Authorities.

- q. I note from the agreement that PACL shall pay the land tax and other public dues/ levies, payable in respect of the plot to the appropriate authorities for and on behalf of the customer and the company shall be entitled to get the same reimbursed from the customer. As per the agreement, PACL shall be entitled to get the same reimbursed out of the net sale proceeds which is the 'Net Estimated Realizable Value' at end of term in accordance with the said plan.

I note from the sample submitted by PACL that PACL has at the end of the term returned the amount to its customers which is equivalent to the 'estimated realizable value' as mentioned in the ledger of the said customer. An analysis of the same shows that the land tax and other public dues have not been adjusted in the amount paid to the customers.

- r. I also observe from the details of the plans operated by PACL that the costs of all the plots offered by PACL are almost the same. It needs to be considered that the value of each piece of land usually varies on the basis of its location and quality. However, in view of the facts and circumstances of the present case, I find that the schemes operated by PACL give a picture that the land is being sold as a homogeneous commodity at a fixed price, which is possible only if the land transactions are a sham and a cover for running a CIS scheme and not a genuine sale of agricultural land. At this juncture, I would also like to examine whether the schemes promoted by PACL passes the credulity test. It is difficult for me to believe that a person in Uttar Pradesh will purchase 100-150 yds. of agricultural land 2,000 kilometers away. The lack of maintenance of proper records/ data is a clear indication that the activities of PACL are in the nature of *ponzi* scheme.
- s. From the above, I conclude as under:
- i. The customer while applying authorizes PACL for development/ maintenance, without which agreement will not be entered with the customer/ investor. In the words of PACL, the contract of transfer of plot and development of plot are non-severable. The customer only gets a right to give suggestions
 - ii. The plot of land is not identified either in the application form cum agreement or in the registration letter which are the primary documents. The only document which mentions the plot of land is the allotment letter, however, there is no mechanism to precisely identify the land, at this stage also.
 - iii. PACL has disbursed large amounts to its agents, under the head 'pre-paid commission'.
 - iv. PACL stately gives the un-partitioned land to its customers, which appears to be of no effective use to the customers mainly for the two reasons, **the first** being the size of the plot which is very small for any kind of agriculture activity, **secondly**, the land is far off from the places where the customers of PACL are ordinarily residing.
 - v. PACL has designed the schemes in such a way that the customers will never ask for the possession of its plot of land from the company.
- t. Having considered the above nature of the business activities carried out by PACL, I need to consider the same in the backdrop of the charges levelled in the SCN i.e., PACL is

operating CISs without obtaining a certificate of registration, in terms of Section 12(1B) of the SEBI Act read with Regulation 3 of the CIS Regulation, from SEBI. Any schemes in order to be called a CIS, has to satisfy the four conditions mentioned in Section 11AA(2) of the SEBI. Let us examine whether the nature of business of PACL would qualify as a CIS and the schemes floated by it satisfy all the four conditions prescribed under Section 11AA(2) of the SEBI Act:

- The first condition, under Section 11AA(2), is that the contributions or payments made by the investors, by whatever name called, are pooled and utilised for the purposes of the scheme or arrangement. In the instant case, as detailed above, PACL collects the money from customers/ investors against the purported sale of a plot/ land. The application form and the agreement are the primary documents taken by PACL from a customer for subscribing to its schemes. As detailed above, the application form and the agreement contains the clauses that the customer is applying for plot of agricultural land and for development and maintenance of the same by PACL. I note that the customer cannot enter into an agreement unless he/ she enters into development agreement with PACL.

As already observed that PACL at the stage of application form and agreement do not identify the land to be sold to the applicant. On the contrary, the 'agreement' states that PACL is in the process of 'making arrangements for purchasing/ procuring the land'. A reading of this and the discussion in above paragraphs suggests that PACL on the date of application/ agreement is only making arrangements for procuring the land.

It is observed that the registration letter also does not identify the land or even the specific State where the land will be allotted. It only provides for the plot size. The registration letter also provides for the 'expected value' of the land which has not yet been allotted and as such the location of plot/ land is undisclosed. From the available records, I observe that while allotting the land to the customers vide the allotment letter, PACL reserves its right to change the location of the allotment of land. The discussion on this right of PACL to change the location has been elaborately discussed above.

