BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. AO/AP/PACL/1-5 / 2015]

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

In the Matter of M/s PACL Ltd.

In Respect of:

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

2. **Mr. Tarlochan Singh (PAN: AIEPS9489Q)**

3. **Mr. Sukhdev Singh (PAN: AUGPS0130B)**

4. **Mr. Gurmeet Singh (PAN: AAMPS1400Q)**

5. **Mr. Subrata Bhattacharya (PAN: AAIPB6480H)**

Background:

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation into the affairs of M/s. PACL Limited. The investigation conducted by SEBI revealed that M/s. PACL Limited (hereinafter referred to as "**Noticee no.1" or "the company**") and its directors namely, Mr. Tarlochan Singh (hereinafter referred to as "**Noticee no. 2**"), Mr. Sukhdev Singh (hereinafter referred to as "**Noticee no. 3**"), Mr. Gurmeet Singh (hereinafter referred to as "**Noticee no.4**") and Mr. Subrata Bhattacharya (hereinafter referred

to as "**Noticee no.5**") (hereinafter collectively referred to as "**Noticees**") had mobilized funds from general public by sponsoring/causing to be sponsored, carrying/causing to be carried, collective investment schemes, without obtaining registration from SEBI as required under the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") and SEBI (Collective Investment Schemes) Regulations, 1992 (hereinafter referred to as "**CIS Regulations**").

2. Vide order dated December 09, 2014, I was appointed as Adjudicating Officer, in terms of Section 15-I read with Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**the Rules**"), to inquire into and adjudge under Section 15 HA of the SEBI Act, 1992, the violation of Regulation 4(2) (t) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**") alleged to have been be committed by the Noticees.

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

Show cause notices, dated January 20, 2015 (hereinafter referred to as "**SCN**") were issued to the Noticees under Rule 4(1) of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed against them under Section 15 HA of the SEBI Act, 1992, for the alleged violation of Regulation 4(2) (t) of PFUTP Regulations read with Section 15 HA of SEBI Act, 1992. The Noticees were advised to file their replies to the respective SCN within 14 days of its receipt. In the SCN, it was alleged that the Noticee No.1 has illegally mobilized funds to the tune of Rs 2686,25,54,797/- (Rs Two Thousand Six Hundred Eighty Six Crore Twenty Five Lakh Four Thousand Seven Hundred and Ninety Seven only) during the period of September 01, 2013 to June 15, 2014 in its collective investment schemes, without obtaining registration from SEBI. It was also alleged that during the relevant period, Noticees no. 2 to 5 were incharge and responsible for the activities of Noticee no.1 and were directly/indirectly involved and instrumental in such illegal mobilization under the schemes of Noticee no.1. It was further alleged that the Noticees have violated provisions of Regulation 4 (2) (t) of PFUTP Regulations. The charges have been levelled against the Noticees in the SCN, based on the Investigation Report (hereinafter referred to as "**the IR**") and other material made available to me. Copy of relevant extract of IR and other documents relied upon in the

proceedings were given to the Noticees along with the SCN. The details of the charges in the SCN are as under:

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

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

c) The Noticee no. 1 introduced certain other schemes, over a period of time. All such schemes, provided for estimated realizable value or projected plot value.

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

e) The development agreement forms part of all the prevailing plans, i.e. plan no. 28 to 67. Hence, it is inferred that the customer does not have any option of developing the land on its own. It has also been stated during investigation by Shri Sukhdev Singh, M. D., (Noticee no.3), of M/s. PACL that "*All business plans are inclusive of land cost and development charges. Therefore there is no scope for the customer to opt for the self-development of the plot in the existing plan.*" The same was

also confirmed during investigation by Shri Gurmeet Singh (Noticee No. 4) that the development of agricultural land sold to its customers is done by the Noticee no.1 only.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

l) Mr. Sukhdev Singh (Noticee No.3) has, during the course of investigation, confirmed that there is no scope for the customer to opt for self-development of the land as the business plans are inclusive of land cost and development charges. It has been further confirmed that since inception, none of the plans have provided option of self-development and thus none of the customers have opted for self-development. It has been further stated that the option of self-development by the customer is provided keeping in mind further changes in business plan.

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

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

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

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

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

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

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

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

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

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

s) The customer does not have exclusive rights over the facilities such as irrigation, drainage system, etc. He is only entitled to use such facilities along with others in the neighborhood. Without having any control over such facilities, the customer

is not having, for all practical purposes, the absolute ownership/possession/control of the agricultural land purchased by him.

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

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

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

w) The Noticee no. 1 has failed to provide scheme-wise amount mobilized or the details of the amount used for development of the land. Such details are also not available in the financial statements of the Noticee no.1. The price of plots is uniform across all the states. Thus, the monies mobilized by it under the schemes, have been pooled and utilized for the purposes of the schemes.

x) At the time of making the investment, the customers are informed about the 'estimated realizable value' of such plot. The plot can be sold by the customer only at respective estimated realizable value. As stated by Noticee no.4, during the course of Investigation, all customers seek assistance of the Noticee no.1 to sell their plot. The amount mentioned under such head is the amount that the customers is expected to receive at the end of the tenure of the scheme. The Noticee no. 1 has submitted that it ensures by carrying out development activities on the land, that the customer receives at least the 'estimated realizable value'. It is clear that the investor would be getting the 'estimated realizable value' and not the rights over the land or anything growing over it. The customer cannot sell the plot for more than the value determined by the Noticee no.1. Hence, the contributions/payments made by the customers are with a view to receive profit from such schemes.

y) The customer does not have a right to choose the state where the land is situated. This option has been started to be given to the customers only 2-3 years back. Exact location of the plot is decided by the Noticee no. 1 only, which is also subject to change by the Noticee no.1. The customers of the Noticee no.1 belong

to various parts of the country, however, land has been allotted to them in 8 states only, out of which land has been majorly allotted in 3 states. The title deeds pertaining to sale of plots is kept with the Trustee appointed by the Noticee no.1. The same is not given to the customer even after payment of full consideration. The investor does not get any right over the land beyond the pre-determined amount of 'estimated realizable value' and the land cannot be utilized for any other purpose.