PACL has argued that the customers would not have any cause for concern with regard to the change of location as the land would be uniformly barren at the acquisition stage. I note that by its own admission, PACL has said that under the CDPP plan, the land is allotted to the customers within a period, generally not exceeding 270 days from the date of receipt of the consideration, while under the IPP the land is allotted within a period,

generally not exceeding 90 days from the date of receipt of 50% of the consideration amount. It can thus be inferred that PACL does not identify any specific land to a customer till the stage of allotment.

The above discussed facts suggests that PACL pools the investment made by the customers, with an aim/ object of carrying out the overall scheme/ arrangement. It is clear that the application form/ agreement/ registration letter does not mention about the location of the land which is being sold to the customers. There is no physical transfer of land happening as discussed in detail in the above paragraphs.

From the foregoing, it becomes clear that PACL pools in the money of customers for the purposes of the scheme i.e., for procuring the land. Thus, satisfying the first condition as stipulated in Section 11AA(2)(i) of the SEBI Act.

- The second condition, is that the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement. In this regard, I note that the contribution/ payments are made by customers to PACL.

PACL has argued that it does not promise any 'assured return'/ 'profit' to its customers. As per it the estimated realizable value is a benchmark value which the customers use at the time of sale to third parties. It has also been said that none of its customers has till date sold their land at a value below the estimated realizable value. PACL has submitted that the 'expected value'/ 'estimated realizable value' is the price which land commands on completion of the development activities. I note that PACL has provided the criteria for finding out the 'expected value'/ 'estimated realizable value' as discussed in detail in the above paragraphs and has submitted that there is no specific method for determining the estimated value of land. Without prejudice to determining whether PACL provides assured returns or not, the mere promise of expected value higher than amount invested makes it clear that contributions are made with a view of earning profits.

From the above, it is clear that the customer of PACL makes contribution/ payment with a view to receive the profits, income and returns on their initial investments that may accrue to them as applicable, thus attracting the second condition as stipulated in Section 11AA(2)(ii) of the SEBI Act.

- The third condition is that the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors.

It is the admission of PACL itself that the customer who invest their money with PACL are mandatorily required to give the right of development and maintenance in favour of PACL. I note that the said authority is given to PACL by the customers vide the application form and registration letter itself. From the same, one can say that an investor gets only an undivided interest in the stock of land and the same cannot be identified. The customer does not manage his investments in the scheme rather his investments are managed and utilized by PACL. Thus, it is clear that the land as mentioned in the allotment letter is not managed by the customers at any stage of the scheme. The same therefore, satisfies the third condition as stipulated in Section 11AA(2)(iii) of the SEBI Act.

- The fourth and last condition is that the investors do not have day to day control over the management and operation of the scheme or arrangement. As stated above, PACL obtains the authority from its customers for development and maintenance of the plots of land. From the discussion, it is clear that the land remains in the possession of PACL. PACL provides irrigation system which is part of the overall irrigation system. It employs its own technical experts, advisors and such other personnel for the purpose of carrying out its obligations. It keeps the responsibility for arranging the sale of the produce, if any, out of the said property. The customer does not have any claim over the common facilities provided by PACL, such as, irrigation pipelines, drainage systems and electrical lines etc. even after the execution of sale deeds. In the absence of such facilities it will not be possible for the customer to use its land for cultivation. Further, it may not be that easy to install such infrastructure by the customer.

By stating in the agreement that 'PACL shall have the right to develop and maintain the property and the customer shall not ordinarily interfere', PACL admits that the contribution/ investment by customers and the plot of land are managed by PACL statedly on behalf of its customers. I note that the customers do not have any role in their management. This makes it clear that the customer does not have day to day control over the land as the same remained in the custody/ use of PACL which satisfies the fourth and last condition as stipulated in Section 11AA(2)(iv) of the SEBI Act.

- u. The main argument put forth by PACL is that it is running a real estate business and not a CIS. Out of the sample of 500 customers selected randomly from the list of customers provided by PACL, who according to it were allotted land in the year 2005-2006, not a single customer had finally received the land even after the passage of more than eight (8) years. This shows clearly that the real estate business is only a facade for running a CIS.

PACL has also argued that the fact that Justice K. Swamidurai has found 19,284 sale deeds executed by PACL as genuine and the same proves that the Company is running a genuine real estate business. For the purposes of this order, the genuineness or otherwise of the said 19,284 sale deeds is not the issue, which anyway have been taken as genuine, having been verified by Justice K. Swamidurai.

The issue is whether PACL is running a CIS with its 5,85,40,150 customers [i.e. 1,22,26,808 customers (admission as per letter dated April 18, 2013) + 4,63,13,342 customers (admission as per the proposal dated August 11, 2014) - 19,284 customers (for whom sale deeds have been executed)], whose money has been collected, without transferring any rights in the land or even identifying the plot of land that they may ultimately own.

- v. I find it necessary to place my reliance on the judgment of Hon'ble Supreme Court, in the matter of *PGF Limited Vs. Union of India & Ors.*:

"Therefore, the paramount object of the Parliament in enacting the SEBI Act itself and in particular the addition of Section 11AA was with a view to protect the gullible investors most of whom are poor and uneducated or retired personnel or those who belong to middle income group and who seek to invest their hard earned retirement benefits or savings in such schemes with a view to earn some sustained benefits or with the fond hope that such investment will get appreciated in course of time. Certain other Section of the people who are worstly affected are those who belong to the middle income group who again make such investments in order to earn some extra financial benefits and thereby improve their standard of living and on very many occasions to cater to the need of the educational career of their children.

38. Since it was noticed in the early 90s that there was mushroom growth of attractive schemes or arrangements, which persuaded the above vulnerable group getting attracted towards such schemes and arrangements, which weakness was encashed by the promoters of such schemes and arrangements who lure them to part with their savings by falling as a prey to the sweet coated words of such frauds, the Parliament thought it fit to introduce Section 11AA in the Act in order to ensure that any such scheme put to public notice is not intended to defraud such gullible investors and also to monitor the operation of such schemes and arrangements based on the regulations framed under Section 11AA of the Act.....

40. It will have to be stated with particular reference to the activity of the PGF Limited, namely, sale and development of agricultural land as a collective investment scheme, the implication of Section 11AA was not intended to affect the development of agricultural land or any other operation

connected therewith or put any spokes in such sale-cum-development of such agricultural land. It has to be borne in mind that by seeking to cover any scheme or arrangement by way of collective investment scheme either in the field of agricultural or any other commercial activity, the purport is only to ensure that the scheme providing for investment in the form of rupee, anna or paise gets registered with the authority concerned and the provision would further seek to regulate such schemes in order to ensure that any such investment based on any promise under the scheme or arrangement is truly operated upon in a lawful manner and that by operating such scheme or arrangement the person who makes the investment is able to really reap the benefit and that he is not defrauded..... It is, therefore, apparent that all other schemes/arrangements operated by all others, namely, other than those who are governed by sub-section 3 of Section 11AA are to be controlled in order to ensure proper working of the scheme primarily in the interest of the investors.

...

42. Therefore, in reality what sub-section (2) of Section 11AA intends to achieve is only to safeguard the interest of the investors whenever any scheme or arrangement is announced by such promoters by making a thorough study of such schemes and arrangements before registering such schemes with the SEBI and also later on monitor such schemes and arrangements in order to ensure proper statutory control over such promoters and whatever investment made by any individual is provided necessary protection for their investments in the event of such schemes or arrangements either being successfully operated upon or by any misfortune happen to be abandoned, where again there would be sufficient safeguards made for an assured refund of investments made, if not in full, at least a part of it.

.....In the light of our above conclusions on this ground it will have to be held that Section 11AA is a valid provision, not suffering from any infirmity, as it does not intrude into the specific activities of sale of agricultural land and its development.

- w. Considering the above discussion, it can be satisfactorily said that the transactions between PACL and its customers are not real estate transactions simpliciter, and they satisfy all the ingredients of a CIS as defined under Section 11AA of the SEBI Act. It is clear that the business run by the PACL is nothing but that of a CIS. Thus, PACL has violated Section 12(1)(B) of the SEBI Act read with Regulations 5, 68, 69 of the CIS Regulations, by not applying for registration with SEBI as a CIS and also launching new schemes/ plans, raising money under such schemes/ plans.
35. At this stage, I note the noticees namely Mr. Gurmeet Singh and, Mr. Subrata Bhattacharya have stated that SEBI at the stage of current SCN has to decide only on the issue whether the business PACL falls within the purview of CIS or not; depending on the outcome of such issue SEBI can proceed to take further action in accordance with law. It has also been argued by the said noticees that any coercive action can follow in the proceedings initiated later-on.