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

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

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

cc) It was also alleged, based on the details provided vide letters dated June 03, 2014 and June 30, 2014, issued by the Advocate for Noticee no.1, during the course of hearing before Whole Time Member, SEBI, that the Noticees have mobilized funds to the tune of Rs 2686,25,54,797/- (Rs Two Thousand Six Hundred Eighty Six Crore Twenty Five Lakh Fifty Four Thousand Seven Hundred and Ninety Seven only) during the period of September 01, 2013 to June 15, 2014, without obtaining registration from SEBI.

4. Vide letter dated February 09, 2015, Noticee no. 4 requested for reasonable time to make submissions on the SCN. The said letter was filed for seeking time for all the Noticees, however, authorization letters in favour of Noticee no.4 were not filed. Accordingly, vide letter dated February 11, 2015, time to file reply to the SCN was extended for another 7 days. The Noticee no.4 was also advised to file independent authorization letter on behalf of all other noticees, authorizing him to represent them in these proceedings. Subsequently, separate letters dated February 20, 2015 were received from the Noticees, seeking further time of 10 days to file reply to the SCN. However, as no reply was received despite extension of time (vide letter dated February 11, 2015), it was decided to conduct an inquiry in the matter, based on the material available on record.

5. Before dwelling upon the various contentions raised by the Noticees before me, it would be appropriate to refer to the brief factual and legal background of this matter, as the same would help to understand the various contentions raised by the Noticees in correct perspective :

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

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

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

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

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

c) Vide Press Release dated November 18, 1997, the Government of India communicated its decision that schemes through which instruments such as agro bonds, plantation bonds, etc., issued by the entities, would be treated as schemes under the SEBI Act, 1992 and SEBI was directed to frame regulations in order to regulate these CIS. Pursuant to the decision taken by the Government of India on CIS, a press release dated November 26, 1997 was issued by SEBI, wherein it was stated that regulations under Section 12 (1B) of SEBI Act, 1992 are being framed and till the time the said regulations are framed, no person can sponsor or cause to be sponsored, carry on or cause to be carried on any new CIS. It was further notified that persons desirous of availing the benefits of the proviso to Section 12 (1B) of SEBI Act, 1992 may send the information within 21 days.

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

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

f) Thereafter, Section 11 AA was inserted in the SEBI Act, 1992 by the SEBI (Amendment) Act, 1999, w.e.f February 22, 2000, which defines collective investment scheme as under :

Section 11AA

"Collective investment scheme.

11AA. (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) or sub-section (2A) shall be a collective investment scheme:

Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.

(2) Any scheme or arrangement made or offered by any person under which, –

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;

(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable

or immovable, from such scheme or arrangement;

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

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

(2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.

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

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

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

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

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

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

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

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

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

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

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

h) In its reply dated March 23, 1998, the Noticee no. 1 challenged the jurisdiction of SEBI on the ground that its business activities are in the nature of

sale and purchase of agricultural land and thus SEBI Act, 1992 is not applicable to it.

i) In the meanwhile, a Public Interest Litigation, S.D. Bhattacharya Vs SEBI and others (C.W.P. No. 3352/98), was filed before Hon'ble High Court of Delhi, against entities running plantation and similar schemes. SEBI submitted a list of all the companies which, according to it were running CIS. The said list included the name of Noticee no. 1. Hon'ble High Court vide its interim order dated October 07, 1998 directed *inter alia* such companies to comply with the SEBI's directive published on February 24th, 1998 whereby it was directed that existing CIS can mobilize funds from the public or from the investors under their existing schemes only if a rating from any one of the credit rating agencies has been obtained.

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

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

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

m) Hon'ble High Court of Delhi, in the matter of S.D. Bhattacharya & Ors. Vs SEBI and others, vide its order passed in March 2003, allowed the Noticee no.1

to execute sale deeds in favour of its customers and notice against it was discharged. However, on SEBI's objection, the Hon'ble High Court later clarified that the said order of discharging notice would not come in the way of SEBI deciding upon whether or not the Noticee no.1 is a CIS entity or not.

n) Hon'ble High Court of Rajasthan, vide its order dated November 28th, 2003 quashed the notices issued by SEBI and observed that the schemes of Noticee no. 1 were not CIS as they did not possess the characteristics of CIS, as defined under Section 11 AA of SEBI Act, 1992.

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

p) Regulation 4 (2) (t) was inserted in PFUTP Regulations with effect from September 06, 2013. The said regulation is reproduced hereunder :

> ***"4 Prohibition of manipulative, fraudulent and unfair trade practices***
>
> ...
>
> *(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-*
>
> *(t) illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any collective investment scheme by any person."'*

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

6. A hearing notice dated March 17, 2015 was issued to the Noticees, in terms of Rule 4 (3) of the Rules, fixing April 07, 2015 as the date of hearing. However, the Noticees did not appear for the hearing as scheduled and request vide letter dated April 09, 2014, of Mr. PawanShree Agrawal, Advocate was received on behalf of Noticee no.1, Noticee no.2 and Noticee no. 3 referring to another adjudication proceedings for which the SCNs were received at same time by the Noticees and submitted that the Noticees were under a belief that replies to the SCN have already been filed. Similar request was also received from Shri Ayush Sharma, Advocate, representing Noticee no.4 and Noticee no.5. It was further submitted that Noticees have realized on that day that there are two separate proceedings. Accordingly, a request was made seeking time of 4 weeks to file the reply. Subsequently, a common reply dated May 15, 2015, to the SCN, on behalf of Noticee no. 1, Noticee no. 2 and Noticee no. 3 and separate replies dated May 15, 2015, on behalf of Noticee no. 4 and Noticee no. 5 were filed by the respective counsels. In the meanwhile, a hearing notice dated May 12, 2015 fixing May 19, 2015 as the hearing date, was issued. However, requests vide letter dated May 18, 2015 from both the counsels were received seeking adjournment in the matter. Thereafter, vide hearing notice dated May 19, 2015, the personal hearing in the matter was fixed for June 15, 2015.