In this regard, the relevant portion from the Order dated February 26, 2013 of the Hon'ble Supreme Court of India is reproduced below:

"4., it was suggested to the learned counsel whether the impugned orders of the appellant dated 30.11.1999 and 10.12.1999 themselves can be treated as show cause notices and an opportunity to be extended afresh to the first respondent company before passing final orders on the question as to whether or not the business of the first respondent company will fall within the category of Collective Investment Scheme (hereinafter being referred to as "CIS"). Further, depending upon the outcome of any such fresh orders to be passed by the appellant, further proceedings can be initiated by the appellant in accordance with law.

5. To the above suggestion, the learned senior counsel appearing for the respondents readily agreed. Learned counsels appearing for the appellant however, submitted that the appellant should have full cooperation from the first respondent Company, that appellant should be in a position to make an inspection, investigation, and inquiry of the first respondent Company, that it should have access to the verification of the records with the assistance of Auditors and only thereafter, the appellant would be in a position to issue any comprehensive show cause notice supplementing the proceedings dated 30.11.1999 and 10.12.1999. Learned counsel submitted that the appellant would require not less than three months' time to carry out the exercise and issue the supplementary show cause notice. Further, though learned counsel for the appellant submitted that the first respondent Company should be restrained from mobilising any fresh records, it was made clear that such a blanket prohibition cannot be issued, instead in the event of mobilisation of any fresh funds, the first respondent company would furnish the details of those transactions also to the appellant when the appellant proceed to hear the first respondent Company and before passing any fresh orders.

... ..

8. We also make it clear that the appellant shall pass fresh orders as regards the business activity of the first respondent company as to whether it falls under the category of CIS or not and depending upon the ultimate order to be passed it may proceed further in accordance with law. The appellant shall before taking any future action give prior notice to the first respondent company."

From the above, it is noted that Hon'ble Supreme Court of India has remanded the matter back to SEBI and directed SEBI to determine afresh 'whether the business of the PACL falls under the category of CIS?' The order further states that depending upon the final order to be passed by SEBI, further proceedings can be initiated by it in accordance with law.

I note that the issue framed, whether PACL is operating a CIS without obtaining registration from SEBI, has been elaborately dealt with in **paragraph 34** above. The natural consequences of operating an unauthorised CIS activity would be to immediately prevent the entity from continuing with such activity and to direct that entity to refund monies collected under its unauthorised CIS activity with promised returns to its customers. The same shall be followed in this case also. The above action is remedial and preventive in nature. Appropriately, penal and coercive action would ensue if the entity fails to comply with such remedial measures directed by SEBI. Accordingly, as per the

procedure followed by SEBI in the quasi-judicial proceedings, SEBI is now duty bound in terms of Section 11 and 11B of the SEBI Act, in the interest of investors and orderly development of securities market to restrain PACL from continuing with its money mobilization schemes, wind up its schemes which are in the nature of CIS as determined in this order and direct PACL to refund the monies mobilized under such CISs with returns that were promised to the customers.

At this stage, I note that during the course of personal hearing dated July 12, 2014, PACL has even submitted a draft proposal wherein it has *inter alia* proposed to discontinue all the existing schemes/ plan(s) and no new schemes/ plan(s) will be launched in future. The proposal also speaks about the repayments to the existing customers and for the same PACL has requested for a period of five long years.

By its own admission of PACL, it does not have enough land bank compared to the amount mobilized by it from the customer. I note that PACL had 4,63,13,342 customers as on March 31, 2014 who have not been allotted land. The outstanding dues to such customers as on March 31, 2014 is ₹ 29,420.65 crore and the value of total lands in the form of 'stock-in trade' as on March 31, 2014 is ₹ 11,706.96 crore. As discussed, PACL does not have assets corresponding to the amounts of monies raised by it from public. In view of the above, I reject the proposal of PACL.

36. After having found that the activities of PACL are in the nature of CIS, it becomes important to determine the liability of its directors – both past and present. The SCNs have been issued to Mr. Anand Gurwant Singh, Mr. Gurnam Singh (R/o P.O. Singh Bhagwant Pur), Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Nirmal Singh Bhangoo, Mr. Gurnam Singh (R/o P.O. Wazidpur), Mr. Uppal Devinder Kumar, Mr. Tyger Joginder, Mr. Gurmeet Singh and Mr. Subrata Bhattacharya. As regards the above persons; the following table provides the details regarding the period of their directorship in PACL:

Table - J

Name	Date of appointment	Date of ceasing
Anand Gurwant Singh	13-02-1996	16-09-1996
Gurnam Singh	13-02-1996	07-01-1997
Tarlochan Singh	13-02-1996	N. A.
Sukhdev Singh	03-06-1996	N. A.
Bhangoo Nirmal Singh	03-06-1996	03-02-1998
Gurnam Singh	10-01-1998	05-02-2009
Uppal Devinder Kumar	10-08-1998	29-09-1998
Tyger Joginder	05-09-2005	31-12-2008

Gurmeet Singh	01-02-2009	N. A.
Subrata Bhattacharya	01-02-2009	N. A.

- a.** From the above table, I note that Mr. Tarlochan Singh and Mr. Sukhdev Singh were appointed as directors of PACL during 1996. The said persons still continue as its directors. Mr. Gurmeet Singh and Mr. Subrata Bhattacharya were appointed as the directors of PACL during the year 2009 and still continue as its directors. The aforesaid 4 persons are the directors of PACL as on date. Therefore, they are liable and responsible for the violations committed by PACL in running CISs without obtaining registration from SEBI as required under law.
- b.** Mr. Tyger Joginder and Mr. Gurnam Singh (R/o Wazidpur) have resigned during the years 2008 and 2009 respectively. Mr. Tyger Joginder (appointed as a director on September 05, 2005) has submitted that he did not attend any board meetings and was not responsible for any action of the company which was not done with his consent. In my opinion not attending board meetings does not absolve a director from his responsibility. Mr. Gurnam Singh, vide letter dated July 24, 2013, has submitted that he was associated with PACL only for the period between January 10, 1998 and February 05, 2009. However, in his written submission dated July 01, 2014, he has contended that he was not aware as to when he was appointed and relieved as director of PACL. The above submissions are contrary to each other. In view of the above, Mr. Tyger Joginder and Mr. Gurnam Singh (R/o Wazidpur) are liable and responsible for the violations committed by PACL in running CISs without obtaining registration from SEBI as required under law, during the period when they were the directors.
- c.** From the above table, I also note that the noticee, Mr. Anand Gurwant Singh has resigned in the year 1996. The directors/noticees, Mr. Nirmal Singh Bhangoo and Mr. Uppal Devinder Kumar have resigned during 1998. Mr. Anand Gurwant Singh was the director of PACL since incorporation. As regards Mr. Nirmal Singh Bhangoo and Mr. Uppal Devinder Kumar, I note that these had resigned only after the press releases issued by Government of India and SEBI. In addition to the same, I also note that Mr. Nirmal Singh Bhangoo had an important role to play in the affairs of PACL i.e. of an advisor. In view of the same, these three noticees are liable and responsible for the violations committed by PACL in running CISs without obtaining registration from SEBI as required under law, during the period when they were the directors.

d. I note that Mr. Gurnam Singh (R/o P.O. Singh Bhagwant Pur) had ceased to be a director of PACL since January 07, 1997, on account of his death. In this regard, I have seen the relevant 'form 32'. Accordingly, taking note of the same, the proceedings in respect of Mr. Gurnam Singh (R/o P.O. Singh Bhagwant Pur) stands abated.

37. PACL Customer Association has requested that the interests of the customers should be kept in mind and SEBI's order should not adversely affect their interests. The entire exercise undertaken by SEBI is for protecting the customers by ordering that their monies be returned with returns that are promised by PACL Limited and due to them. However, keeping in mind that there might be some customers who have entered into some land transaction with PACL and there transactions have been certified to be genuine by Justice K. Swamidurai. I therefore direct that nothing contained in this order will affect the sale deeds which have been certified as genuine by Justice K. Swamidurai. The request made by PACL Customer Association is accordingly disposed off.