6.1. Noticee no. 1, Noticee no.2 and Noticee no.3

On the date of hearing date, as scheduled for June 15, 2015, a letter dated June 14, 2015 from the counsel for the Noticee no. 1, Noticee no. 2 and Noticee no. 3 was received, seeking adjournment in the matter. Subsequently, a request seeking inspection of documents was also made by the counsel for Noticee no. 1, Noticee no. 2 and Noticee no. 3. The said request was accepted and SEBI was directed to provide the inspection of documents. After completion of the inspection, request vide letter dated July 21, 2015, from the counsel seeking copies of certain documents was received. Vide hearing notice dated July 02, 2015, the next hearing was fixed for July 27, 2015 and on the scheduled day of hearing, i.e., July 27, 2015 the counsel sought copies of documents as requested in his letter dated July 21, 2015. On perusal of the request made seeking copies of the documents, it was observed that few of those documents were internal file noting of SEBI and other were the communication exchanged between the Noticee no. 1 and SEBI. Thus, the request was rejected and it was also decided that in case any such document is relied upon in the instant proceedings, copy

of the same shall be provided to the noticees, in compliance of the principles of natural justice. It is further observed that none of the other documents have been disputed by the Noticees nor copies have been sought for. On request of the counsel, the hearing for Noticee no. 1, Noticee no. 2 and Noticee no. 3 was adjourned to August 04, 2015. However, another letter dated August 04, 2012, from their counsel was received on the day fixed for hearing seeking adjournment in the matter. In view of the request made, the hearing was adjourned for August 14, 2015. However, vide letter dated August 13, 2015, the hearings were further rescheduled to August 17, 2015 due to certain official reasons. On August 17, 2015 Mr. Akarsh Garg, Advocate, duly authorized by Shri Pawanshree Agrawal appeared and made oral submissions. On request of Shri Akarsh, time of 1 week was granted to file written submissions. With regard to the Noticee no.1, Noticee no. 2 and Noticee no.3, request dated August 24, 2015 was received from the counsel seeking extension of time to file written submissions by 15 days. However, the written submissions were filed belatedly on September 15, 2015.

6.2. Noticee no. 4 and Noticee no.5

The hearing for Noticee no. 4 and Noticee no.5 was also fixed for June 15, 2015. The counsel for Noticee no. 4 and Noticee no. 5 appeared on June 15, 2015 and made request for inspection of documents relied upon in the proceedings. The said requests were accepted and SEBI was directed to provide the inspection of documents. After completion of the inspection, request from the counsel seeking copies of certain documents were received. On perusal of the request made seeking copies of the documents, it was observed that few of those documents were internal file noting of SEBI and other were the communication exchanged with the Noticee no. 1 and SEBI. Thus, the request was rejected and it was also decided that in case any such document is relied upon in the instant proceedings, copy of the same shall be provided to the noticees. It is further observed that none of the other documents have been disputed by the Noticees nor copies have been sought for. The hearing for Noticee no. 4 and Noticee no. 5 was scheduled for August 14, 2015 which was further rescheduled to August 17, 2015 due to certain official reasons. On August 17, 2015, the counsel for Noticee no. 4 and Noticee no. 5 concluded the arguments and sought time of 1 week to file written submissions. However, a request dated August 24, 2015 was received seeking extension of time to file written submissions by 15 days. However, the written submissions were filed belatedly on September 15, 2015.

7. **Submissions by the Noticees**

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

7.1. **Noticee no. 1, Noticee no.2 and Noticee no. 3:**

In response to the charges in the SCN and the aforesaid findings of the IR, Noticee no.1, Noticee no. 2 and Noticee no.3 filed a common reply. The submissions made on behalf of these three noticees are as follows:

7.1.1. General Submissions:

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

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

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

D. The business of the company relates to buying and selling of agricultural land including development of such land into cultivable land and providing other infrastructure on it. The transactions of the company are comparable to that of a

builder/developer of a property. It purchases lands from its own funds prior to inviting allotment for individual plots, adds value to the land through its development activities and based on such land banks, the customers approach the company through its agents for purchase of lands.

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

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

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

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

I. The allotment letter etc., issued by the company are for the sale of land and the same do not create any marketable securities. As per CIS Regulations, the 'units/other instrument' of a CIS should be capable of being marketable on a stock exchange. The 'units' used by the company refers to fixed size of plots and agreements are executed with regard to the plots, hence, such documents cannot be considered to be capable of being listed/traded on stock exchange and thus cannot be held to be security as defined under Section 2(h) of SCRA.

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

K. Justice K. Swamidurai (Retd.) who was appointed by Hon'ble High Court of Delhi in the matter of S.D. Bhattacharya & Ors. Vs SEBI and others, to supervise the land sale transactions of the company has in his report observed that the sale

and purchase transactions carried out by the company are genuine. The reports have been filed by Justice K. Swamidurai does not contain any adverse findings against the company.

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

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

N. PACL does not have any entitlement to control or take charge of the property or monies paid by the customers. PACL is not in the possession of the land and merely has limited right of entry to provide development services and management of property is not handed over to PACL. Marketing services provided at the end of the development period to help the customers sell the plot are provided at the request of the customer. Customers are free to retain the plot or sell it by himself. The company does not manage any contribution or investment as the monies paid by the customers are consideration for the plot and fees for development services provided by it. The customer does not hand over the management of the property but merely conveys limited right of entry to the company, for the purpose of development. To develop the land, the company exercises certain level of discretion, but the same cannot be termed as 'management' of properties. The company uses its expertise and experience in developing the land without undue interference from the customers. The customers have a right to give suggestions.

O. The sums paid by the customer are consideration of the land and fee for development and thus the company is not managing the contributions of the customers. The customers are informed about the composite nature of contract, i.e., transfer of title of a piece of land and development of land by the company. The development and maintenance for the period of tenure of the agreement, forms an integral and conjoined service offered to the customer. The company

prefers to do the development without undue interference from the customers. However, the customers have the right to tender suggestions regarding development & maintenance of the land.

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

Q. The customer cannot transfer any right, title or interest in the land before execution of sale deeds as ownership is vested in them coupled with possession. The land is allotted to the customer in the State of his choice, based on the availability. A person who makes substantial purchase of land by making payment cannot be said to be finding it difficult to visit the piece of land.

R. The company executes a Special Power of Attorney in favour of its representative to provide flexibility in facilitating the execution of sale deeds. The execution of SPoA is optional.

S. The current application forms and agreements do not contain clauses of joint sale deed. The customers may have undivided shares along with other customers in a plot of land. The rights of each customer are recorded in separate sale deed.

T. From 2011 onwards, customers have option to self-develop the land. If the customers were developing all the plots, the company would merely be engaged in land trading. However, the value proposition offered by the company is development of agricultural land, which increases the sale price of land manifold at the time of expiry of the agreement. The major parts of charges are towards development charge as barren land is converted into cultivable over the period of plan.

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

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

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

X. All taxes/public dues are paid by the company on behalf of the customer and the same are reimbursed by the customer on expiry of tenure. SEBI cannot challenge the validity of the agreement entered between two parties. Agreements are backed by consideration of reciprocal promises and SEBI cannot question the adequacy of consideration.

Y. It has been contended for the directors (Noticee no.2 and Noticee no.3) that they cannot be held responsible for any of the actions of the company, much less for running CIS, thus, SEBI has erred in directing the issuance of proceedings against noticees.

Z. The CIS Regulations were notified only on October 15, 1999 and SEBI was assigned the task vide Press Release of Govt. of India dated November 18, 1997. Therefore, before November 18, 1997, the activities of agro based plantation bonds were beyond the ambit of Section 11 (2) (c) of SEBI Act, 1992. The company was of the opinion that its activities are not covered under the communication dated March 03, 1998.

AA. The provisions of SEBI Act, 1992 and CIS Regulations cannot be given retrospective effect. The term CIS was defined much later after Dave Committee submitted its report and all things happened subsequent to the date when noticee ceases to be director of the company.

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

7.1.2. On applicability of Section 11 AA (2):

The Noticees No.1, Noticee no.2 and Noticee no.3 have contended that Section 11AA is not applicable on the schemes of Noticee no.1, due to the following reasons:

A. As the company owns huge land bank, thus, there is no pooling to purchase the land. In the allotment letter, the land is clearly identified and after execution of sale deed the location cannot be changed.

B. The company is not managing the land but is merely developing the same. Its activities are similar to sale/purchase of flats by builder. As the company has started giving the option of self-development, third condition is also not met out.

C. The customer, if so desire, can have day to day control over the land and certainly has the same after execution of sale deed.

7.1.3. **Further, the response of Noticee no.1, Noticee no.2 and Noticee no.3 on applicability of Regulation 4(2) (t) is as under:**

A. As the company is having huge land holding, the finding that dealing is fraudulent is contrary to record. Identified land is being sold by allotment letter and after execution of sale deed, the location cannot be changed. There is no fraud being committed by the company, thus the first condition of Regulation 4(2) (t) is not met out.

B. The company is not running CIS. It is not managing the land is merely developing the same, as done by a builder in course of sale/purchase of flats. Thus, the second condition of Regulation 4(2) (t) is also not met out.

C. All the transactions with each customer is separate transaction for sale and development of land. The common factor in such transactions are payment mechanism/tenure of development/unit of land etc. and the same cannot be construed to be part of common 'scheme'.

D. The monies are not pooled and utilized solely for any common purpose. Identified land is sold to each customer who pays for purchase and development of the plot. Merely due to the fact that the company receives consideration for development services prior to or while carrying out the development activities, the same cannot be construed to be 'pooling' of funds or the transaction cannot be called as a CIS.

E. Even assuming whilst denying that Regulation 4(2) (t) is attracted, only monies collected after August 22, 2014, i.e. the date when SEBI for the first time hold the activities of the company as CIS, should be covered under Section 15 HA.

7.2. Noticee no. 4 and Noticee no. 5:

Noticee no. 4 and Noticee no.5 have filed separate replies to the respective SCN, however, contents of the said replies are almost identical which are as below :

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

B. Section 12(1B) was inserted into SEBI Act, 1992 w.e.f January 25, 1995 for prohibiting any company from running a CIS without obtaining a certificate of

registration from SEBI. Government of India issued directions under Section 16 to SEBI, directing it to formulate draft regulations for CIS. Pursuant to the same, various press releases were issued by SEBI prohibiting companies from sponsoring or causing to be sponsored any CIS, till the framing of the regulations for CIS.

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

D. The Hon'ble High Court of Delhi, directed that the transactions of sale to various parties by the company should be finalized under the supervision of Justice K. Swamidurai (Retd.). Justice Swamidurai filed his report stating that the sale deeds had been executed and registered in favour of customers of the company in compliance of the order of Hon'ble High Court. The Hon'ble High Court allowed the application for deletion of the name of the company from the list of respondents.

E. In the meanwhile, CIS Regulations were notified and Section 11 AA was inserted in SEBI Act, 1992.

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

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

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

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

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

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

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

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

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

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

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

Q. With regard to the applicability of Regulation 4(2) (t) of PFUTP Regulations, the Noticee no.4 & Noticee no.5 have taken defense similar to the common reply of Noticee no. 1, Noticee no.2 and Noticee no.3, as referred above.

7.3. **Written Submissions**:

Apart from the replies to the SCN filed by the Noticees, in their written submission they have submitted that in view of the Hon'ble Rajasthan High Court's judgment and refusal of Hon'ble Supreme Court to grant stay on the said judgment, and due to the directions passed by Hon'ble Supreme Court to conduct investigation, the Noticees were under bonafide belief till August 22, 2014 that the activities of the Noticee no.1 do not fall under the ambit of CIS. The Noticees have placed reliance on the decision of Hon'ble Supreme Court's decision in the matter of R.D. Saxena Vs Balram Prasad Sharma. By referring to the said judgment, Noticees have submitted that as they were under the bonafide belief that their activities are legal, penalty should not be imposed on them. Reliance has also been placed on the decision of House of Lords in the matter of Derry Vs Peek [1889] UKHL 1.

Preliminary Objections of Noticee no. 1, Noticee no. 2 and Noticee no.3:

8. Before dealing with the charges and findings, it is deemed appropriate to deal with preliminary objections taken in the common reply filed on behalf of Noticee no. 1, Noticee no.2 and Noticee no. 3, pertaining to jurisdiction of SEBI to regulate the business of sale and purchase of land, which are as follows:

A. The business of the company is not relating to any 'securities' as defined under Section 2 (h) of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "SCRA"). The SEBI Act and regulations made thereunder deal with securities marketable on securities market and relates only to movable assets such as shares, bonds etc. The sale/title deeds of land, maintenance/development agreements cannot be considered to be 'securities' as they are not capable of being marketed on any stock exchange.

B. The agreements executed with the customers are with regard to immovable assets and the term 'units' used by PACL refers to fixed size of plots of land. The documents issued to the customers are not instruments deriving their value from underlying assets and such documents cannot be considered as movable asset, nor are they capable of being traded or listed on a stock exchange.

C. The 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 stipulates that the power to make laws relating to land (especially agricultural land), lies with the State.

D. 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.

9. I have carefully examined the contentions raised by the Noticees qua jurisdiction of SEBI over its activities. I note that the legislature has empowered SEBI by Section 11 (2) (c) to inter alia register and regulate the working of collective investment schemes. Further, prohibition to sponsor or caused to be sponsored or carry on or caused to be carried on any CIS, without obtaining registration from SEBI has been prescribed under Section 12 (1B) of SEBI Act, 1992. With regard to the definition of 'securities', it is observed that Section 2 (h) (ib) of SCRA, includes 'units or any other instrument' issued by any 'collective investment scheme' to the investors in such schemes.

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

question is 'investor protection', whereas sale and purchase of agricultural land and/or development of agricultural land is incidental thereto….. In the aforesaid view of the matter, there can be no manner of doubt that the pith and substance of the subject-matter of the legislation in hand does not fall under Entry 18 of the State List."

11. The aforesaid decision of Hon'ble High Court of Punjab and Haryana was challenged by the petitioner therein before Hon'ble Supreme Court of India by filing an SLP which was converted into Civil Appeal [P.G.F.L. Vs Union of India and others] [MANU/SC/0247/2013]. Hon'ble Supreme Court upheld the aforesaid decision of Hon'ble High Court of Punjab and Haryana and observed that: " *A detailed analysis of sub-section (2) of Section 11 AA, which defines a collective investment scheme disclose that it is not restricted to any particular commercial activity such as in a shop or any other commercial establishment or even agricultural operation or transportation or shipping or entertainment industry etc. The definition only seeks to ascertain and identify any scheme or arrangement, irrespective of the nature of business, which attracts investors to invest their funds at the instance of someone else who comes forward to promote such scheme or arrangement in any field and such scheme or arrangement provides for the various consequences to result there from.*"

12. I note that legislature has entrusted the task of regulating CIS to SEBI. The Hon'ble Courts, as referred above, has also upheld the constitutional validity of Section 11 AA of SEBI Act, 1992. Thus, I observe that regardless of the nature of activity of an entity or capability of the instruments issued by such entity, of being listed and traded, SEBI has jurisdiction to regulate such transactions, if the same satisfies the ingredients of Section 11 AA of SEBI Act, 1992. Therefore, any instrument, whether it relates to maintenance/development agreement or sale deeds of a land, would fall under the ambit of 'securities' if the scheme, by which such instruments are issued, satisfies the provisions of Section 11 AA of SEBI Act, 1992. In view of the statutory provisions and the aforesaid judgments of Hon'ble Courts, I found that the arguments of the company regarding jurisdiction of SEBI are sans merit, baseless and does not hold credence of any magnitude.

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

14. Further, the Noticee no.1, Noticee no.2 and Noticee no.3, has also raised a contention that only after the press release dated November 18, 1997, the task to regulate collective investment schemes was assigned to SEBI. In this connection, I note that the Section 11(2) (c) of SEBI Act which *inter alia* empowers SEBI to take measures for registering and regulating the working of collective investment schemes, was a part of SEBI Act since its enactment. Further, Section 12 (1B), which was inserted in the SEBI Act, 1992, vide Securities Laws (Amendment) Act, 1995 w.e.f. January 25, 1995 prohibited the sponsoring or causing to be sponsored, carrying on or causing to be carried on any collective investment scheme, without obtaining registration from SEBI. Thus, the argument is wholly devoid of merit.

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

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

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

II. Whether the noticees have violated the provision of Regulation 4(2) (t) of PFUTP Regulations?

III. Whether Noticees no. 2 to Noticee no.5 were responsible for the violations committed by the Noticee no.1?

IV. Whether the violations, if any, on the part of the noticees, attract penalty under Section 15 HA of SEBI Act?

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

Consideration of Issues:

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

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

17.2. In this regard, I note that there is not an iota of doubt that the Noticee no.1 is offering certain schemes/arrangement that starts from brokers/agents informing prospective clients about the schemes of the company; the client approaches the customer care of the company and executing the agreement; the purported development work being carried out by the company and the customer t receives the estimated realizable value of the land from the company. It is observed that the Noticee no.1 has mobilized funds under its various schemes. Now in order to examine further whether the schemes satisfies the conditions enumerated under Section 11 AA(2) of SEBI Act, 1992 I note the following :

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

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

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

ii. As per the Investigation Report, it is a mandatory condition for the customer to get the said plot of land developed by the Noticee no.1 only. It has also been submitted in the common reply of Noticee no. 1, Noticee no.2 and Noticee no. 3 that the development and maintenance of the land for tenure of the agreement by the company is an essential and un-severable condition of the agreement.

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

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

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

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

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

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

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

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

i. The 'estimated realizable value' is disclosed to the investors at the time of the investment. The Plan Codes 28 to 67 mentioned about the estimated realizable value or the projected plot value. The estimated realizable value is the value of the land that the customer is expected to receive at the end of the tenure of the scheme/plan which is projected to be the sale value of the land after the tenure of the agreement, due to the development activities carried out by the Noticee no.1. The ownership of the plot holder is limited only to the scheduled property, the crops, trees etc., to the extent of the estimated realizable value at the end of the term, as per the plan. The residual proceeds would solely belong to the Noticee no.1. It is noticed from the investigation report that Mr. Gurmeet Singh (Noticee no.4) has *inter alia* informed: *"We do not buy-back plots from the customer. We provide assistance to our customers to sell their plot. Almost all the customers seek our*

assistance for sale of their plot. We provide buyers to our customers. In most cases, the tenure of the plan ends at the same time; hence all the customers of that particular plot seek our assistance to sell the land."

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

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

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

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

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

I. In so far as the third condition of Section 11 AA (2) is concerned, the common reply of Noticee no. 1, Noticee no. 2 and Noticee no. 3 states that the company is not managing the land and is merely developing the same. The reply further states that due to the option provided by the customer for self-development of land (started to have been given from the year 2011), third condition of Section 11 AA (2) is not satisfied. In this regard, I found contradictions in the same reply of Noticee no.1 to Noticee no. 3. In total contradiction to the aforesaid stand of option of self-development, the reply at one place mentions that the customers are informed that the development and maintenance of the land for the tenure of the agreement is an integral part of the services offered by the company. It has been further mentioned that the company prefers to do the development of land without undue interference from the customers and such customers have right to tender suggestions in regard to development and

maintenance of the land. I find that it is beyond imagination for a person living in rural part of Rajasthan to 'tender' suggestion for development of 'unidentified portion of land' that is hundreds of miles away from him. The ground that the company is not managing the property on behalf of the customers is fortified by the following:

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

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

iii. It has been confirmed by Mr. Sukhdev Singh (Noticee no.3) during the investigation that there is no scope for the customer to opt for the self-development of plot in the existing plans.

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

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

vi. It has been admitted, during investigation, by the Managing Director of the company, Shri Sukhdev Singh (Noticee no.3) that in most of the cases the SPoA is given to the company.

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

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

to enable the company to implement the agreement during the relevant period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. **Issue II: Whether the noticees have violated the provision of Regulation 4(2) (t) of PFUTP Regulations?**

As regard to the applicability of Regulation 4(2) (t) of PFUTP Regulations, the following is noticed:

a) The Noticee no.1, Noticee no.2 and Noticee no.3 in their common reply have submitted that the company is having huge land holding and the land being sold to the customers is properly and clearly identified. It has been further submitted during the hearing as well as in the written submissions by the Noticees that in order to invoke the Regulation 4(2) of PFUTP Regulations, it is required to prove fraud first and then only any of the conditions laid down in Regulation 4(2) of PFUTP Regulations, can be said to be proved or in other

words, fraud is a condition precedent to for invoking any of the instances mentioned under Regulation 4(2) of PFUTP Regulations. It has also been contended that *mens rea* is an essential element to constitute fraud. The Noticees no. 4 and 5 have placed reliance on the judgment of Hon'ble Supreme Court of India passed in the matter of Meghmala & ors. Vs G. Narasimha Reddy [2010 (8) SCC 383]. Further, the Noticees have submitted that the schemes of the Noticee no.1 are not in the nature of fraud.

b) In this regard, I note that the said submissions pertaining to the land holding by Noticee no.1 are contrary to the record. In so far as the submission that the schemes of Noticee no.1 are not in the nature of CIS is concerned, and I note that the same have been addressed in the foregoing paragraphs and the defense does not deserve further consideration.

c) To my understanding, the only thing that remains to be decided in this issue is whether the funds were 'illegally mobilized'. The same is proved by virtue of the fact that the Noticee no.1 did not take registration as mandated under Section 12 (1B) of the SEBI Act, 1992 read with the CIS Regulations. Regulation 4 (2) (t) of PFUTP Regulations, proceeds on presumption that an act of illegal money mobilization under a collective investment scheme is fraudulent and unfair trade practice. Therefore, any argument, which says that collection of money under CIS without obtaining registration is not 'fraudulent or manipulation' is not tenable.

d) I also observe that a plain reading of Regulation 4(2) indicates that dealing in securities will be deemed to be fraudulent and unfair trade practice, if the same involves fraud. The Regulation further goes on to spell certain practices which if satisfied will *ipso facto* be deemed to be category of fraudulent or unfair trade practice. It is further observed that the list of activities as enumerated under Regulation 4 (2) of PFUTP Regulations is not exhaustive as the construction of the opening part of Regulation 4 (2) reads as : "*Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include...*". The activities, mentioned under Regulation 4(2), if committed by any person, shall tantamount to fraudulent or unfair trade practices.

e) From the above, I note that the list mentioned under Regulation 4(2) is inclusive one and thus the argument that to invoke Regulation 4(2), fraud

should be separately proved and to constitute such fraud, *mens rea* should also be proved, does not hold any strength, whatsoever. At this stage, I rely upon the observations of Hon'ble Supreme Court of India , in the matter of The Chairman, Sebi vs Shriram Mutual Fund & Anr on 23 May, 2006, : *The impugned order sets the stage for various market players to violate statutory regulations with impunity and subsequently plead ignorance of law or lack of mens rea to escape the imposition of penalty. The imputing mens rea into the provisions of Chapter VI A is against the plain language of the statute and frustrates entire purpose and object of introducing Chapter VIA to give teeth to the SEBI to secure strict compliance of the Act and the Regulations.".*

f) It is noted that the aforesaid Regulation 4(2) (t) was inserted in the PFUTP Regulations w.e.f September 06, 2013. From the findings recorded in the foregoing paragraphs, I note that the Noticees were running CIS without obtaining registration from SEBI, during the relevant time when Regulation 4(2) (t) of PFUTP Regulations came into force w.e.f September 06, 2013.

g) It has been alleged in the Show Cause Notice that the total amount mobilized under the schemes for the period September 2013 to June 15, 2014 is Rs 2686,25,54,797 (Rs Two Thousand Six Hundred Eighty Six Crore Twenty Five Lakh Fifty Four Thousand Seven Hundred and Ninety Seven only). The said amount of illegal mobilization has been arrived at based on the letters dated June 03, 2014 and June 30, 2014, of the Advocate of the Noticee No.1, filed during the proceedings before WTM, SEBI. In this regard, it is noted that such mobilization has been illegally done without obtaining registration from SEBI in violation of Section 12 (1B) of SEBI Act, 1992, during the period of September 06, 2013 till June 15, 2014. I therefore found that the answer to the second issue is also in affirmative.

21. **Issue III: Whether Noticees no. 2 to Noticee no.5 were responsible for the violations committed by the Noticee no.1?**

a) The Noticee no. 4 and Noticee no. 5, apart from the stand taken which is similar to the one taken by Noticee no. 1 to Noticee no. 3, have also submitted that they are only salaried directors and solely on this ground, they cannot be held liable for the acts of the company.

b) In this regard, I note that the Noticee no. 2 and Noticee no. 3 were appointed as directors of Noticee no. 1 in the year 1996 and they are also the promoters of the Noticee no.1. The Noticee no. 4 and Noticee no. 5 were appointed as directors in the year 2009. The Noticee no. 2 to Noticee no. 5 still continue to be the directors of Noticee no. 1. I also note that there is no dispute as regards the period of directorship of the Noticee no. 2 to Noticee no.5 is concerned. Noticee no. 2 to 5 being the directors of the Noticee no. 1 were at the helm of its affairs and incharge of activities of Noticee no. 1 and were thus directly/indirectly involved and instrumental in sponsoring or causing to be sponsored, carrying out or causing to be carried out CIS and thereby illegally mobilizing money under such schemes including the period of September 06, 2013 to June 15, 2014. Moreover, the statements made by the Noticee no.3 and Noticee no.4, during the investigation regarding the business operations of the company demonstrates that these persons were in effect controlling and running the activities of the company. Further, the defense taken by Noticee no. 4 and Noticee no. 5 that they were paid salaries for controlling and running the business of a company is of no help to these noticees to absolve them of their liability.

c) It is also noted that Noticee no. 2 and Noticee no.3 are the promoter cum director of the Noticee no.1.

d) Noticee no.1, being a legal entity, has to act through its directors. Thus, the directors of Noticee no.1, i.e, Noticee no. 2 to Noticee no.5, who were controlling the affairs of Noticee no. 1, cannot escape liabilities of the acts of commission and omission of Noticee no.1 as they were directly/indirectly involved and instrumental in illegal mobilization of money under the schemes of Noticee no.1, without obtaining the registration from SEBI.

e) The said act/omission of the Noticee no. 1 is committed through Noticee no. 2 to Noticee no.5, thus all the Noticees have violated Regulation 4(2) (t) of the PFUTP Regulations rendering them jointly and severally liable for the consequence of such violations. Therefore, the answer to the issue III is in affirmative.

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

a) From the examination of the material on record including the replies filed by the Noticees and the submissions made by them, it has been sufficiently proved that the Noticees have illegally mobilized funds by sponsoring/causing to be sponsored collective investment schemes without obtaining registration under the SEBI Act, 1992 and the CIS Regulations. Such illegal mobilization of funds by the Noticees is a Fraudulent and Unfair Trade Practice and hit by Regulation 4 (2) (t) of PFUTP Regulations.

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

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

15HA Penalty for fraudulent and unfair trade practices

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

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

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

a) The Noticees, while denying the applicability of Regulation 4(2) (t), have submitted that even if penalty is being imposed under Section 15 HA of SEBI Act, the amount collected only after August 22, 2014, i.e., the date on which the schemes of the Noticee no.1 was declared as CIS for the first time, should be considered.

b) After carefully pondering over the submission of the Noticees, I note that on the day of August 22, 2014, the Noticees have been, in a separate and totally independent proceedings, were directed to wind up its schemes as the same have been found to be in the nature of CIS. By doing so, the schemes of the Noticee no.1 have been adjudged to CIS, which is a determination of fact based on the law as existed. It is not the case of enforcing a substantial law with retrospective effect, which is affecting the rights of any person. In the present proceedings, the substantive law is violation of Regulation 4 (2) (t) of PFUTP Regulations and the same came into force w.e.f September 06, 2013. Therefore, the amount collected in violation of Regulation 4(2) (t) of PFUTP Regulations, post September 06, 2013 will have to be taken into account.

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

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

15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely: –

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default."

d) In order to satisfy the aforesaid factors and to decide the quantum of penalty to be impose, I observe that the whole amount which has been illegally raised under the collective investment schemes without obtaining registration from SEBI during the period of September 06, 2013 to June 15, 2014, can be considered as the amount of disproportionate gain or unfair advantage as a result of the default of not obtaining registration. The said profit/unfair advantage has been gained by the Noticees at the cost of loss caused to the investors of the schemes of Noticee no.1. As regards repeated nature of the offence, I note that the funds were being mobilized between the period of September 06, 2013 till June 15, 2014 and nothing has been shown to indicate that the Noticees have stopped the mobilization of

funds. It is an admitted position that the Noticees have mobilized Rs 2686,25,54,797 (Rs Two Thousand Six Hundred and Eighty Six Crore Twenty Five Lakh Fifty Four Thousand Seven Hundred and Ninety Seven only) from September 2013 to June 15, 2014. It suggests that the violation by the Noticees is repetitive in nature.

e) I note that as per the records available, the Noticees have mobilized a huge amount of Rs 26,86,25,54,797 (Rs Two Thousand Six Hundred and Eighty Six Crore Twenty Five Lakh Fifty Four Thousand Seven Hundred and Ninety Seven only) during the period of September 01, 2013 to June 15, 2014. I also note that the cutoff date from which the mobilization has to be considered is September 06, 2013. As month wise details of the mobilization is filed by the Noticee , the exact amount mobilized illegally by the Noticees after the notification dated September 06, 2013, of the amendment in PFUTP Regulations, is not ascertainable. However, I am of the view that if the cutoff date of mobilization is taken as October 01, 2013, the amount collected after such cutoff date till June 15, 2014 can be the fair value for the purpose of calculation of quantum of monetary penalty. The law in this regard under Section 15 HA of SEBI Act, 1992 provides for imposition of penalty of Rs 25 Crore or three times of such profit made by indulging in fraudulent and unfair trade practices.

f) Therefore, the total amount that have been illegally mobilized by the Noticees is Rs 24,23,16,56,765/- (Rs Two Thousand Four Hundred Twenty Three Crore Sixteen Lakhs Fifty Six Thousand Seven Hundred and Sixty Five only), for the purpose of calculation of quantum of monetary penalty..

g) Keeping in view the entire facts and circumstances of the case, I am of the view that there cannot be a better case than this which deserves imposition of maximum penalty and if it is done so, than it will give a strong message to securities market at large that such type of violations will not be viewed lightly. In the recent past, the country has suffered a lot in the hands of entities who indulge in such illegal money mobilization under various schemes, wherein the hard earned money of the common man has been duped. Thus, imposition of deterrent penalty is the need of the hour. I also note that Regulation 4(2) (t) was inserted in PFUTP Regulations with an intention to deal with such violations in a stern manner and also to provide that severe to severe penalties can be imposed. The magnitude of the

violation can be assessed from the fact that huge illegal mobilization of money is made leading to consequent profits to the Noticees, to the tune of Rs 24,23,16,56,765/- (Rs Two Thousand Four Hundred Twenty Three Crore Sixteen Lakhs Fifty Six Thousand Seven Hundred and Sixty Five only), in a short span of less than one year. It is also noticed from the order of Hon'ble SAT dated August 12, 2015 and order of SEBI dated August 22, 2014 that the Noitcee no.1 has mobilized Rs 49, 100/- Crore rupees in 15 years.

ORDER:

24. In view of the findings and justification recorded above, I in exercise of the powers conferred upon me under Section 15-I (2) of the SEBI Act read with Rule 5 of the Rules, hereby impose a monetary penalty of Rs 7,269,49,70,295 (Rs Seven Thousand Two Hundred Sixty Nine Crore Forty Nine Lakhs Seventy Thousand Two Hundred and Ninety Five only), in terms of Section 15 HA of SEBI Act, 1992, which according to me is three times of the profits accrued to the Noticees. In my considered opinion, the amount of penalty is commensurate with the defaults committed by the Noticees. The liability to pay the penalty imposed herein above shall be joint and several, against all the Noticees namely:

1. **M/s PACL Limited (PAN: AAACP4032A);**
2. **Shri Tarlochan Singh (PAN: AIEPS9489Q);**
3. **Shri Sukhdev Singh (PAN: AUGPS0130B);**
4. **Shri Gurmeet Singh (PAN: AAMPS1400Q) and**
5. **Shri Subrata Bhattacharya (PAN: AAIPB6480H).**

25. The Noticees shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Deputy General Manager, Investment Management Department, Securities and Exchange Board of India, Northern Regional Office, 5th Floor, Bank of Baroda Building, 16, Sansad Marg, New Delhi- 110001.

26. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

27. This order of adjudication is made and passed on 22nd day of September 2015 at New Delhi.

Amit Pradhan

Adjudicating Officer