DIRECTIONS

38. In view of the observations made in this Order, I, in compliance with the directions of the Hon'ble Supreme Court, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992, hereby find that the business/activities/schemes/plans offered and operated by PACL are Collective Investment Schemes, satisfying all the ingredients specified under Section 11AA of the Securities and Exchange Board of India Act, 1992. The natural consequences of such findings would be to *inter alia* direct PACL and its directors and promoters to refund the monies, which have been collected in an unauthorized manner, with promised returns to investors. Accordingly, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 and Sections 11, 11B and 11(4) thereof read with Regulation 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999, hereby issue the following directions:

a. PACL Limited [PAN: AAACP4032A], its promoters and directors including Mr. Tarlochan Singh [PAN: AIEPS9489Q], Mr. Sukhdev Singh [PAN: AUGPS0130B], Mr. Gurmeet Singh [PAN: AAMPS1400Q] and Mr. Subrata Bhattacharya [PAN: AAIPB6480H], shall abstain from collecting any money from investors or launch or carry out any Collective Investment Schemes including the schemes which have been identified as a Collective Investment Scheme in this Order.

- b. PACL Limited, its promoters and directors including Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh and Mr. Subrata Bhattacharya, shall wind up all the existing Collective Investment Schemes of PACL Limited and refund the monies collected by the said company under its schemes with returns which are due to its investors as per the terms of offer within a period of three months from the date of this Order and thereafter, within a period of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, including the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds.
- c. PACL Limited and its directors, including Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh and Mr. Subrata Bhattacharya are also directed to immediately submit the complete and detailed inventory of the assets owned by PACL Limited.
- d. PACL Limited, its promoters and directors including Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh and Mr. Subrata Bhattacharya, shall not alienate or dispose off or sell any of the assets of PACL Limited except for the purpose of making refunds to its investors as directed above.
- e. In the event of failure by PACL Limited and its directors/ promoters to comply with the above directions, the following actions shall follow:
- PACL Limited and its directors, including Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh, Mr. Subrata Bhattacharya, Mr. Anand Gurwant Singh, Mr. Nirmal Singh Bhangoo, Mr. Uppal Devinder Kumar, Mr. Tyger Joginder and Mr. Gurnam Singh (R/o Wazidpur) shall immediately (*on expiry of the three months period available for making refunds*) be restrained from accessing the securities market and would further be prohibited from buying, selling or otherwise dealing in securities market till all the Collective Investment Schemes of PACL Limited are wound up and all the monies mobilized through such schemes are refunded to its investors with returns which are due to them.
 - SEBI would make a reference to the State Government/ Local Police to register a civil/ criminal case against PACL Limited, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and
 - SEBI would make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the company, PACL Limited.

- Without prejudice to the above, SEBI shall also initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder.

f. Further, for the reasons stated above in this Order, the SCN issued in respect of Mr. Gurnam Singh (R/o P.O. Singh Bhagwant Pur) is disposed off without any directions.

39. The above directions shall come into force with immediate effect.
40. The Hon'ble Supreme Court has also directed SEBI to proceed further in accordance with law if PACL is found to be carrying on CISs. Therefore, for the contraventions as found in this Order and the contravention of Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, I advise SEBI to initiate appropriate proceedings under Sections 11(4) and 11B of the SEBI Act read with Regulation 65(e) of the CIS Regulations and Chapter VI A of the SEBI Act against PACL Limited, its promoters and directors, including Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh, Mr. Subrata Bhattacharya, Mr. Nirmal Singh Bhangoo [PAN: ACTPB6698L, DIN: 0031748], Mr. Tyger Joginder [DIN: 00694280], Mr. Gurnam Singh (R/o Wazidpur) [PAN: AOYPS3203H; DIN: 00498810], Mr. Anand Gurwant Singh and Mr. Uppal Devinder Kumar.
41. The above action would be without prejudice to the right of SEBI to initiate any action under law including prosecution proceedings under Section 24 of the Securities and Exchange Board of India Act, 1992, against PACL Limited, its promoters and directors, including Mr. Tarlochan Singh, Mr. Sukhdev Singh, Mr. Gurmeet Singh, Mr. Subrata Bhattacharya, Mr. Nirmal Singh Bhangoo, Mr. Tyger Joginder Mr. Gurnam Singh (R/o Wazidpur), Mr. Anand Gurwant Singh and Mr. Uppal Devinder Kumar and those other persons who are in default, for the above violations.
42. Copy of this Order shall be forwarded to recognized stock exchanges and depositories for information and necessary action.

DATE : AUGUST 22, 2014
PLACE: KOLKATA

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA