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IN THE HON'BLE SUPREME COURT OF INDIA

CIVIL APPELLATE/ ORIGINAL JURISDICTION

IA NO. 183800 OF 2018

IN

C.A. 13319/ 2015

IN THE MATTER OF:

Gurmeet Singh

...Appellant/ Applicant

Versus

Securities Exchange Board of India

...Respondent

(PAPER BOOK)

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONER/ APPLICANT: MANISHA AMBWANI

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IN THE HON'BLE SUPREME COURT OF INDIA

CIVIL APPELLATE/ ORIGINAL JURISDICTION

IA NO. 1238 OF 2018

IN

C.A. 13319/ 2015

IN THE MATTER OF:

Gurmeet Singh

...Appellant/ Applicant

Versus

Securities Exchange Board of India

...Respondent

APPLICATION FOR DIRECTIONS

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION ON BEHALF OF THE APPLICANT ABOVENAMED:

MOST RESPECTFULLY SHOWETH:

1. That the Applicant herein is the Appellant before this Hon'ble Court in the Civil Appeal No. 13319 of 2015 pending adjudication by this Hon'ble Court.

2. The Applicant / Appellant had preferred the said civil appeal against the impugned Order dt. 12.08.2015 passed by the Ld. Securities Appellate Tribunal (SAT) in Appeal No. 368 of 2014, praying therein for stay of the said Impugned Order dt. 12.08.2015. For sake of brevity all facts, circumstances and averments relied in the Civil Appeal No. 13319 of 2015 are not being reproduced herewith, however, the contents therein may be read as part and parcel of the instant IA. However it is respectfully reiterated that a significant and important question of law in the instant civil appeal is whether M/s PACL operated as CIS without appropriate authorization from SEBI or not. This Hon'ble Court was pleased to issue Notice on the instant Appeal, vide its Order dt.02.02.2016, and the matter is pending since before this Hon'ble Court.

True Copy of the Order dt. 02.02.2016 passed by this Hon'ble Court in Civil Appeal No. 13319/2015 emanating from the Order dt. 12.08.2015 passed by the Hon'ble SAT is annexed herewith and marked as **ANNEXURE A1**.From Pg. No. ____ to Pg. No._____.

3. That it is further respectfully submitted that this Hon'ble Court vide its Order dt. 26.02.2013 passed in C.A. 6753-6754 of 2004, this Hon'ble Court on mutual consensus between the parties concerned permitted SEBI to investigate, inquire and inspect the business affairs of the company, namely, M/s PACL Ltd., wherein the Applicant was employed as a Salaried Director. In addition to the same, this Hon'ble Court further held (at Para 8) "*we also make it clear that the appellant (SEBI therein) shall pass fresh orders as regards the business activity of the first respondent Company (M/s PACL Ltd. therein) as to whether it falls under the category of CIS (Collective Investment Scheme")* *or not and depending upon the ultimate order to be passed it may proceed further in accordance with law."*At this juncture, it is respectfully submitted that the ultimate order qua the nature of the operations of M/s PACL Ltd. is pending adjudication with this Hon'ble Court vide Civil Appeal No. 13319 & other connected matters, therefore, any further proceedings in this regard must be stayed till such time that this Hon'ble Court has passed the said ultimate order.

True Copy of the Order dt. 23. 02.2013 passed by this Hon'ble Court in Civil Appeal No.C.A. 6753-6754 of 2004 is annexed herewith and marked as **ANNEXURE A3**.From Pg. No. ___ to Pg. No. _____.

4. That, it is further brought to the attention of this Hon'ble Court that the instant Application is preferred by the Applicant/ Appellant qua the Impugned Order dt. 28.02.2018 passed by the Hon'ble SAT in Appeal No. 141 of 2016 preferred before it. The Impugned Order dt. 28.02.2018 passed by the Hon'ble SAT erroneously upheld the Order dt. 02.02.2016 passed by Ld. Adjudicating Officer, SEBI, wherein the Ld. A.O. had erroneously imposed maximum penalty against the Applicant/ Appellant to the tune of Rs. 1,00,00,000/- (Rupees One Crore only) under Section 15 D ("Penalty for certain defaults in case of mutual funds") of the SEBI.

True copy of the Order dt. 28.02.2018 passed by the Hon'ble SAT in Appeal No. 141/2016 is annexed herewith and marked as **ANNEXURE A3.** From Pg. No. ____ to Pg. No._____.

True copy of the Order passed by the Ld. A.O. dt. 02.02.2016 vide Adjudication Order No. AO/AP/PACL/1-10/2016 is annexed herewith and marked as **ANNEXURE A4.** . From Pg. No. ____ to Pg. No._____.

5. That at the very outset it is stated that the Order dt. 28.02.2018 passed by the Hon'ble SAT erroneously places reliance upon the Order dt. 22.08.2014 passed by the Whole-Time Member, SEBI ("WTM") and subsequent

Order dt. 12.08.2015 passed by the Hon'ble SAT, since the said Orders have been challenged before the Hon'ble Supreme Court vide Civil Appeal No. 13319/2015 and connected batch matters. For sake of brevity the grounds for challenging the said Orders are not repeated herein, however, the same be read as part and parcel of the Instant Application.

6. That it is further stated that the Order dt. 28.02.2018 the Hon'ble SAT erroneously omitted to consider that the Order dt. 12.08.2015 wherein the Hon'ble SAT erroneously upheld the decision passed by the Ld. WTM who had erroneously concluded that the activities carried out by M/s PACL, company wherein the Applicant/Appellant was employed as a Salaried Director, was carrying out transactions in the style of a Collective Investment Scheme without taking appropriate authorization from the concerned authorities. The said conclusion of the Ld. WTM was challenged on several grounds before the Hon'ble SAT, however, the Hon'ble SAT also failed to consider the grounds and issues raised by M/s PACL as a result of which the said conclusion of the Hon'ble SAT vide Order dt. 12.08.2015 was challenged before this Hon'ble Court. It is herewith reiterated that the most crucial and vital question of law in the Civil Appeal No. 13319/2015 connected with other batch matters, is that, whether operations of M/s PACL were in

line of an unauthorized CIS or not. It is therefore, most respectfully stated that till such time the said question of law is not conclusively adjudicated by this Hon'ble Court, subsequent proceedings emanating from the alleged cause of action cannot be initiated, and therefore, the Order dt. 28.02.2018 passed by the Ld. SAT upholding the Order dt. 02.02.2016 passed by the Ld. A.O., must be stayed till such time that the Civil Appeal in not conclusively decided.

7. It is respectfully submitted that the Ld. A.O. vide his Order dt. 02.02.2016 has erroneously affixed liability on the part of the Applicant/ Appellant herein, who was a salaried Director at M/s PACL Ltd., to have carried out an unauthorized CIS in the running of M/s PACL Ltd. It is respectfully submitted that the said Order dt. 02.02.2016 passed by the Ld. A.O. emanates from an erroneous interpretation of law as the Ld. A.O. has failed to take notice to the fact that the issue qua, whether or not, M/s PACL functioned as a CIS ("Collective Investment Scheme") is pending adjudication by this Hon'ble Court. At this juncture, it is further stated that even the Hon'ble SAT vide its Order dt. 28.02.2018 has repeated the errnous omission on part of the Ld. A.O., by failing to appreciate and consider the fact of the an Appeal qua determining whether the transactions carried out by M/s PACL Ltd., were in fact in the style and format of an

unauthorized CIS or not. The humble plea of the Applicant herewith is that subsequent proceedings emanating from the same aspect of law, i.e., whether or not M/s PACL exists in the form and format of an unauthorized CIS, is yet to be conclusively decided by this Hon'ble Court. The Applicant humbly only prays that till the times that said questions are not conclusively adjudicated by this Hon'ble Court, subsequent proceedings presuming adverse interpretations should be stayed by this Hon'ble Court.

The True copy of FORM 32 filed by M/s PACL indicating the date of appointment of the Applicant as 01.02.2009 is annexed herewith an marked as **ANNEXURE A5** From Pg. No. ____ to Pg. No.____.

The True copy of the Extracts of Minutes of the Extra-Ordinary General Meeting of the Members of PACL Ltd. held on 11.04.2013 stipulating salary terms of the Applicant/ Appellant is annexed herewith and marked as **ANNEXURE A6.** From Pg. No. ____ to Pg. No.____.

IMPUGNED ORDER DT. 28.02.2018 PASSED BY THE HON'BLE SAT

8. That at the very outset the Hon'ble SAT vide its Order dt. 28.02.2018 has grossly erred in upholding the Order of

the A.O. dt. 02.02.2016, wherein the Ld. A.O. has imposed penalty upon the Company, i.e., M/s PACL, its Promoters and beneficiaries and Managing Director and also the Salaried Directors, i.e., the Applicant/ Appellant herein under Section 15 D of the SEBI Act on erroneous finding that the activities of carried out the Company were in lines of an unauthorized CIS. It is further stated that the said provision under which the Ld. A.O and the Hon'ble SAT has erroneously affixed penalty upon the Applicant/ Appellant herein, reads as follows:

Penalty for certain defaults in case of mutual funds.

15D.If any person, who is— (a) required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees];

(b) registered with the Board as a collective investment scheme, including mutual funds, for sponsoring or

carrying on any investment scheme, fails to comply with the terms and conditions of certificate of registration, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees];

(c) registered with the Board as a collective investment scheme, including mutual funds, fails to make an application for listing of its schemes as provided for in the regulations governing such listing, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees];

(d) registered as a collective investment scheme, including mutual funds, fails to despatch unit certificates of any scheme in the manner provided in the regulation governing such despatch, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

(e) registered as a collective investment scheme, including mutual funds, fails to refund the application monies paid by the investors within the period specified in the regulations, he shall be liable to a penalty which shall

not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

(f) registered as a collective investment scheme, including mutual funds, fails to invest money collected by such collective investment schemes in the manner or within the period specified in the regulations, he shall be liable a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees].

9. That, at this juncture it is important to highlight that the applicability of the said provision, i.e., Section 15D of the SEBI Act, shall be in such cases wherein it has been conclusively found that the activities of the Company were in the form and format of carrying/ sponsoring of a CIS, without registration, in light of the present case, wherein the said question of whether M/s PACL Ltd. exercised and carried out business in the format of an unauthorised CIS is pending adjudication before the Hon'ble Supreme Court, therefore to come to a pre-emptive and presumptuous conclusion only with an object to impose maximum monetary penalty should not be permitted by this Hon'ble Court.

10. That at this juncture it is further highlighted that the erroneous observation made by the Hon'ble SAT vide its Order dt. 28.02.2018, wherein it has been recorded that *"Since the Appellants (Applicant herein) were the Directors of M/s PACL Ltd. for a long period, imposition of maximum penalty of Rs.1,00,00,000/- (Rupees One Crore) on the Appellants cannot be faulted"*, is a result of gross misinterpretation of facts and circumstances surrounding the matter. At this point, the attention of this Hon'ble Court is directed to the fact that the Applicant herein was appointed as the salaried Director of M/PACL in 2009, after the said Company had been given clean chits by the Hon'ble High Court of Delhi and Hon'ble High Court of Rajasthan. It is further mentioned the question of the M/s PACL only emerged in 2014 and since 2015, the said question is pending before this Hon'ble Court, therefore to impose maximum monetary penalty for default on registration of company as CIS (which has still not been confirmed) would be absolutely unjust.

The True copy of the Judgement delivered by the Hon'ble High Court of Rajasthan is annexed herewith and marked as **ANNEXURE A7**. From Pg. No. ____ to Pg. No. ____.

11. At this juncture it is important to bring to the attention of this Hon'ble Court that the penalty as imposed by the Ld. A.O.'s orderdt. 02.02.2016 hinges on the question of law and facts, i.e., whether M/s PACL operated as an unauthorized Collective Investment Scheme or not, which is pending adjudication before this Hon'ble Court in Civil Appeal No. 13319/2005 and connected matters. It is therefore stated that till such time the said question is not conclusively adjudicated by this Hon'ble Court it would be unjust for the Ld. A.O. to presume liability and impose monetary penalty on the Applicant/ Appellant herein.

BRIEF HISTORY OF THE CENTRAL ISSUE IN THE CIVIL APPEAL PREFERRED BY THE APPELLANT/ APPLICANT

M/s PACL CLEARED BY THE HON'BLE HIGH COURT OF DELHI – JUSTICE SWAMIDURAI REPORT UPHELD GENUINENESS OF TRANSACTIONS

12. That, at the very outset it is integral to bring to the knowledge of this Hon'ble Court that allegations against M/s PACL for operating in the style of an unauthorized CIS mechanism were levied against M/s PACL vide Writ Petition, namely, CWP 3352 of 1998 filed before the Hon'ble High Court of Delhi. Thereafter, M/s PACL filed an Application before the Hon'ble High Court of Delhi and sought for deletion of its name from the list of

Respondents against whom the Petitioner therein had levied the said allegations. The Hon'ble High Court of Delhi vide its Order dt. 26.05.1999 allowed the name of M/s PACL to be deleted from the list of Respondents against whom the accusations had be levied by the Petitioner, contingent on M/s PACL appointing auditors for ascertaining the genuineness of the transactions executed by it.

13. That in compliance with the Orders passed by the Hon'ble High Court of Delhi, Justice (Retd.) K. Swami Durai was appointed to ascertain the genuineness of the transactions carried on by the company. On 22.02.2002, the audit qua transactions of M/s PACL was successfully carried out by the Justice (Retd.) K. Swami Durai and a report in this regard which ascertained and verified the genuineness of transactions was filed before the Hon'ble High Court of Delhi, in favour of the company. Owing to the Report filed by Justice (Retd.) K. Swami Durai, PACL's name was allowed to be deleted from the list of Respondents (therein) against whom the Petitioner (therein) had levied accusations of carrying out illegal activities and transactions.

M/s PACL CLEARED BY HON'BLE HIGH COURT OF RAJASTHAN

14. That it is further submitted in a similar question of law and facts qua whether PACL operated on lines of CIS without obtaining the due authorizations from the concerned authorities, the Hon'ble High Court of Rajasthan vide its Order dt.28.11.2003 in M/s PACL &Anr. v Union of India (2003) SCC Online Raj 208, ruled in favour of PACL, holding that schemes of M/s PACL did not fall within the purview of collective investment scheme.

15. That it is brought to the attention of this Hon'ble Court that the Hon'ble High Court of Rajasthan while holding that the activities as carried out by M/s PACL do not fall within the purview of a Collective Investment Scheme, further placed reliance on the Report submitted hy Justice (Retd.) K. Swamidurai (before the Hon'ble High Court of Delhi) and observed:

> *"68. Considering the submissions vide order dated November 16, 2000 the Delhi High Court has appointed, Mr. Justice K. Swamidurai (Retd). To enquire and submit a report regarding the genuineness of the transactions entered between the Petitioner-Company and its customers. That final report was submitted on submitted on September 20, 2001, by Justice Swamidurai and concluded his report as under:*
>
> *13. My Conclusion is drawn as under:*

i. *The land which the PACL proposed to transfer to its customers were found to be in actual existence as per the record of the PACL.*

ii. *PACL was the owner in possession of the land in question either as direct owners or owners by virtue of agreements for sale in their favour by the erstwhile owners and the powers of attorney in favour of the representative of PACL by the erstwhile owner, and by paying full amount of consideration to the erstwhile owner.*

iii. *The development work on the lands in question was found to be carried out by PACL. While in certain cases, the development work was completed, in some case, it was still in progress. In some of the cases, it was found that the customers had taken possession of the plots of the land, had constructed cottages and were also carrying on their development work, in addition to the*

development work being carried by PACL.

iv. *Sale deeds have been executed and registered in favour of the customers of PACL and their names and addresses had been tallied with their details provided by M/s Raj K. Agarwal and Associates, a certified copy of which was supplied to me.*

v. *The title and the possession of the agricultural land mentioned in the sale deeds, stood transferred unconditionally by means of registered sale deeds in favour of the customers.*

69. From the factual report of Justice K. Swamidurai, it appears that the transactions entered between the petitioner-company and its customers are genuine and they basically relate to purchase and sale of the agricultural land.

16.At this juncture, it is important to highlight that that the Applicant/ Appellant herein only joined as Salaried Director at M/s PACL Ltd., after the decisions of the

Hon'ble High Court of Delhi and Hon'ble High Court of Rajasthan, wherein the conduct of the Company was found to be squarely legal. Thereafter, the aspect of stay on the Show Cause Notice issued by SEBI was challenged by the Respondents herein, before this Hon'ble Court in Civil Appeal No. 6753-6754 of 2004.

17. That it is further brought to the attention of this Hon'ble Court that vide this Hon'ble Court's Order dt. 26.02.2013 passed in SEBI v. PACL (Civil Appeal No. 6753-6754 of 2004), this Hon'ble Courtset aside the Order dt 28.11.2003 of the Hon'ble High Court of Rajasthan wherein the Hon'ble High Court had stayed the operation of 2 Show Cause Notices dt. 30.11.1999 and 10.12.1999 issued by SEBI (Respondent herein), it did not form any opinion qua the nature of business activities of the M/S PACL. It is further reiterated that this Hon'ble Court, on mutual agreement between the parties, while setting aside the Show Cause Notice dt. 30.11.1999 and 10.12.1999 issued by SEBI did not form any opinion qua the merits of the matter, the nature of the business carried out or conduct of M/s PACL Ltd. It is further stated that owing to the voluntary cooperation on part of the M/s PACL, the Order dt. 26.02.2013 held that "*the Order of High Court (referring to Order dt. 28.11.2003 passed by Hon'ble High Court of Rajasthan) impugned in theses appeals (referring to Appeal No.6753-6754 of 2004) should be set*

aside and the proceedings dt. 30.11.1999 and 10.12.1999 can themselves be treated as show cause notices apart. from permitting the appellant to issue a comprehensive supplementary show cause notice to the first Respondent (PACL therein) within a period of 3 months after carrying out necessary inspection, investigation, inquiry and verification of the accounts and other records of the first respondent company (PACL)."

18. That at this point of time it must further be mentioned that the Hon'ble Supreme Court while delivering the said Order did not form an opinion on its merits of the Appeal preferred by SEBI (Respondents herein). This Hon'ble Apex Court further observed that "***We make it clear that such order shall be passed by the Appellant (SEBI therein) uninfluenced by whatever stated by the High Court in the order impugned (Order dt. 28.11.2003) in these appeals as well as its own earlier orders including its order dt. 24.06.2002. We also make it clear that we have not gone into the merits of the case of the respective parties.***"

19. That it is respectfully submitted that the Appellant Company (PACL) in the Civil Appeal No. Appeal No.6753-6754 of 2004 consented and agreed for a fresh investigation, inquiry and verification of their documents

under the *bona fide* belief that the activities carried on by the Company are in compliance of the law of the land. It is further stated the Counsel appearing on behalf of the Respondent in Appeal No.6753-6754 of 2004, would have never agreed to the proposal of investigation and inquiry had there been even a shred of *mala fide* on part of the Company. Therefore, the Order dt. 26.02.2013 passed by this Hon'ble Court cannot be construed to mean that the Order of the Hon'ble High Court of Rajasthan was set aside on merits. Thus, this further establishes the conduct on part of the Applicant (herein) who was a salaried Director of the Company and *bona fidely* believed the activities of the company to be squarely legal owing to the Orders passed by the Hon'ble High Court of Delhi and the Hon'ble High Court of Rajasthan, which subsisted till the year 2014.

20. That at this juncture it is most respectfully stated that M/s PACL as well as the Applicant herein were in the *bona fide* belief that the activities carried on by the company were squarely and had there been even a shred of *mala fide* on part of the Company, mutual cooperation by the Company would have not been extended to the Respondent herein. It is further brought to the attention of this Hon'ble Court that vide Order dt. 26.02.201, this Hon'ble Court further considered the contentions raise by SEBI qua absolute restraining of M/s PACL from

mobilizing funds, however, the same was rejected as this Hon'ble Court held that "*Further, though the learned for counsel for the appellant (Respondent herein) submitted that the first respondent company (M/s PACL) should be restrained from mobilizing any fresh records, it was made clear that such blanket prohibition cannot be issued, instead in the event of mobilization of any fresh funds, the first respondent company (M/s PACL) would furnish the details of the transactions also to the appellant (SEBI) when the appellant proceed to hear the first respondent Company and before passing any fresh Orders.*" It is respectfully submitted that to the best knowledge of the Applicant Director, who was merely a salaried Director, all information qua the subsequent mobilization of funds was brought to its knowledge and attention. It is further stated that in case wherein such transactions would have been tainted in law, not only would they have not been executed but also the concerned managerial personnel would have not brought before the SEBI.

21. Thereafter, in terms of the Order dt. 26.2.2013 a Supplementary Show Cause Notice was issued by the Respondent to PACL, and proceedings Whole Time Member (WTM), SEBI also commenced. The Ld. WTM vide his Order dt. 22.08.2014 erroneously held that PACL was operating in the form of CIS without appropriate

authorization from SEBI. The said Order dt. 22.08.2014 passed by the Ld. WTM was thereafter challenged by PACL as well as the Applicant herein aggrieved by the Order dt. 22.08.2014 passed by the Ld. WTM preferred an appeal bearing Appeal No. 368 of 2014 filed before the Hon'ble SAT, Mumbai.

22. That it is further brought to the attention of this Hon'ble Court that the Hon'ble SAT vide its Order dt. 12.08.2015 passed erroneously upheld the Order dt. 22.08.2014 passed by the Ld. WTM and erroneously held that PACL was functioning as a CIS, without appropriate licensing or authorization from SEBI. The said Order dt. 12.08.2015 passed by the Hon'ble SAT was challenged before this Hon'ble Court by the Applicant herein on several grounds such as:

a. The Ld. WTM while arriving at the Order dt. 22.08.2014 erroneously failed to adhere to the procedure prescribed by this Hon'ble Court vide its Order dt.26.02.2013 delivered in C.A. 6753-6754 of 2015);

b. The Ld. WTM while arriving at the Order dt. 22.08.2014 passed order on consequential action to be taken without providing opportunity to be heard to the Noticees.

c. The Ld. WTM while arriving at the Order dt. 22.08.2014 did order.

d. The Hon'ble SAT vide its Order 12.08.2015 had erred while condoning the Ld. WTM's failure to prescribe to the procedure laid down by this Hon'ble Court vide its Order dt. 26.02.2013;

e. The SEBI Act, 1999 and the SEBI (CIS) Regulations do not contain any specific provisions whereby SEBI is mandated to determine whether a company is running as CIS or not;

23. That it is further submitted that this Hon'ble Court vide its Order dt. 02.02.2016 was pleased to issue Notice to the instant Appeal preferred by the Applicant/ Appellant. That the main prayer of the Appellant qua the instant appeal is to set aside the Order passed by the Hon'ble SAT dt. 12.08.2015 wherein PACL as well as the Applicant herein have been erroneously found to be operating a CIS. That therefore, the Applicant herein most humbly prays that the impugned Order herein, i.e., Order passed by the Ld. A.O. wherein the Ld. A.O. has erroneously relying on the finding of the Order dt. 12.08.2015 (Impugned Order in the Civil Appeal No.

13319/2015 and connect matters) erroneously held that M/s PACL was carrying out unauthorised CIS and has erroneously affixed maximum person liability upon the Applicant herein to the tune of Rs.1,00,00,000/-(Rupees Two Thousand Four Hundred Twenty Three Crores Sixteen Lakh Fifty Six Thousand Seven Hundred and Sixty Five), which should be stayed till such time that the question of law and facts, is not conclusively adjudicated by this Hon'ble Court.

FORMING OF THE JUSTICE LODHA COMMITTEE

24. That this Hon'ble Court vide its Order dt. 02.02.2016 was further pleased to constitute the Justice (Retd.) Lodha Committee to aid and assist the resolution in the investor-company dispute that had emanated since then. This Hon'ble Court further held that it would be open to the Hon'ble Chairman of the said Committee to appoint such experts or other persons, as he might think it necessary, in consultation with SEBI, so as to enable the Committee to sell the land and pay back to the investors.

25. That in addition to constituting of the Justice (Retd.) Lodha Committee, this Hon'ble Court vide its Order dt. 02.02.2016 passed in C.A. 13301 of 2015 also held that *"the amount, which is lying in the bank*

accounts of the Company and other cash belonging to the Company shall be released in favour of SEBI so that it can be used either for disbursement in favour of the investors or for incurring necessary expenditure."

26. That since then the matter has been pending before this Hon'ble Court and the appeal challenging the Impugned Order dt. 12.08.2015 passed by the Hon'ble SAT is yet to be decided.

IA FILED BY SEBI TO ALLOW THE COMPANY TO THE SELL THE PROPERTIES

27. At this point of time it is respectfully brought to the attention of this Hon'ble Court that firstly, the Applicant is no longer associated with PACL and his services as a Salaried Director in the Company were ceased with effect from 28.05.2016 and Form 32 to this effect was filed with the Registrar of the Companies on 06.12.2017, and secondly, to the best of knowledge of the Applicant the entire investor-company dispute is at a cusp of complete resolution and the investors monies are being returned. The True copy of the FORM 12 filed on 06.12.2017 indicting cessation of employment of the Applicant/Appellant as Director of M/s PACL Ltd..with effect from 28.05.2016 is marked **ANNEXURE A8.** From Pg. ____ to Pg. _____.

28. That it is further submitted that SEBI vide its IA No. 13260/2017 filed in C.A. No. 13301/ 2015, connected with C.A. No. 13319/ 2015, C.A. No. 13394/2015 and C.A. No. 13410/2015 has submitted before this Hon'ble Court that "*the Committee (Justice Lodha) Committee has thus far been able to sell through invitation of EOI and subsequent auction process merely 113 properties which has realized only 89 crores (approx.).* That vide the said IA, SEBI has further contested before the Hon'ble Supreme Court that "*it would be just, expedient and in the interest of justice as well as the erstwhile investors of PACL Ltd., that the said Company (PACL) be directed to sell all its immoveable properties and deposit the monies realized there from directly with the Committee, thereby bot only reducing the expenses being incurred by the Committee but also ensuring a quicker refund to erstwhile investors by the Committee, which would be free to concentrate on the refund process to such investors.*" In addition to the above mentioned, SEBI vide the said IA further put forth this Hon'ble Court that "*The Applicant (SEBI) further submits it would be appropriate that affidavits by all current Directors of PACL be submitted to this Hon'ble Court, undertaking to abide by not only the time schedule for effecting payments but also all such terms and conditions that this Hon'ble Court*

may be pleased to impose for such sale of properties by PACL Ltd." This Hon'ble Court vide its Order dt. 23.02.2018 passed pleased to consider this said IA filed on behalf of SEBI and directed that *"Justice Lodha Committee may submit the comments on applications within 4 weeks."*

29. That thereafter, the Hon'ble Justice Lodha Committee considering the proposal made by the SEBI and the Order dt. 23.02.2018 passed by this Hon'ble Court, vide their Letter dt. 16.03.2018 opined as follows:

> *"4. PACL Ltd. may as expeditiously as possible and in any event within two weeks from the date of this communication, submit to the Committee a proposal to be accompanied by a Demand Draft of Rs.500 Crores in favour of SEBI and payable at Mumbai, together with unconditional Undertaking in respect of the Properties referred to in 3 hereinabove, including the properties with MR Numbers that have been seized by the CBI.*
>
> *5. The unconditional undertaking referred to in 4 herein above, should include the following:*

a) *The amount to be brought in by PACL Ltd. with respect to the properties shall not be less than the amount arrived at after computing the cumulative value of the Properties based on the prevailing circle rate and heaving regard to the prevalent market value (the "consideration.")*

b) *The liability of M/s PACL Ltd. towards investors shall not cease with the payment of the Consideration by PACL Ltd. or the payment of Purchase Price by any prospective buyer, and PACL shall continue to ensure deposit of further amounts as may be required till every investor claim is satisfied.*

c) *Out of the entire Consideration amount, forty (40) per cent, which shall include the Rupees Five Hundred (500) crores deposited as EMD, shall be deposited by PACL Ltd. within a period of four (4) months and the balance of the entire*

Consideration within a period not exceeding one (1) year from the date of acceptance off the proposal of PACL Ltd. by the Committee.

d) *PACL shall declare that the terms and considerations contained in the Undertaking shall be binding on PACL and its Directors.*

e) *The Undertaking will include a personal undertaking from Mr. N.S. Bhangoo, Pearl Group Chairman, declaring therein that he will be unconditionally bound by the terms and conditions as contained in the Undertaking.*

30. That at this point it is further brought to the attention of this Hon'ble Court that the management of M/s PACL vide their letter dt. 14.04.2018 addressed to the Justice (Retd.) LodhaCommiitee, have already submitted their proposal to refund Rs.15,000 crores to the investors within the course of 2 years as well as an additional Rs.5,000 crores in the 3rd year. The said proposal reads as follows:

5. That in the view of the same, the Company makes the following offer for kind consideration of this Hon'ble Committee:

a) *That the Company has adequate domain knowledge and is well versed with the true value of the property and hence offers to bring in buyers to purchase its assets for a total consideration of* ***NOT LESS THAN*** *Rs.15,000 Crore (Rupees Fifteen Thousand Crores) and/ or higher till the Company discharges its entire liability towards the entire investors claims received before the Committee, whichever is higher.*

b) *That out of the Rs.15,000 Crore the Company shall bring in atleast Rs.7,500 crore in the first year and atleast another Rs.7,500 crore in the second year through either sale of its assets to buyers/investors or through facilitating JV/ Collaborations with Govt. entities to develop its properties. The Company will forward as proposals to enter into JV /*

Collaboration agreement for developments of its land with the Govt./ Govt. Entities directly to SEBI.

c) *The Company further offers that in the event of being granted one more years time, i.e., 3 year , it shall be able to sell assets to the tune of another 5,000 crore thus bringing a total Rs.20,000 crore in 3 years' time.*

31. That the aforementioned proposal made by M/s PACL along with Affidavits of the Undertakings of Mr. Sukdev Singh (Managing Director, M/s PACL Ltd.), Mr. Narinder Singh Mehta (Director, M/s PACL Ltd.), Mr. Sikender Singh Dhillon (Director, M/s PACL Ltd.) and Nirmal Singh Bhangoo (Former Director pf PACL Ltd. & M/s PGF Ltd.), have been also brought on record by SEBI vide their Confidential Report dt. 15.05.2018 filed in C.A. NO. 13301 OF 2015.

The Copy of the Confidential Report dt. 15.05.2018 filed in Civil Appeal No. 13301/2015 is annexed herewith and marked as **ANNEXURE A9**. From Pg. No. __ to Pg. No.____.

32. That, at this juncture it is further brought to the attention of this Hon'ble Court that since the filing of the proposal by M/s PACL to return and refund the investor's monies, the said proposal has been uploaded by the SEBI on its website, inviting counter-proposals to the proposal made by M/s PACL. It is brought to the attention of this Hon'ble Court that M/s PACL vide its Letter dt. 03.07.2018 addressed to the Hon'ble Justice Lodha Committee has reiterated its utmost *bona fide* of returning the investor monies and stated that "*The Committee (Justice Lodha Committee) may kindly understand that PACL's offer is not only to recover now Rs.23,000 crore by sale of its assets but to continue to recover further monies till the last investor claim is repaid...*" It is further brought to the knowledge of this Hon'ble Court that since then, M/s PACL vide its Letter dt.. 17.07.2018 to the Hon'ble Committee has further submitted their final proposal to facilitate sale of its properties to an amount of Rs.28,000 Crores (Rupees Twenty Eight Thousand Crores(payable in the following manner:

a. First Year – Rs.7,000 crores
b. Second Year – Rs.8,000 crores
c. Third Year – Rs. 8,000 crores
d. Fourth Year – Rs. 3,000 crores
e. Fifth Year – Rs.2,000 crores.

That it is further respectfully submitted that M/ PACL along with their proposal dt. 17.07.2018 have also appended cheques amounting to Rs. 500 Crores as EDM in favour of SEBI.

The true copy of the Representation dt.03.07.2018 made by M/s PACL to the Hon'ble Justice (Retd.) LodhaCommittee is annexed herewith and marked as **ANNEXURE – A 10.** From Pg. No. ___ to Pg. No.____.

The true copy of the Final Proposal-PACL Properties dt. 17.07.2018 made by M/s PACL to Hon'ble Justice (Retd.) Lodha Committee is annexed herewith and marked as **ANNEXURE – A 11.** From Pg. No. ___ to Pg. No.____.

33. That in light of the aforementioned developments qua the PACL Company-Investor dispute it is humbly submitted that the dispute is at the cusp of resolution and the funds are being returned to the investors by PACL and its Key Managerial Persons. Since the Applicant herein is neither on Board of PACL, nor associated with PACL in any capacity, neither a beneficiary to the alleged schemes of the PACL nor a shareholder in the Company must not be made to suffer in light of the Order passed by the. Therefore, the Applicant humbly prays that the Order of the Ld. A.O. dt. 07.09.2017, proceedings emanating from

and consequent to the said Order, namely, Appeal No. 47/2018 (pending before the Hon'ble SAT), till the pendency of the Civil Appeal No. 13319 of 2015 pending adjudication before this Hon'ble Court.

34. That it is most humbly submitted that the peculiar facts and circumstances of the present case justify the exercise of the powers of this Hon'ble Court under Article 142 of the Constitution of India for granting the relief as prayed for in the instant Application.

35. That it would be therefore in the interest of justice if this Hon'ble Court were to issue the directions prayed for in this Application.

PRAYER

In the premises set forth above, it is therefore most respectfully submitted that this Hon'ble Court may graciously be pleased to:

A. Stay the Impugned Order dt. 28.02.2018 passed by the Hon'ble SAT and the penalty imposed therein till the pendency of Civil Appeal No. 13319 of 2015 preferred by the Applicant in this Hon'ble Court;

B. Pass any such other Order or Orders as this Hon'ble Court may deem fit and proper in light of the facts and circumstances surrounding the instant Application.

AND FOR THIS ACT OF KINDNESS THE APPLICANT EVER PRAY AS DUTY BOUND

FILED BY

MANISHA AMBWANI

FILED ON

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

IA NO. _____ OF 2018

CIVIL APPEAL NO. 13319 OF 2015

IN THE MATTER OF:

GURMEET SINGH

...APPLICANT/ APPELLANT

VERSUS

SEBI

...RESPONDENT

AFFIDAVIT

I, Smt. Tejinder Kaur Chahal, Aged about 50 years, w/o Gurmeet Singh Chahal, Resident of 49, Ground Floor, Eklavya Apartment, Sector -13, Rohini, Delhi, presently at New Delhi, do hereby solemnly affirm and stated as under:

1. That I am the wife and pariokar of the Applicant/Appellant in the Civil Appeal and well acquainted with the facts and circumstances of the present case and in that capacity, competent to swear the present affidavit in support of the accompanying IA.

2. That I have read and understood the accompanying Interim Application (from Page ___ to ___) and I state that the facts mentioned therein are true and correct to the best of my knowledge and that nothing material has been concealed.

NOTARY
Name: R.P. Bansal
Area: New Delhi
Regd. No. 16678/14
Expiry Date: 27/06/2019
GOVT. OF INDIA

ANNEXURE A1
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ITEM NO.1 COURT NO.2 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).13301/2015

SUBRATA BHATTACHARYA Appellant(s)

VERSUS

SECURITIES & EXCHANGE BOARD OF INDIA Respondent(s)
(With appln.(s) for exemption from filing c/c of the impugned judgment, permission to file additional documents and stay and office report)

WITH

C.A.No.13319/2015
(With appln.(s) for permission to file additional documents, for exemption from filing c/c of the impugned judgment and ex-parte stay and Office Report)

C.A.No.13394/2015
(With appln.(s) for ex-parte stay, impleadment, intervention, stay and for permission to file additional documents and Office Report)

C.A.No.13410/2015
(With appln.(s) for ex-parte stay and for exemption from filing c/c of the impugned judgment and Office Report)

W.P.(C)No.500/2015
(With appln.(s) for directions and Office Report)

T.C.(C)No.134/2015

T.P.(C)No.45/2016
(With appln.(s) for stay and Office Report)

T.P.(Crl.)No...../2016 (D.No.388/2016)
(With appln.(s) for ex-parte stay and permission to file T.P. and Office Report)

T.P.(Crl.)No...../2016 (D.No.398/2016)
(With appln.(s) for permission to file T.P. and stay and Office Report)

T.P.(C)No.46/2016
(With appln.(s) for stay and Office Report)

Date : 02/02/2016 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ANIL R. DAVE
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Appellant(s) Mr. Anil B. Divan,Sr.Adv.
Mr. Amit Pawan,Adv.
Mr. Abhishek Amritanshu,Adv.
Mr. Suryodaya Prakash Tiwari,Adv.

In C.A. 13394/15 Mr. Kapil Sibal,Sr,Adv.
Mr. Mahesh Agarwal,Adv.
Mr. Samir Rohatgi,Adv.
Ms. Radhika Gautam,Adv.
Mr. Paras Anand,Adv.
For Mr. E.C. Agrawala,Adv.

In C.A. 13140/15 Mr. C.A. Sundram,Sr.Adv.
Mr. Mahesh Agarwal,Adv.
Mr. Samir Rohatgi,Adv.
Ms. Radhika Gautam,Adv.
Mr. Paras Anand,Adv.
For Mr. E.C. Agrawala,Adv.

In T.C.(C) No.134/15 Dr. A.M. Singhvi,Sr.Adv.
Mr. Mahesh Agarwal,Adv.
Mr. Samir Rohatgi,Adv.
Ms. Radhika Gautam,Adv.
Mr. Paras Anand,Adv.
For Mr. E.C. Agrawala,Adv.

Mr. P.B. Suresh,Sr.Adv.
Mr. C.P. Chandrasekharan,Adv.
Mr. Vipin Nair,Adv.
Mr. Vinod Nair,Adv.
Mr. Rahul Srivastava,Adv.
For M/s. Temple Law Firm,Advs.

For Respondent(s) SEBI Mr. Arvind P. Datar,Sr.Adv.
Mr. Pratap Venugopal,Adv.
Ms. Surekha Raman,Adv.
Mr. Purushottam K. Jha,Adv.
Ms. Niharika,Adv.
For M/s. K.J. John & Co.,Advs.

Mr. Shashank Bajaaj,Adv.
Mr. Shakun S. Shukla,Adv.
Mr. Prakash Kumar Singh,Adv.

Mr. Laxmi Narayan,Sr.Adv.
Mr. Sarabjot Singh,Adv.
Mr. Alex Joseph,Adv.
For M/s. B.J. Law Offices,Advs.

Mr. Prashant Bhushan,Adv.
Mr. Omanakuttan K.K.,Adv.

Mr. Rajiv Ranjan Dwivedi,Adv.

Caveator/Customer Assn. — Mr. Amrit Pal singh Gambhir,Adv.
Mr. Shantanu Kumar,Adv.

Investors — Mr. Avadh Kaushik,Adv.
Ms. Deepika Raghav,Adv.

UPON hearing the counsel the Court made the following

O R D E R

C.A.Nos.13301, 13319, 13394 & 13410 of 2015, WP(C) No.500/2015, T.C.(C)No.134/2015 :

1. Heard Mr. C.A. Sundaram, learned senior counsel appearing for the appellant-Company, Mr. Anil B. Divan, learned senior counsel appearing on behalf of the Director of the Company and Mr. Arvind P. Datar, learned senior counsel appearing on behalf of Securities & Exchange Board of India (SEBI), on caveat.

2. Upon hearing the learned counsel and looking at the peculiar facts of the case, in the interest of the investors, we think it proper to pass this order with regard to interim arrangement, without going into the legality of the impugned judgment and without prejudice to the submission which might be made by the counsel at the time of further hearing of these matters and we direct that the appellant-Company shall not collect any

further amount from any of the investors.

3. The SEBI shall constitute a Committee for disposing of the land purchased by the Company so that the sale proceeds can be paid to the investors, who have invested their funds in the Company for purchase of the land. Hon'ble Mr. Justice R.M. Lodha, the former Chief Justice of India, would be the Chairman of the said Committee. It would be open to the Hon'ble Chairman of the Committee to appoint such experts or other persons, as he might think it necessary, in consultation with the SEBI, so as to enable the Committee to sell the land and pay to the investors in a manner that might be decided by the said Committee.

4. A Nodal Officer shall be appointed, who shall be in-charge of the funds so collected and shall have a liaison with the Committee and shall also work as a Secretary to the said Committee.

5. The Committee shall collect relevant record, including Title Deeds from the Central Bureau of Investigation (CBI), if the CBI is in possession of any of the documents. Copies of the Title Deeds shall also be given to the Company so that the Company can also assist the Committee in the process of sale of the land.

6. The CBI is directed to hand over the documents, after retaining their copies, which might be required by the SEBI, so as to enable the Committee to sell the land.

The CBI will be entitled to use the photocopies of the Title Deeds, which will be handed over to it for Court proceedings.

7. The methodology with regard to recovery of amount by sale of the land and disbursement of the amount to the investors shall be overseen by the Members of the Committee.

8. Remuneration to be paid to the Chairman shall be determined by the Hon'ble Chairman himself after considering the quantum of work to be done by the Committee.

9. The work with regard to disposal of the land and disbursement of the proceeds to the investors be completed as soon as possible and preferably within six months from today.

10. The Registry is directed to forward copies of this order to Hon'ble Mr. Justice R.M. Lodha, the SEBI and the CBI. The Company and its Directors shall extend their cooperation to the Committee so that the Committee can function effectively to complete the work as soon as possible.

11. It would be open to the Hon'ble Chairman to make modification in the afore-stated arrangement and he is empowered to do whatever he thinks proper for disposal of the land and disbursement of the proceeds to the investors.

12. The amount, which is lying in the bank accounts of the Company and other cash belonging to the Company shall be released in favour of SEBI so that it can be used either for disbursement in favour of the investors or for incurring necessary expenditure. If any amount has been deposited by the Company or by its Directors or by any other person on behalf of the Company in any Court, the same shall be released in favour of the SEBI, who shall have a separate account so as to deal with the same. The Committee shall also decide as to whether the staff of the Company should be continued or relieved.

13. The decision with regard to sale of property of the Company by the Committee shall not be interfered with by any Court.

14. List the matters on 2nd August, 2016 as Part-heard, so as to know the progress.

T.P.(C) Nos.45/2016 :

Heard the learned counsel.

The transfer petition is allowed. Writ Petition (C)No.12342/2015 titled as Gurmeet Singh Vs. Securities and Exchange Board of India is directed to be transferred from the High Court of Delhi at New Delhi to this Court and shall be heard along with Civil Appeal No.13301/2015 and other connected matters on 2nd August, 2016.

T.P.(C) Nos.46/2016 :

Heard the learned counsel.

The transfer petition is allowed. Writ Petition (C)No.12341/2015 titled as Subrata Bhattacharya Vs. Securities and Exchange Board of India is directed to be transferred from the High Court of Delhi at New Delhi to this Court and shall be heard along with Civil Appeal No.13301/2015 and other connected matters on 2nd August, 2016.

TP(Crl.)No...../2016 (D.No.388/2016) :

Permission to file transfer petition is granted.

Heard the learned counsel.

The transfer petition is allowed. Writ Petition (Crl.)No.1078/2014 titled as Gurmeet Singh Vs. C.B.I. is directed to be transferred from the High Court of Delhi at New Delhi to this Court and shall be heard along with Civil Appeal No.13301/2015 and other connected matters on 2nd August, 2016.

TP(Crl.)Nos...../2016 (D.No.398/2016) :

Permission to file transfer petitions is granted.

Heard the learned counsel.

The transfer petitions are allowed. Writ Petition (Crl.)Nos.705 and 1076 of 2014, both titled as PACL Ltd.

Vs. C.B.I. are directed to be transferred from the High Court of Delhi at New Delhi to this Court and shall be heard along with Civil Appeal No.13301/2015 and other connected matters on 2nd August, 2016.

(Sarita Purohit)
Court Master

(Sneh Bala Mehra)
Assistant Registrar

ANNEXURE A2
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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 6753-6754 OF 2004

SECURITIES & EXCHANGE BOARD OF INDIA Appellant (s)

VERSUS

PACL INDIA LTD. & ORS. Respondent(s)

WITH

CIVIL APPEAL NO.2864/2006

O R D E R

CIVIL APPEAL NOS. 6753-6754/2004

1. IA No. 1 of 2004 (Application for impleadment) is allowed.

2. We have heard Mr. Parag Tripathi, learned senior counsel and Ms. Suruchii Aggarwal, learned counsel appearing for the appellant and Mr. Harish Salve, Mr. Abhishek Manu Singhvi, Mr. Vivek Tankha, Mr. Rakesh Dwivedi and Mr. P.H. Parekh, learned senior counsel appearing for the respondents.

3. In the course of his submissions Mr. Harish Salve, learned senior counsel for the first respondent contended that had the appellant issued necessary show cause notice before the passing of the orders dated 30.11.1999 and 10.12.1999, the first respondent would have placed the necessary materials and demonstrated as to how its business activities would not have fall under the definition of Collective Investment Schemes and there would have been no necessity to approach the High Court for the redressal of its grievances. The learned senior counsel also submitted that even now if the said orders dated 30.11.1999 and 10.12.1999 are treated as show cause notices and appropriate opportunity is extended to the first respondent that would enable the first respondent to vindicate its stand before the appellant.

4. After hearing the respective counsel and after noticing the orders dated 30.11.1999 and 10.12.1999 impugned in the writ petition filed before the High Court, which were set aside by the order impugned in these appeals, as well as, the order dated 24.6.2002 which order also got merged in the order impugned in these appeals, it was suggested to the learned counsel whether the impugned orders of the appellant dated 30.11.1999 and 10.12.1999 themselves can be treated as

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

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

6. Having heard the learned counsel for the respective parties, we are convinced that the order of the High Court impugned in these appeals should be set aside and the proceedings dated 30.11.1999 and 10.12.1999 can themselves be treated as show cause notices apart from permitting the appellant to issue a comprehensive supplementary show cause notice to the first respondent Company within a period of three months after carrying out necessary inspection, investigation, inquiry and verification of the accounts and other records of the first respondent Company.

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

8. We also make it clear that the appellant shall pass fresh orders as regards the business activity of the first respondent

Company as to whether it falls under the category of CIS or not and depending upon the ultimate order to be passed it may proceed further in accordance with law. The appellant shall before taking any future action give prior notice to the first respondent Company.

9. We make it clear that such order shall be passed by the appellant uninfluenced by whatever stated by the High Court in the order impugned in these appeals as well as its own earlier orders including its order dated 24.6.2002. We also make it clear that we have not gone into the merits of the case of the respective parties.

10. Since the earlier orders of the appellant were of the year 1999 and long time gap has occurred in between, such time gap shall not cause any prejudice to either of the parties.

11. With these directions, the appeals stand disposed of.

CIVIL APPEAL NO.2864/2006

Heard Mr. A. Mariarputham, learned senior counsel appearing for the appellant and Mr. Parag P. Tripathi, Sr. Adv. and Ms. Suruchii Aggarwal, learned counsel appearing for the respondent. We find no merit in the appeal.

The appeal is dismissed.

.....J.
[DR. B.S. CHAUHAN]

NEW DELHI
FEBRUARY 26, 2013

.....J.
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

ITEM NO.101-PH COURT NO.6 SECTION XV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 6753-6754 OF 2004

SE ..ITIES & EXCHANGE BOARD OF INDIA Appellant (s)

VERSUS

PACL INDIA LTD. & ORS. Respondent(s)

(With appln(s) for directions and permission to place addl. documents on record and impleadment and early hearing and permission to file additional affidavit and with office report)

WITH

CIVIL APPEAL NO.2864/2006
(With appln.(s) for stay and office report)

Date: 26/02/2013 These Appeals were called on for hearing today.

CORAM :
HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

C.A. Nos. 6753-6754/2004

For Appellant(s) Mr. Parag P. Tripathi, Sr. Adv.
Ms. Suruchii Aggarwal,Adv.
Ms. Monisha Handa, Adv.
Mr. Siddharth, Adv.

Union of India Mr. Mohan Jain, ASG
Mr. D.K. Thakur, Adv.
Ms. Manmeet, Adv.
Ms. Supriya Juneja, Adv.
Ms. Sushma Suri, Adv.

Mr. B.V. Balaram Das ,Adv

For Respondent(s)

CA No. 6753/2004 Mr. Harish Salve, Sr. Adv.
Mr. Rakesh Dwivedi, Sr. Adv.
Mr. D.P. Mohanty, Adv.
Ms. Pallavi Sharma, Adv.
Mr. Faisal Sherwani, Adv.
for M/S. Parekh & Co.,Adv.

CA No. 6754/2004 Mr. Abhishek Manu Singhvi, Sr. Adv.
Mr. Vivek Tankha, Sr. Adv.
Mr. D.P. Mohanty, Adv.
Ms. Pallavi Sharma, Adv.
Mr. Faisal Sherwani, Adv.
for M/S. Parekh & Co., Adv.

IA No 1 in CA Nos.
6753-54/2004 Mr. P.H. Parekh, Sr. Adv.
Mr. Rohit Tandon, Adv.
Mr. Pavan Kumar, Adv.
Mr. Prathvi Pal, Adv.

C.A. No. 2864/2006
For Appellant(s) Mr. A. Mariarputham, Sr. Adv.
Mr. P. Parmeswaran, Adv.
Mr. Yusuf Khan, Adv.

For Respondent(s) Mr. Parag P. Tripathi, Sr. Adv.
Ms. Suruchii Aggarwal, Adv.
Ms. Monisha Handa, Adv.
Mr. Siddharth, Adv.

UPON hearing counsel the Court made the following

O R D E R

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CIVIL APPEAL NOS. 6753-6754/2004

I.A. No. 1 of 2004(Application for impleadment) is allowed.

The appeals stand disposed of in terms of the signed order.

CIVIL APPEAL NO.2864/2006

Heard Mr. A. Mariarputham, learned senior counsel appearing for the appellant and Mr. Parag P. Tripathi, Sr. Adv. and Ms. Suruchii Aggarwal, learned counsel appearing for the respondent. We find no merit in the appeal.

The appeal is dismissed.

(DEEPAK MANSUKHANI)
Court Master

(M.S. NEGI)
Court Maste

(Signed order is placed on the file)

ANNEXURE A
51

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 28.02.2018

Misc. Application No. 08 of 2018
In
Misc. Application No. 99 of 2016
And
Appeal No. 141 of 2016

Gurmeet Singh
22, 3rd Floor, Amber Tower,
Sansar Chand Road,
Jaipur 302 004, Rajsthan ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051 ...Respondent

WITH
Misc. Application No. 311 of 2017
In
Misc. Application No. 100 of 2016
And
Appeal No. 142 of 2016

Subrata Bhattacharya
22, 3rd Floor, Amber Tower,
Sansar Chand Road,
Jaipur 302 004, Rajsthan ...Appellant
Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051 ...Respondent

Mr. Pulkit Sharma, Advocate i/b Abhishek Adke for the Appellants.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody and Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per: Justice J.P. Devadhar (Oral)

Misc. Application Nos. 08 of 2018 & 311 of 2017

By these two Miscellaneous Applications applicants seek recall of our orders dated 24.05.2017 whereby both the appeals were dismissed for want of prosecution as none appeared on behalf of the appellants. For the reasons stated in the respective Miscellaneous Applications, the order dated 24.05.2017 is recalled and both appeals are restored to the file and taken up for hearing.

Both the Miscellaneous Applications are disposed of accordingly with no order as to costs.

Misc. Application Nos. 99 & 100 of 2016

There is delay of 33 days in filing the respective appeals. By these Miscellaneous Applications, applicants seek condonation of the said delay. For the reasons stated in the respective applications, the delay is condoned.

Miscellaneous Applications are disposed of accordingly.

Appeal No. 141 & 142 of 2016

1. Appellants in these two appeals have challenged the order passed by the Adjudicating Officer ("AO" for short) of Securities and Exchange Board of India ("SEBI" for short) on 02.02.2016. By the said order penalty has been imposed on PACL Ltd. and its directors including the

appellants herein. In the impugned order it is held that the appellants have violated Section 15D of the SEBI Act and accordingly maximum penalty of ₹ 1 crore has been imposed on each appellant.

2. It is not in dispute that the appellants were directors of PACL Limited for about six years. When the appellants joined as directors admittedly several schemes floated by PACL Ltd.. were in force and during their tenure several new schemes were also launched. Since the said schemes floated by PACL Ltd., were in the nature of Collective Investment Schemes ("CIS") and the said schemes were carried on without obtaining registration from SEBI in gross violation of the CIS Regulations, proceedings were initiated against PACL Ltd., and its directors including the appellants herein. Thereafter, the Whole Time Member ("WTM" for short) of SEBI by his order dated 22.08.2014 held that the schemes floated by PACL Ltd. were CIS and directed PACL Ltd. and its directors to wind up the existing CIS and refund the money collected from the investors with promised returns. By the impugned order dated 02.02.2016 the AO of SEBI has imposed penalty of ₹ 1 crore on each appellant under Section 15D of SEBI Act.

3. Appellants had filed appeals before this Tribunal to challenge the decision dated 22.08.2014 passed by the WTM of SEBI. The said appeals were dismissed by this Tribunal on 12.08.2015. Challenging the decision of this Tribunal the appellants have filed appeals before the Apex Court and the same are pending. However, during the pendency of the said appeals, the Apex Court by its order dated 02.02.2016 has directed that the land purchased by PACL Ltd. be sold and the sale

proceeds be given to the investors in the manner as more particularly set out in the said order.

4. In these appeals filed by the appellants to challenge the order passed by the AO on 02.02.2016, counsel for the appellants submit that the order passed by the AO cannot be sustained for the following reasons:-

a) Once the WTM of SEBI had record a finding that the schemes run by PACL Ltd. were CIS and that finding was being contested in the appeals filed by the appellants before this Tribunal, SEBI could not have initiated parallel proceedings and, therefore, the impugned order is liable to be set aside.

b) Fact that the appellants at the relevant time were the directors of PACL Ltd. cannot by itself be a ground to impose penalty on the appellants. Without disclosing the role played by the appellants in running the CIS, the AO is not justified in imposing penalty against the appellants.

c) There were several directors in PACL Ltd. before the appellants joined as directors of PACL Ltd. In such a case imposing uniform penalty of ₹ 1 crore on all the directors including the appellants is wholly unjustified.

5. We see no merit in the aforesaid contentions.

6. Powers conferred on the WTM of SEBI under Section 11 & 11B of SEBI Act are different from the powers conferred on the Adjudicating Officer of SEBI to impose penalty for the violations enumerated in Chapter VIA of the SEBI Act. Therefore, fact that the appeals filed by the appellants against the order passed by the WTM of SEBI were pending before this Tribunal, did not preclude SEBI from initiating penalty proceedings against the appellants.

7. Argument that without setting out the role played by the appellants no penalty could be imposed on the appellants merely because they were directors of PACL Ltd. is also without any merit. Very fact that the appellants as directors of PACL Ltd. not only continued the schemes operating on the date on which they joined as directors but also floated new schemes in the nature of CIS without obtaining registration from SEBI is sufficient to hold the appellants guilty of violating Section 15D of SEBI Act.

8. Argument of the appellants that the AO has erroneously imposed uniform penalty on different directors of PACL Ltd. is factually incorrect. On perusal of the impugned order it is seen that the AO has imposed different penalty on the directors who were covered under Section 15D of SEBI Act as it stood prior to its amendment on 29.10.2002 and has imposed penalty of ₹1 crore on all the directors covered under Section 15D of SEBI Act as it stood after 29.10.2002. It is relevant to note that penalty imposable under Section 15D of SEBI Act as

it stood prior to 29.10.2002 was ₹ 10,000/- for each day during which the person carried on CIS or 10 lakh of rupees whichever is higher. Penalty imposable under Section 15D of SEBI Act after 29.10.2002 was ₹ 1 lakh for each day during which the person carried on CIS or ₹ 1 crore whichever is less.

9. In the present case, the amount collected by PACL Ltd. from 5.85 crore investors for selling agricultural land was to the tune of ₹ 49,100 crore, whereas value of total lands held by PACL Ltd. in the form of stock in trade as on 31.03.2014 was ₹ 11,706.96 crore. Thus, it is apparent that substantial amounts collected from the investors have been swindled away by the directors of PACL Ltd. Since, the appellants were directors of PACL Ltd. for a long period, imposition of maximum penalty of ₹ 1 crore on the appellants cannot be faulted.

10. In the result, we see no merit in both the appeals and the same are hereby dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

28.02.2018
Prepared & Compared By: PK

ANNEXURE A4

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BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

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

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

In the Matter of M/s PACL Ltd.

In Respect of:

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

2. Mr. Anand Gurwant Singh

3. Mr. Gurnam Singh (PAN:AOYPS320H)

4. Mr. Tarlochan Singh (PAN: AIEPS9489Q)

5. Mr. Sukhdev Singh (PAN: AUGPS0130B)

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

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

8. Mr. Tyger Joginder(DIN: 00694280)

9. Mr. Gurmeet Singh (PAN: AAMPS1400Q)

10. Mr. Subrata Bhattacharya (PAN: AAIPB6480H)

Background:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Copies of application forms, agreement and sale deed executed in case of 10 customers have been provided. In all the cases, the customer has applied for 5 plots of 1000 sq. yards under Plan Code No. C3/30 and sale deed has been executed for one plot of 1000 sq. yards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. The SCNs were served to all the Noticees except Noticee no. 2 and Noticee no. 7. The SCN issued to Noticee no. 2 came back with the remark: "unclaimed" and the SCN issued to the Noticee no. 7 came back with the remark: "Left India return to sender". Accordingly, the SCNs were sought to be served to the aforesaid Noticees through affixation at their last known address. During the attempt of affixation at the address of Noticee no. 7, he was present and accordingly, the SCN was served on the Noticee no. 7 by hand delivery.

5. Vide letter dated February 03, 2015, Noticee no. 9 requested for reasonable time to file reply to the SCN. The said letter was filed for seeking time for the Noticee no. 1, Noticee no. 4, Noticee no.5 and Noticee no. 10, however, authorization letters in favour of Noticee no. 9 by other Noticees were not filed. Accordingly, vide letter dated February 11, 2015, time to file reply to the SCN was extended for another 7 days. The Noticee no. 9 was also advised to file independent authorization letter on behalf of all other noticees, authorizing him to represent them in these proceedings. Subsequently, separate letters dated February 20, 2015 were received from the all these Noticees, seeking further time of 10 days to file reply to the SCN.

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

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

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

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

14. Submissions by the Noticees

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

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

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

14.1.1. Preliminary Objections:

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

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

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

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

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

14.1.2. General Submissions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14.2. Noticee no. 3

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

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

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

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

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

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

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

14.3. Noticee no. 6 :

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14.4. Noticee no. 7

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) ...

(b)...

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

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

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

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

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

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

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

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

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

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

Section 11AA

"Collective investment scheme.

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

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

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

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

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

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

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

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

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

scheme or arrangement –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dealing with the Preliminary Objections:

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

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

conclusion undoubtedly is in favour of the former, i.e., the pith and substance of the legislation in question is 'investor protection', whereas sale and purchase of agricultural land and/or development of agricultural land is incidental thereto ... In the aforesaid view of the matter, there can be no manner of doubt that the pith and substance of the subject-matter of the legislation in hand does not fall under Entry 18 of the State List." The aforesaid decision of Hon'ble High Court of Punjab and Haryana was challenged by the petitioner therein before Hon'ble Supreme Court of India by filing an SLP which was converted into Civil Appeal [P.G.F.L. Vs Union of India and others] [MANU/SC/0247/2013]. Hon'ble Supreme Court affirmed the aforesaid decision of Hon'ble High Court of Punjab and Haryana and observed *inter alia* that: " *A detailed analysis of sub-section (2) of Section 11 AA, which defines a collective investment scheme disclose that it is not restricted to any particular commercial activity such as in a shop or any other commercial establishment or even agricultural operation or transportation or shipping or entertainment industry etc. The definition only seeks to ascertain and identify any scheme or arrangement, irrespective of the nature of business, which attracts investors to invest their funds at the instance of someone else who comes forward to promote such scheme or arrangement in any field and such scheme or arrangement provides for the various consequences to result there from.*"

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

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

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

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

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

Issues for Consideration:-

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

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

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

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

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

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

Consideration of Issues:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24.3. Noticee no. 2

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

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

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

24.4. Noticee no. 3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24.6. **Noticee no. 6**

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

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

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

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

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

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

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

24.6.7. Noticee no. 7

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

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

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

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

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

24.7. Noticee no. 8

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

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

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

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

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

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

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

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

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

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

15D. If any person, who is –

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

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

15D. If any person, who is—
(a) required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty not exceeding ten thousand rupees for each day during which he carries on any such collective investment scheme including mutual funds, or ten lakh rupees whichever is higher;
(b) ...".

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

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

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

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

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

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

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

(c) the repetitive nature of the default."

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

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

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

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

ORDER:

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

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

a. **Noticee no. 1**

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

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

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

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

b. Noticee no. 2

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

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

c. Noticee no. 3

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

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

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

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

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

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

d. Noticee no. 4 and Noticee no. 5

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

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

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

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

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

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

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

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

e. Noticee no. 6

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

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

f. Noticee no. 7

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

g. Noticee no. 8

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

h. Noticee no. 9 and Noticee no. 10

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

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

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

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

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

29. The amount of penalty is commensurate with the defaults committed by the Noticees.

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

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

32. This order of adjudication is made and passed on 2nd day of February 2016 at New Delhi.

Amit Pradhan
Adjudicating Officer

ANNEXURE A5
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FORM 32

[Pursuant to sections 303(2), 264(2) or 266(1)(a) and 266(1)(b)(iii) of the Companies Act, 1956]

Particulars of appointment of Managing Director, directors, manager and secretary and the changes among them or consent of candidate to act as a Managing Director or director or manager or secretary of a company and/ or undertaking to take and pay for qualification shares

Note - All fields marked in * are to be mandatorily filled.

1. *This form is for ◯ New company ◉ Existing company

2.(a) *Form 1A reference number (Service request number (SRN) of Form 1A) or corporate identity number (CIN) of company: U70101RJ1996PLC011577

(b) Global location number (GLN) of company: [ ] Pre-fill

3.(a) Name of the company: PACL INDIA LIMITED

(b) Address of the registered office of the company:
22,3RD FLOOR,
AMBER TOWER,SANSAR CHANDRA ROAD,
JAIPUR
Rajasthan
INDIA

(c) e-mail ID of the company: paclindia@yahoo.co.in

4. Number of Managing Director, director(s) for which the form is being filed: 3

5. Details of the Managing Director, directors of the company

I. Details of the Managing Director or director of the company

Director identification number (DIN): 00067223 Pre-fill

Name: GURMEET SINGH

Father's name: KULWANT SINGH

Present residential address:
49, EKLAVYA APPTTS.,
SECTOR-13, ROHINI
DELHI
Delhi
India 110085

Nationality: IN Date of birth: 22/03/1965

◉ Appointment ◯ Cessation ◯ Change in designation

Designation: Director Date of appointment or change in designation: 01/02/2009 (DD/MM/YYYY)

Category: Professional

Whether chairman, executive director, non-executive director

☐ Chairman ☒ Executive director ☐ Non-executive director

DIN of the director to whom the appointee is alternate: [ ] Pre-fill

Name of the director to whom the appointee is alternate:

Name of the company or institution whose nominee the appointee is:

e-mail ID:

In case of cessation

Hereby confirmed that the above mentioned ◯ Director ◯ Managing Director is not associated with the company with effect from [ ] (DD/MM/YYYY) due to [ ]

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II. Details of the Managing Director or director of the company

Director identification number (DIN) 00570538 Pre-fill

Name: SUBRATA BHATTACHARYA

Father's name: BIRESHWAR BHATTACHARYA

Present residential address: H.NO-87, POCKET C-13,
SECTRO-3, ROHINI
DELHI
Delhi
India 110085

Nationality: IN Date of birth: 14/02/1961

(•) Appointment ( ) Cessation ( ) Change in designation

Designation: Director Date of appointment or change in designation: 01/02/2009 (DD/MM/YYYY)

Category: Independent

Whether chairman, executive director, non-executive director

[ ] Chairman [ ] Executive director [X] Non-executive director

DIN of the director to whom the appointee is alternate: Pre-fill

Name of the director to whom the appointee is alternate:

Name of the company or institution whose nominee the appointee is:

e-mail ID:

In case of cessation

Hereby confirmed that the above mentioned ( ) Director ( ) Managing Director is not associated with the company with effect from (DD/MM/YYYY) due to

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III. Details of the Managing Director or director of the company

Director identification number (DIN) 00498732 Pre-fill

Name SUKHDEV SINGH

Father's name RAGHBIR SINGH

Present residential address
VPO. JHALLIAN KALAN
DISTRICT ROPAR
Punjab
India 140111

Nationality IN Date of birth 25/02/1960

○ Appointment ○ Cessation ◉ Change in designation

Designation Managing Director Date of appointment or change in designation 01/02/2009 (DD/MM/YYYY)

Category Promoter

Whether chairman, executive director, non-executive director

☒ Chairman ☒ Executive director ☐ Non-executive director

DIN of the director to whom the appointee is alternate Pre-fill

Name of the director to whom the appointee is alternate

Name of the company or institution whose nominee the appointee is

e-mail ID

In case of cessation

Hereby confirmed that the above mentioned ○ Director ○ Managing Director is not associated with the company.

with effect from (DD/MM/YYYY) due to

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6. Number of manager(s), secretary(s) for which the form is being filed

7. Details of the manager or secretary of the company

I. Details of the manager or secretary of the company

Income-tax permanent account number (PAN) ◯ Appointment ◯ Cessation

Whether the secretary is a member of ICSI ◯ Yes ◯ No

Whether associate or fellow ◯ Associate ◯ Fellow

Membership number of the secretary

First name

Middle name

Last name

Father's name

First name

Middle name

Last name

Present residential address Line I

Line II

City

State Pin code

ISO country code

Country

Phone Fax

Date of birth (DD/MM/YYYY)

Designation

Date of appointment or cessation (DD/MM/YYYY)

e-mail ID

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Verification I

☒ 1. *I confirm that the information given above is true to the best of my knowledge and belief.

☒ 2. It is also hereby confirmed that the consent of the appointee Managing Director, director(s) has been filed as an attachment to this eForm (applicable only in the case of a public company)

Attachments:

1. Evidence of payment of stamp duty where qualification shares is involved (This will be mandatory only if the director giving consent agrees to pay for at least one share) — Attach

2. Consent(s) of the appointee Managing Director, director(s) — Attach

3. Declaration regarding qualification shares — Attach

4. Evidence of cessation — Attach

5. Optional attachment(s) - if any — Attach

List of attachments

CONSENT GURMEET SINGH.pdf
CONSENT SUBRATA.pdf

Remove attachment

Verification II

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete.

☒ I have been authorised by the Board of directors' resolution number 31/12/2008 dated 31/12/2008 (DD/MM/YYY to sign and submit this form.

☐ I am authorised to sign and submit this form.

To be digitally signed by

Managing Director or director or manager or secretary of the company (In case of an existing company, person signing the form should be different from the person in whose respect the form is being filed)

Surender Kumar Gaur

*Designation: Secretary

*Director identification number of the director or Managing Director; or Income-tax PAN of the manager; or Membership number, if applicable or income-tax PAN of the secretary (secretary of a company who is not a member of ICSI, may quote his/ her income-tax PAN): ACTPG1576A

Certificate

It is hereby certified that I have verified the above particulars(including attachment(s)) from the records of

PACL INDIA LIMITED

and found them to be true and correct. I further certify that all required attachment(s) have been completely attached to this form.

○ Chartered accountant (in whole-time practice) or ○ Cost accountant (in whole-time practice) or
◉ Company secretary (in whole-time practice)

*Whether associate or fellow ◉ Associate ○ Fellow

AJAY KUMAR BEHERA

*Membership number or certificate of practice number: 7980

Modify | Check Form | Prescrutiny | Submit

For office use only:

This e-Form is hereby registered

Digital signature of the authorising officer: Ramesh Chandra Mishra

Confirm submission

ANNEXURE A6

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PACL LIMITED

EXTRACTS OF MINUTES OF THE EXTRA - ORDINARY GENERAL MEETING OF THE MEMBERS OF PACL LIMITED HELD ON THURSDAY, THE 11th APRIL, 2013 AT THE CORPORATE OFFICE OF THE COMPANY AT 10:00 A.M. AT 7th FLOOR, GOPALDAS BHAWAN, 28, BARAKHAMBA ROAD, NEW DELHI- 110001

RE-APPOINTMENT OF MR. GURMEET SINGH AS WHOLE TIME DIRECTOR ON REVISED TERMS AND CONDITIONS

"RESOLVED THAT in accordance with the provisions of Section 198, 269, 309, 310, 349, 350, read with schedule XIII and other applicable provisions of The Companies Act, 1956 and in accordance with the article 128 of the Articles of Association of the company, the consent of the members be and are hereby accorded to Reappoint Mr. Gurmeet Singh as a Whole Time Director of the Company for a period of three years w.e.f. 1st April, 2013 to 31st March, 2016 on the revised terms and conditions as mentioned below and his office shall be liable to retire by rotation.

(In Rs. Per month)

Basic Salary	3,26,000
HRA	1,63,000
Special Allowance	41,800
Total	5,30,800

Perquisites & other Reimbursements:

a) Soft Furnishing
Soft Furnishings (Tablecloths, upholstery, curtains, crockery etc) including maintenance at the residence for entertaining guests at home for official purpose (Rs. 2,00,000/- once for prescribed years, as per the policy of the company or revised from time to time).

b) Insurance
Insurance and/or Accident Insurance for an amount as per the specified policy of the company.

PACL LIMITED

c) **Servants**
Services of two domestic Servants, a Cook and a gardener at the residence of the Executive Director and reimbursement of salary of such persons to the extent of Rs. 6,000/- each per month for domestic servants, Rs. 8,000/- per month for cook and 5,000/- per month for gardener.

d) **Telephone**
Telephone at residence - Actual
Mobile - Actual

e) **Executive Attire**
Reimbursement of Executive Attire to the extent of Rs. 8,000/- per month.

f) **Bonus**
8.33% of the basic salary or in excess thereof, if any declared by the Company in any financial year.

g) **Provident Fund**
As per existing land laws and company policy.

h) **Superannuation Fund :**
Superannuation fund will be as per the policy of the company.

i) **Employees**
Services of a helper, a Secretary, a Peon, a Computer Operator at the residence of the Director for official duties duly approved by the Board of Directors

j) **Earned Leaves**
As per the Company policy.

k) **Company Car**
Reimbursement of petrol / diesel of Rs. 20,000/- p.m.

PACL LIMITED

l) Maintenance
As per Company policy.

m) Ex-gratia
As per Company policy.

n) Other Conditions
For All other terms and conditions not specifically spelt out above, the Rules and Orders of the company shall apply.

RESOLVED FURTHER THAT the other terms and conditions pertaining to reappointment of Mr. Gurmeet Singh as whole time director shall remain same and unchanged.

RESOLVED FURTHER THAT the power of the Company be and is hereby accorded to the Board of Directors / remuneration committee with respect to any increase in remuneration of Mr. Gurmeet Singh as an Whole Time Director based upon his performance every year in accordance with the existing policy of the Company and accordingly would be empowered to make necessary revisions and modifications in the existing salary structure as Board / committee deem fit in the best interest of the organization provided that such revision or increment shall be subject to the limits as specified in Schedule XIII or as prescribed whatsoever as provided under the provisions of The Companies Act, 1956.

RESOLVED FURTHER THAT in the event of absence or inadequacy of profits in any financial year, the remuneration payable to Mr. Gurmeet Singh by way of remuneration, perquisites, allowances and reimbursement including increment and revision shall not exceed the maximum limits as prescribed under schedule XIII or as prescribed whatsoever as provided under the provisions of The Companies Act, 1956 "

CERTIFIED TRUE COPY
FOR PACL LIMITED

RAJEEV GUPTA
(COMPANY SECRETARY)

ANNEXURE A7

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2003 SCC OnLine Raj 208 : (2004) 120 Comp Cas 470 : (2004) 2 BC 331 (DB) : (2005) 64 CLA 48 : (2004) 58 CLA 244

[In the Rajasthan High Court — Jaipur Bench]

(BEFORE Y.R. MEENA AND KHEM CHAND SHARMA, JJ.)

1. PACL India Ltd. and Others
(D.B. C.W.P. No. 6735 of 1999)

2. Swapan Maity and Another
(D.B. C.W.P. No. 6747 of 1999)

Versus

Union of India and Another

D.B. Civil Writ Petitions Nos. 6735 and 6747 of 1999
Decided on November 28, 2003

The Judgment of the court was delivered by

Y.R. MEENA, J.:— In D.B. Writ Petition No. 6735 of 1999, the petitioner has prayed that the respondent-SEBI be directed to withdraw their instructions dated December 10, 1999, and also quash the letter dated November 30, 1999, issued by respondent No. 2 addressed to petitioner No. 1 and further prayed that the provisions of section 11AA and sub-section (IB) of section 12 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "the Act, 1992"), be declared ultra vires the Constitution of India in so far as it includes "collective investment schemes". The petitioner has further prayed that the Regulations (the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999) (hereinafter referred to as "the Regulations, 1999"), be declared ultra vires the Constitution of India being inconsistent with and in derogation of the Companies Act, 1956, and these Regulations should not be given effect.

2. In D.B. Writ Petition No. 6747 of 1999, the validity of similar provisions are challenged and further prayed that directions or mandamus be issued to the respondents that the scheme of PACL India Ltd. is not subject to the Regulations, 1999. Since both the petitions involve common questions, both the petitions have been heard and are being disposed of by this common order.

3. In both the petitions, the petitioners have prayed that direction be given to the respondents that the scheme of PACL India Ltd. is not covered under the definition of "collective investment scheme" as defined under section 11AA of the Act, 1992. Alternatively, it has been prayed that if the view is taken that the scheme of the petitioner, PACL India Ltd., is covered under the definition of "collective investment scheme", in that case the provisions of section 11AA as well as sub-section (IB) of section 12 of the Act, 1992, be declared ultra vires the Constitution, and also the Regulations so far as they are made applicable in the case of *PACL India Ltd.* be declared ultra vires and inconsistent with the Companies Act and other Acts.

4. The case of the petitioner in Writ Petition No. 6735 of 1999, filed by PACL India Ltd. (hereinafter referred to as "the company") is that the petitioner is a public limited

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company incorporated under the Companies Act having its registered office at Jaipur and is engaged mainly in the business of sale and purchase of agricultural land and its development spread over for a period from five to ten years, depending upon the choice of the customers at the time of entering into agreement.

5. The questions for our consideration in both the petitions are that:

(i) whether the scheme of the company is covered within the definition of "collective investment scheme" as defined in section 11AA of the Act, 1992;

(ii) whether the Regulations, 1999, are applicable in the case of this company;

(iii) whether the provisions of section 11AA and sub-section (IB) of section 12 are ultra vires the Constitution;

(iv) whether the Regulations referred to in the prayer clause, in company's petition is ultra vires and inconsistent to the provisions of the Companies Act and other Acts.

6. Heard learned counsel for the parties.

7. Mr. Paras Kuhad, learned counsel for the SEBI, raised some preliminary objections and has submitted that this writ petition is not maintainable in view of the order of their Lordships of the Supreme Court dated July 23, 1999, passed on a transfer petition, filed by the SEBI, as their Lordships have stayed the proceedings of all petitions, pertaining to "collective investment scheme" pending in various High Courts.

8. He further submits that similar matter of the petitioner is pending before the Delhi High Court, therefore, this writ is not maintainable. He further submits that when the same issue is pending before the Delhi High Court, writ is not maintainable on that very subject, before this court.

9. To counter this preliminary objection, learned senior counsel for the peti-tioner-company submits that the stay is limited to the proceedings which were pending on the date of order of their Lordships dated July 23, 1999, and not to the subsequent petitions specially the subsequent petitions which are on the different issues and the subject matter.

10. In the petition in hand, the petitioner-company has challenged the validity of some provisions of the Act, 1992, and also the legality of the Regulations, 1999, and these provisions are inserted in the Act after July, 1999, i.e., after order of their Lordships dated July 23, 1999.

11. Learned counsel further submits that the second transfer application was also moved by the SEBI in respect of subsequent petitions, before their Lordships which includes the present petition and their Lordships have rejected transfer application as well as stay application. Therefore, it cannot be said that this writ petition is not maintainable because of the order dated July 23, 1999.

12. First we will take up the preliminary objections raised by Mr. Kuhad, whether writ is maintainable?

13. To consider whether writ is maintainable, Mr. Kuhad has twofold arguments that when their Lordships have stayed the proceedings regarding "collective investment schemes" pending before various High Courts, therefore, this writ is not maintainable, and, secondly, when the same matter is pending

before the Delhi High Court, parallel proceedings in this court is not permissible.

14. The facts are not in dispute that the order dated July 23, 1999, was passed on transfer petition filed by the SEBI. Their Lordships have stayed the proceedings of the petitions pending in various High Courts challenging the directions of the SEBI. The relevant part of the order of their Lordships reads as under:

> "In the meantime writ petitions/proceedings filed by the parties before various other High Courts challenging the direction issued by the SEBI as regards the collective investment scheme shall remain stayed pending before such High Courts. Stay shall stand vacated as soon as the Delhi High Court pronounces the judgment. We also hope that the Delhi High Court will proceed with the writ petitions/proceedings expeditiously."

15. From the order referred above, we see no substance in the argument of Mr. Kuhad. Nowhere their Lordships have said in order dated July 23, 1999, that any subsequent writ, if filed in any High Court, challenging the directions of the SEBI or challenging the provisions of the Regulations, introduced after July, 1999, are also subject to order dated July 23, 1999. Their Lordships have used the words "writ petitions/proceedings filed by the parties before various other High Courts challenging the direction issued by the SEBI as regards the 'collective investment scheme' shall remain stayed pending before such High Courts. Stay shall stand vacated as soon as the Delhi High Court pronounces the judgment. We also hope that the Delhi High Court will proceed with the writ petitions/proceedings expeditiously". Their Lordships stayed the proceedings of the petitions, which were pending on the date of order dated July 23, 1999.

16. The petitioner-company has not challenged before the Delhi High Court, the impugned notices issued after July, 1999, by the SEBI. But, in the petition in hand, the petitioner has challenged two notices dated November 30, 1999, and December 10, 1999, issued by the SEBI to the petitioner-company at Jaipur. The impugned notices were not the subject matter before the Delhi High Court, thus, these notices can be challenged before this court, as the subject matter before the Delhi High Court is not the same as the subject matter in the present writ petition.

17. The facts on record reveal that the Delhi High Court has issued notices to various companies including the petitioner-company, in a writ filed by Mr. Bhattacharya and others. In reply to the notice the petitioner has claimed that the scheme of the company does not come under "collective investment scheme", therefore, notice should be discharged. The Delhi High Court has discharged the notice in the case of this petitioner-company. Even otherwise the subject matter is not one and the same. Before the Delhi High Court the matter pertaining to the companies which comes within the definition of

"collective investment scheme". In the present writ petition the petitioner has not only challenged the validity of some provisions of the Act, 1992, and legality of some provisions of the Regulations, 1999, which are introduced after July, 1999, and also the notices which are issued to the petitioner-company after July 23, 1999, under the Regulations, 1999. Therefore, it cannot be said that there are parallel proceedings of the same issues. In the writ of Mr. Bhat-tacharya, the validity of the provisions of the

Act, 1992, or the Regulations, 1999, is not in challenge.

18. There is no dispute also on the facts that notices are issued by the SEBI and received by the petitioner-company in its head office at Jaipur and Jaipur falls within the territorial jurisdiction of this court, therefore, this court has territorial jurisdiction in this case.

19. The SEBI had not only prayed for transfer of this petition in the apex court but also had prayed for stay of proceedings in this petition. Both were rejected by their Lordships. When their Lordships have rejected the second transfer petition filed by the SEBI before their Lordships regarding transfer of petition filed subsequent to the order dated July 23, 1999, and that transfer petition has been dismissed. On these facts, the only inference which can be drawn is that there was no stay on the proceedings of petition filed after July 23, 1999, the present petition has been filed after July 23, 1999. Thus, this petition is maintainable.

20. To conclude, the order of their Lordships dated July 23, 1999, (a) relates to the proceedings pending as on July 23, 1999; (b) the order having been passed on July 23, 1999, did not contemplate questions as regards the vires of the Act or the Regulations which were enacted later; (c) the validity of the notices issued by the SEBI on November 30, 1999, and December 10, 1999, could not also have been in contemplation of the Supreme Court order, and when the notices are received at Jaipur head office, this court has the jurisdiction and writ is maintainable.

21. Now, this brings us to consider whether the scheme of the petitioner comes within the definition of "collective investment scheme" and whether the Regulations, 1999, applicable in the case of this company.

22. Learned counsel for the petitioner submits that the petitioner-company is a limited company incorporated under the Companies Act having its registered office at Jaipur and is engaged in the business of purchase and sale of agriculture land and its development for a period from 5 to 10 years depend upon the choice of the customer at the time of entering into agreement.

23. The petitioner-company acquires agriculture land from the villagers either directly in their name or by taking possession of the agricultural land after entering into agreement with the villagers for purchase of agriculture land on paying the full amount of consideration to the sellers and also getting an irrevocable power of attorney in favour of the representatives of the company.

Under this scheme, the petitioner has purchased big chunk of agricultural land in different places and substantial part of land has already been transferred to the customers as per their agreement.

24. Under the scheme, the petitioner-company receives applications from its customers for purchase and development of agriculture land. Every business transaction between the petitioner-company and its customer is an independent deal for purchase of land between the company and customer. Under the agreement, the petitioner can make cash down payment or can pay the consideration in instalments.

25. Under the "cash down payment plan", land is allotted to the customers within a period, generally not exceeding 270 days from the date of receipt of consideration while under the "instalment payment plans" the land is to be allotted within a period, generally not exceeding 90 days from the date of receipt of 50 per cent, of the consideration.

26. Under the scheme, the company has to transfer the land by executing the sale deeds in favour of the customers in conformity with the relevant provisions of the Transfer of Property Act, 1882, and the Indian Stamp Act, 1899. The petitioner-company does not promise any assured return. The said agreement is for the sale of the agricultural land in favour of the customers and development of the same during the tenure of the agreement.

27. Learned senior counsel for the petitioner further submits that the transaction is genuine. The customer is under no obligation to sell the said land to the petitioner-company. On the contrary, the services of the petitioner-company are made available to the customers to help them to dispose of the said land if either of them so desires to do so. Even the customer is also under no obligation to permit the company to develop the land. Only to help the customers, the company offers its services for developing the plot of lands which has been or is to be sold to customers.

28. The aforesaid activity of the company cannot be termed as "collective investment scheme". The company basically deals in purchase and sale of the land.

29. The facts are not in dispute that before the Delhi High Court on a writ filed by Mr. Bhattacharya and others, the SEBI has given more than 500 names of the companies treating them as agro-plantation companies. The name of the petitioner-company also figured in that list. Thereafter, notices were issued by the Delhi High Court to 592 such companies including the petitioner-company.

30. In reply to the notice of the Delhi High Court, the petitioner-company alleged that the company is engaged in sale and purchase of land, hence the name of the respondent be deleted from the list of the respondents in the petition filed by Bhattacharya and other.

31. The petitioner-company before the Delhi High Court has categorically stated that the scheme of the company does not come within the definition of "collective investment scheme", therefore, notice should be discharged. Finally, that notice has been discharged by the Delhi High Court.

32. The petitioner-company has also moved another application before the Delhi High Court submitting that the petitioner had entered into a large number of agreements with its customers for sale of agricultural land to them, die petitioner-company has also received payments in terms of the said agreement and the petitioner-company is under obligation to execute the sale deeds of the said land in favour of its customers, therefore, the company be permitted to execute the sale deeds in favour of the customers. On May 26, 1999, before the Delhi High Court, learned counsel for the SEBI stated that he has no objection if the sale deeds are registered provided the transactions are genuine.

33. On November 16, 2000, the Delhi High Court appointed Mr. Justice K. Swamidurai (retd.) as Commissioner to find out whether the transactions entered into by the company are genuine. Justice Swamidurai has submitted his report on September 20, 2001. As per his report the transactions are found genuine. On March 3, 2003, the Delhi High Court had discharged the notice issued to the petitioner-company.

34. Learned counsel for the petitioner-company further submit that the notice issued by the Delhi High Court to the petitioner-company, treating it as covered under the "collective investment scheme", is discharged, that means scheme of this company now should not be treated as "collective investment scheme".

35. Learned counsel for the petitioner further submit that when petitioner-company is engaged in the business of purchase and sale of the agriculture land and its development, this subject matter comes under entry 18 of List II of the Seventh Schedule to the Constitution of India.

36. The enactment on that subject is within the domain of the State Government, therefore, firstly, the companies which deal in the purchase and sale of agricultural land do not come under the control of the legislation enacted by the Centre. If the Centre has enacted any such law, which covers the subject matter of Second List to that extent the provisions of the Act are ultra vires the Constitution.

37. Thus, the provisions of the Act, 1992, are not applicable in the case of the petitioner-company. Hence, no directions can be issued by the SEBI under the Regulations, 1999. Therefore, the notice in the form of letter dated November 30, 1999, and December 10, 1999, be quashed and if the court accepts this contention, there is no need to go into the validity of the provisions of section 11AA and sub-section (1B) of section 12 of the Act, 1992, and also the validity of the Regulations, 1999.

38. Learned counsel further submits that the background of the provisions in challenge is to protect the interest of the customers or public at large from cheating by agro-plantation companies, in the name of high returns. These companies have collected huge amount from the public and diverted that fund and ran away. In the case in hand, there is no complaint against the petitioner-company from any customer that he has been cheated by the company.

39. In written submission, the petitioner has submitted that even in a given case where a scheme or arrangement is covered under sub-section (1) of section 11AA, it is necessary that all the four conditions provided under sub-section (2) of section 11AA have to be collectively satisfied. If even one of the conditions provided in sub-section (2) is missing then the said scheme or arrangement cannot be termed as "collective investment scheme" under section 11AA. To illustrate, it may be pointed out that if it is found that condition one of sub-section (2) is not attracted, in that event one does not have to travel to conditions Nos. 2, 3 and 4 as at that very point it will be treated that the said scheme or arrangement cannot be collective investment scheme". If condition (1) is attracted but condition (2) is not attracted, then also the said scheme or arrangement cannot be termed as "collective investment scheme". Similar will be the case for conditions (3) and (4) as the case may be.

40. In the case of the petitioner-company, it is submitted that all the four conditions provided under sub-section (2) are not collectively attracted and, therefore, the transactions of the petitioner-company, that is, sale and purchase of agricultural land and its development and its related services cannot be termed as "collective investment scheme" under section 11AA.

41. In order to demonstrate the petitioner submits that in condition (1) there are no contributions or payments which are pooled and utilised for the purposes of the scheme or arrangement. In the present case, the petitioner entered into an agreement to sell a specified piece of land and development services subsequently the said piece of land is transferred in the name of the customer by way of registered sale deed. The said piece of land is fully identified and the customer becomes an absolute legal owner of the said land on the registration of the sale deed in his favour. The money received

by the company is towards the sale consideration of the land and the customer gets the ownership right over the said piece of land only and has got no right over any of the assets of the company. The moment the sale deed is registered in favour of the customer, the land, which was earlier deemed asset of the company, ceases to be the asset of the company and becomes the asset of the customer.

42. It is submitted in the present case that the petitioner sells a specified asset of the company for valuable consideration and there is no pooling as contemplated in condition (1) of sub-section (2). If this condition itself is not fulfilled, then also the petitioner-company cannot be deemed as "collective investment scheme".

43. It is further submitted by the petitioner that condition (2) is also not fulfilled in the present case as the customer agrees to buy a specified/identifiable land from the company for a consideration. By the transaction in question the customer does not receive profits, income, produce or property but in fact purchases immovable agricultural land from the petitioner-company for consideration. The transfer of land to the customer is not gratis nor does the customer receive any profit, but the customer buys the land from the petitioner-company and becomes the owner of the land, the customer is entitled to deal with the land and the petitioner-company ceases to have right, title or interest in the said land even as per the law. It is, therefore, submitted that condition (2) of sub-section (2) is also not fulfilled.

44. Regarding condition (3), as pointed out earlier, there is neither a scheme nor arrangement as contemplated in sub-section (1) of section 11AA; condition (3) is, therefore, not attracted at all. It may, however, be pointed out that the agricultural land which is sold to the customer ceases to be the land of the company and, therefore, under no circumstances can be termed as forming part of the scheme or arrangement. The development of the land is done by the petitioner-company as per the terms of the agreement and in case the customer commits a breach of the said agreement the petitioner-company shall have no right or title on the said piece of land and can at the moment sue the customer for the damages for breach of the agreement. At the time when the registration of sale deed is done, the petitioner-company is dealing for the limited purposes of development of the said land for the said customer. Condition (3) is also, therefore, not fulfilled.

45. Since conditions (1) to (3) are not attracted in the present case, there is no question of condition (4) being fulfilled. Condition (4) cannot be read in isolation and has to be read in association with and together with conditions (1), (2) and (3). In this view of the matter condition (4) is also not fulfilled.

46. The petitioner further submits that from the facts and circumstances stated hereinabove, it is, therefore, clear that the transactions of the petitioner-company does not fall within the parameters of section 11AA of the Act of 1992 and cannot be termed as "collective investment scheme". The contention of the petitioner-company in fact is also strengthened from the order dated March 3, 2003, passed by the hon'ble High Court of Delhi as the transactions of the petitioner-company are treated as sale and purchase of agricultural land, its development and allied services. In case the hon'ble Delhi High Court had found that the transaction of the petitioner-company was "collective investment scheme" under no circumstances the hon'ble High Court of Delhi would have permitted the said sale deeds to be registered and permitted the discharge of notice issued to the petitioner-company. It is pertinent to point out that

the order dated October 7, 1998, October 13, 1998, and October 29, 1998, were applicable to all the plantation companies, agro companies and

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companies running as "collective investment scheme". The mere fact that the notice issued to the petitioner-company was discharged goes on to prove that after examining the transactions of the petitioner-company with its customers, the hon'ble High Court was convinced that no impediment could be imposed on the petitioner-company in dealing with their transaction with the customer. That is why this question was understood by respondent No. 2 which is evident from orders dated May 26, 1999, and November 26, 2000; passed by the hon'ble High Court of Delhi and the averments made by respondent No. 2 in para. 23 of their counter-affidavit in the present writ petition. Once they have generalised the feelings of the customers and the loss was found to be correct, the apprehension of the SEBI was found to be unfounded and misplaced. The SEBI cannot regulate the sale and purchase of the agriculture land, the transaction in question.

47. Mr. Kuhad, learned counsel for the respondents, while giving the background of "collective investment scheme", has submitted that in 1992, the Central Government took cognizance of the concept known as collective investment scheme and it was discovered that many entities have commenced issuing instruments against the investment in the form of agro-bonds, plantation bonds, etc., by offering very high rate of return, which were not consistent with the normal returns, in such schemes. It was also found that these entities after obtaining funds from the public misutilised these funds by diverting the funds towards purposes which were not disclosed at the time of inviting investments. Such act of these entities not only caused huge losses to the public but also eroded confidence of the investors who have invested their life savings in such bonds. Many of such type of entities closed their companies and ran away.

48. The Central Government found it necessary to design an appropriate regulatory framework for regulating the said entities to protect the interest of the public at large. In 1995, Parliament has introduced sub-section (IB) of section 12 of the existing SEBI Act, 1992, and thereby prohibited sponsoring or running of any collective investment scheme without obtaining a certificate of registration from the Board.

49. In 1997, the Central Government has issued statutory directions to the SEBI under section 16 of the SEBI Act directing the SEBI to treat the entities which issue instruments such as agro-bonds, plantation bonds, etc., as collective investment schemes and to formulate draft regulations for this purpose and to make them available for public.

50. The SEBI appointed the Dave Committee for this purpose. The Dave Committee also found that many companies have diverted the funds which were collected under the scheme agro-plantation and bonds were issued. The Dave Committee submitted its draft report in January, 1998, and submitted its final report in December, 1998. The Dave Committee also noticed that this type of

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companies spent huge amount on advertisement from fund collected from the public, misdirected that fund and cheated the public at large.

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51. In February, 1998, in terms of the recommendations of the Dave Committee, the SEBI has issued directions to all companies involved in collective investment scheme that they can mobilise money only after obtaining a rating from the credit rating agency and also undertake a special audit of those collective investment schemes which had mobilised an amount more than Rs. 5 crores from the public.

52. In the meanwhile, the Association of Agro-Plantation Corporation of India (AAPCI) issued a public notice claiming that the SEBI has no jurisdiction to issue directions to agro-plantation companies regarding their existing schemes.

53. In 1998, several litigations were initiated all over India in various High Courts with regard to these companies that these companies have diverted the funds collected from the public/investors and their interest is not safe in the hands of these companies. Various public interest litigations are also filed in various High Courts in this regard. One Mr. S.D. Bhattacharya and others also filed public interest litigation in the Delhi High Court.

54. In that writ petition, the SEBI has given the list of more than 500 agro-plantation companies in the Delhi High Court and the Delhi High Court has issued the notice including the notice to the petitioner-company.

55. The SEBI has also filed the transfer application before their Lordships of the Supreme Court to transfer the petitions pending before various High Courts relating to "collective investment scheme". Their Lordships instead of transferring petitions pending before the various High Courts stayed the proceedings in the case of such writ petitions.

56. Mr. Kuhad further submits that there is not even a single case where the petitioner has executed the sale deed in favour of the purchaser. Commission on sale to the agents is at very high rate by this petitioner-company. He further submits that the definition of collective investment scheme under section 11AA of the Act, 1992, covers the cases of property of any description, investors also receive profits of produce from the land, the properties are not being managed on behalf of the investors. Investors do not have day-to-day control, therefore, this type of scheme comes within the definition of collective investment scheme under section 11AA of the Act, 1992. Mr. Kuhad also submits that on the direction of the court the petitioner-company has approached the SEBI to consider his case whether it comes under the definition of "collective investment scheme". The SEBI has taken the view that this company falls within the definition of "collective investment scheme". If the petitioner-com-pany has any grievance, the petitioner-company can file the appeal against that order before the appropriate authority.

57. He further submits that some investors have also complained against the company. Copies of such complaints are submitted by respondent No. 2 before the Delhi High Court. Mr. Kuhad, lastly, submits that in these facts and circumstances, the petition should be dismissed.

58. These arguments be taken arguments in Petition No. 6747 of 1999 and both the petitions should be dismissed.

59. Learned counsel for the SEBI, Mr. Kuhad, after concluding the arguments on April 24, 2003, submitted his written submissions on July 30, 2003. Meanwhile, he also got clarification in respect of the order dated March 3, 2003. In the order dated May 30, 2003, the Delhi High Court has clarified that though they have discharged the

notice in the case of the petitioner but the High Court has not said anything on the issue whether the petitioner-company comes within the definition of "collective investment scheme", and also observed that the SEBI can dedde this issue.

60. Thereafter, one more application has been moved by the petitioners before the Delhi High Court that whether the SEBI only can decide the status of PACL India Ltd. that it is a collective investment scheme? On that application, the Delhi High Court has clarified, vide its order dated August 14, 2003, that the SEBI or any High Court can go into the question of status of PACL India Ltd.

61. First, we will take up the issue whether the scheme of the petitioner-company comes within the definition of "collective investment scheme", as defined under section 11AA of the Act, 1992. Section 11AA reads as under:

> "11AA. *Collective investment scheme.*—(1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) shall be a collective investment scheme.
>
> (2) Any scheme or arrangement made or offered by any company under which,—
>
> (i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilised solely for the purposes of the scheme or arrangement;
>
> (ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;
>
> (iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;
>
> (iv) the investors do not have day-to-day control over the management and operation of the scheme or arrangement.

62. The case of the petitioner-company is that the company is engaged in sale and purchase of agricultural land and its development. If the company is

engaged in purchase and sale of the agricultural land, it cannot come within the definition of "collective investment scheme". Under the scheme of the company, the company receives applications from the customers for purchase and development of agricultural land. Every scheme and transactions between the petitioner-company and its customers is independent transaction and specific amount has been paid for purchase of specific piece of land.

63. The customers have the option to pay the consideration either under cash down payment plan or under instalment payment plan. Under the cash down payment plan, land is allotted to the customers within a period generally not exceeding 270 days from the date of receipt of consideration while under the instalment payment plan, the land is to be allotted within a period generally not exceeding 90 days from the date of receipt of 50 per cent, of the consideration.

64. The amount so paid by the customer is received by the company as an advance against sale of land and its development. For that purpose the company and the customer enter into an agreement. The company transfers the title of the land by executing or securing execution of sale deeds in favour of customer in conformity with the relevant provisions of the Transfer of Property Act, 1882, the Indian Stamp Act, 1989, and the Registration Act, 1908.

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65. Under the agreement, the company does not promise any assured return. It is an obligation under the said agreement to arrange for the sale of the agricultural land in favour of the customer and develop the same during the tenure of agreement. Under the agreement, there is a provision that the customer will be free to sell the same at any time to any person he pleases. The customer is not bound to sell his said land to the petitioner-company.

66. It is true that there was a lot of complaints against the plantation companies that they collected the money from public in the name of high returns and ran away and cheated the poor public at large. This was noticed by the Central Government and the Central Government has taken the decision to regulate the activities of that type of companies, which cheated the public at large in the name of plantation and finally come with the regulations and such companies are subject to the Regulations, 1999, to protect the interest of customers and the SEBI has given the names of 592 companies engaged in plantation to the Delhi High Court and the petitioner-company is one of them. A notice has been issued to the petitioner-company, reply to that notice was filed claiming that activity of the company is not come within the class of agro-plantation companies. After considering reply, notice issued to the petitioner has been discharged.

67. The petitioner-company has moved one more application before the Delhi High Court that the petitioner-company has entered into an agreement with some customers and as per agreement the sale deeds are to be executed in their favour. Learned counsel for the SEBI has not objected in case the sale deeds are executed, provided sale transactions are genuine.

68. Considering the submissions, vide order dated November 16, 2000, the Delhi High Court has appointed Mr. Justice K. Swamidurai (retd.) to enquire and submit a report regarding genuineness of the transactions entered between the petitioner-company and its customers. That final report was submitted on September 20, 2001, by Justice Swamidurai and concluded his report as under:

"13. My conclusion is drawn as under:

(i) The land which the PACL proposed to transfer to its customers were found to be in actual existence as per the record of the PACL.

(ii) PACL was owner in possession of the land in question either as direct owners or owners by virtue of agreements for sale in their favour by the erstwhile owners and the powers of attorney in favour of the reperesentative of PACL by the erstwhile owner, and by paying full amount of consideration to the erstwhile owner.

(iii) The development work on the lands in question was found to be carried out by PACL. While in certain cases, the development work was completed, in some cases, it was still in progress. In some of the cases, it was found that the customers had taken possession of the plots of land, had constructed cottages and were also carrying on their development work, in addition to the development work being carried out by PACL.

(iv) Sale deeds have been executed and registered in favour of the customers of PACL and their names and addresses had been tallied with their details provided by M/s. Raj K. Agarwal and Associates, a certified copy of which was supplied to me.

(v) The title and the possession of the agricultural land mentioned in the sale deeds, stood transferred unconditionally by means of registered sale deeds in favour of the customers."

69. From the factual report of Justice K. Swamidurai, it appears that transactions entered between the petitioner-company and its customers are genuine and they basically relate to purchase and sale of the agricultural land.

70. On these aforesaid facts, which are brought on record, now we have to examine whether the activities of this company falls within the definition of "collective investment scheme" as provided under section 11AA of the Act, 1992.

71. Sub-section (1) of section 11AA provides that any scheme or arrangement which satisfies the conditions referred to in sub-section (2) shall be a "collective investment scheme". In sub-section (2), four conditions are laid down. The words used in sub-section (1) are that the scheme or arrangement should satisfy the conditions referred, means all the four conditions should be satisfied then only scheme of company can be said that scheme of the company is covered within the definition of "collective investment scheme". Therefore, we have to see whether all the four conditions are fulfilled on the given facts in the present case.

Condition (i) requires that the contributions, or payments made by the investors, should be pooled and utilised for the purposes of the scheme or arrangements. In the present case, the petitioner has entered into an agreement to sell specified piece of land and subsequently the said piece of land is transferred in the name of the customer by way of registered sale deed. The piece of land for sale is fully identified and the customer becomes an absolute owner of the said piece of land on registration of the sale deed in his favour. Against the payment made, the customer has only right to get the piece of land for which he has entered into agreement. The customer has no right on the other assets of the company. Payment has not been made to run the business of the company, nor is there any arrangement under the present scheme to share the profits of the company from such business, like shareholders share the profits of the company.

72. Therefore, it cannot be said that the amount paid by the customers is pooled for the purpose of scheme of the company. Thus, it cannot be said that the amount paid or contribution made is pooled. Therefore, condition (i) is not fulfilled in the present case.

Condition (ii) requires that contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property. In the case in hand, the contribution or payment has been made mainly for the purchase of land and for its development. The investment by the customer is not with a view to receive income, profit, produce or property as a gratis from the company. Thus, condition (ii) is also not fulfilled.

Condition (iii) requires that the property of the customer should be managed by company on behalf of the customer. In fact, under the present scheme of this company, there is hardly question of management. It is rather a case of development of the land which has been purchased by the customer from the company, under the agreement and customer has paid also for services for development of land. The company is expected to develop it and hand over it to customer. Thus, in our view condition (iii) is also not fulfilled.

Condition (iv) relates to day-to-day control of the management and operation of the scheme. It is true that customer may not have day-to-day control over the development activities on the land but that does not mean that the customer has no right over the specific piece of land.

73. As stated above, when any condition out of four is not fulfilled, the scheme of the company does not fall within the definition of "collective investment scheme". Here at least first three conditions are not fulfilled. In fact, all these four conditions can be seen in the cases where companies issued bonds such as plantation bonds and agro plantation bonds. The scheme of those companies may be treated as "collective investment scheme" and not the company in hand which has business of purchase and sale of land and its development

and get the land registered in favour of customer, within the terms of the agreement entered into.

74. To conclude, the facts found by Justice Swamidurai and material brought on record, we hold that all the four conditions are not fulfilled in the case of this petitioner.

75. Considering the activity of the petitioner-company, reply of the SEBI and the report of Justice Swamidurai and the fact that notice has been discharged by the Delhi High Court, vide order dated March 3, 2003, the scheme of the company cannot be treated as "collective investment scheme".

76. Entry 18 of List II of the Seventh Schedule which relates to the land matters, on that subject matter only State can legislate and not the centre. The relevant portion of entry 18 of List II of the Seventh Schedule reads as under:

"18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

77. There cannot be a Central legislation on land matters: Even in reply of para. 23, respondent No. 2—SEBI has accepted that the petitioner is free to purchase agricultural land or to sell it. There is no impediment on such transactions of the Regulations. Further, the documents in the nature of deeds/sale deeds and agreement to sale of land cannot be treated as securities or units of "collective investment scheme". The relevant para. 23 of the reply filed by the SEBI reads as under:

"That the contents of para. 23 are not admitted. The matter has no corelation with sale of agricultural lands. It is not admitted that the documents of the nature of sale deeds or agreement to sell are sought to be regulated by the Regulations. The answering respondent is not treating the title deeds and sale deeds, if any, as securities are units of collective investment schemes. The petitioner is free to purchase agriculture land or to sell it. There is no impediment on such transactions in the Regulations."

78. So far as the complaint against the petitioner-company is concerned, some complaints are made annexures in an application to place the complaint on record. There is only one complaint against PACL India Ltd. made by one Vijay Khatke who alleged in the application that scheme of this company is "collective investment scheme" and many plantation companies have cheated the customers and the investors. The complainant also enquired to know, whether this company is registered with the SEBI under regulation 5(1) of the Collective Investment Scheme Regulations, 1999.

79. Nowhere he said that any customer of this company has been cheated by this petitioner-company. No other complaint is on record by any customer of this company that he has been cheated by this company or this company has diverted the funds to somewhere else.

80. In the last, the object to regulate the conduct of agro-plantation companies is to protect the customers from cheating by such companies. By way of additional affidavit filed, Mr. L.M. Sinha, senior manager (legal) of the petitioner-company has brought on record the facts that the petitioner-company has already transferred the land to 1, 308 persons. The list of the customers is annexed with the additional affidavit filed by Mr. Sinha in March, 2000.

81. Looking to this aspect also, we see no justification to direct that this company should be regulated under the Regulations, 1999.

82. Thus, on the facts and circumstances we agree with learned senior counsel for the petitioner-company and also Mr. Dhankar, learned senior counsel in D.B. Civil Writ Petition No. 6747 of 1999 that the scheme of the company does not fall within the definition of "collective investment scheme", as defined in section 11AA and sub-section (IB) of section 12 of the Act, 1992, as well as the Regulations, 1999, have no application. As we have taken the view that scheme of the petitioner-company does not come within the definition of "collective investment scheme" given in section 11AA. The Regulations, 1999, have no application in the case of this petitioner-company. Thus, now we need not go into the alternate prayer to examine the validity of provision of section 11AA, sub-section (IB) of section 12 and legality of the Regulations of 1999.

83. In the result, notices dated November 30, 1999, and December 10, 1999, are quashed and both the writ petitions are allowed.

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ANNEXURE A
136

FORM NO. DIR-12

[Pursuant to sections 7(1) (c), 168 & 170 (2) of The Companies Act, 2013 and rule 17 of the Companies (Incorporation) Rules 2014 and 8, 15 & 18 of the Companies (Appointment and Qualification of Directors) Rules, 2014]

सत्यमेव जयते

Particulars of appointment of directors and the key managerial personnel and the changes among them

Form Language (•) English ( ) Hindi

Refer the instruction kit for filing the form.

1. *This form is for ( ) New company (•) existing company

2. (a) *Form INC-1 reference number (Service request number (SRN) of Form INC-1) or corporate identity number (CIN) of company: U70101RJ1996PLC011577

   (b)Global location number (GLN) of company: [ ] Pre-fill

3. (a) Name of the company: PACL LIMITED

   (b) Address of the registered office of the company:
   22,3RD FLOOR,
   AMBER TOWER,SANSAR CHANDRA ROAD,
   JAIPUR
   Jaipur
   Rajasthan
   000000

   (c) E-mail ID of the company: companysecretary@paclltd.com

4. Number of Managing director or director(s) for which the form is being filed: 2

5. Details of the Managing Director, directors of the company

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I Details of the Managing Director or Director of the company

i Director Identification Number (DIN) 00067223 Pre-fill

ii Name GURMEET SINGH

iii Father's name KULWANT SINGH

iv Present residential address 49 GROUND FLOOR
18/1 EKLAVYA APARTMENT, SECTOR 13
ROHINI
Delhi
India
110085

v Nationality IN vi Date of birth 22/03/1965 vii Gender Male

viii ○ Appointment ◉ Cessation ○ Change in designation x Date of Appointment or change in designation (DD/MM/YYYY)

ix Designation Whole-time director

xi Category

xii Whether Chairman, Executive Director, Non-Executive Director

☐ Chairman ☐ Executive director ☐ Non Executive Director

xiii DIN of such director to whom appointee is alternate Pre-fill

xiv Name of the director to whom such appointee is alternate

xv Name of the company or institution whose nominee the appointee is

xvi E-mail ID of director gurmeetsingh2003@yahoo.com

xvii In case of cessation

Hereby confirmed that the above mentioned ◉ Director ○ Managing director xviii is not associated with the company with effect from 28/05/2016 (DD/MM/YYYY) xix due to Removal u/s 169

xx Interest in other entities

xxi Number of such entities

xxii *CIN/LLPIN/FCRN/Registration number Pre-fill

xxiii *Name

xxiv *Address

xxv Nature of interest

xxvi *Designation

xxvii Percentage of Shareholding xxviii Amount

xxix Others (specify)

1 Details of the Managing Director or Director of the company

i Director Identification Number (DIN) 00498624 Pre-fill

ii Name TARLOCHAN SINGH

iii Father's name SADHU SINGH

iv Present residential address HOUSE NUMBER 77, VILLAGE BHOJE MAJRA
TEH ROOPNAGAR,
DISTRICT ROOPNAGAR
Punjab
India
140108

v Nationality IN vi Date of birth 25/04/1965 vii Gender Male

viii ○ Appointment ◉ Cessation ○ Change in designation x Date of Appointment or change in designation (DD/MM/YYYY)

ix Designation Whole-time director

xi Category

xii Whether Chairman, Executive Director, Non-Executive Director

☐ Chairman ☐ Executive director ☐ Non Executive Director

xiii DIN of such director to whom appointee is alternate Pre-fill

xiv Name of the director to whom such appointee is alternate

xv Name of the company or institution whose nominee the appointee is

xvi E-mail ID of director tarlochan_08@rediffmail.com

xvii In case of cessation

Hereby confirmed that the above mentioned ◉ Director ○ Managing director xviii is not associated with the company with effect from 28/05/2016 (DD/MM/YYYY) xix due to Removal u/s 169

xx Interest in other entities

xxi Number of such entities

xxii *CIN/LLPIN/FCRN/Registration number Pre-fill

xxiii *Name

xxiv *Address

xxv Nature of interest

xxvi *Designation

xxvii Percentage of Shareholding xxviii Amount

xxix Others (specify)

6. Number of manager(s), secretary(s), Chief Financial Officer or Chief Executive Officer for which the form is being filed

7. Details of manager(s), secretary(s), Chief Financial Officer or Chief Executive Officer of the company

1 i Director Identification Number (DIN), if any — Pre-fill

ii Income Tax permanent account number (PAN) — Verify Details

iii ◯ Appointment ◯ Cessation

iv Membership number of the secretary

v First Name

vi Middle Name

vii Last Name

viii Father's name

ix First Name

x Middle Name

xi Last Name

xii Present residential address xiii Line I

xiv Line II

xv City

xvi State

xvii Pin Code

xviii ISO Country Code

xix Country

xx Phone

xxi Fax

xxii Date of birth (DD/MM/YYYY)

xxiii Designation

xxiv Date of Appointment or cessation (DD/MM/YYYY)

xxv E-mail ID

Attachments

List of attachments

(1) Letter of appointment; — Attach

(2) Declaration by first director — Attach

(3) Declaration of the appointee director in Form No. DIR-2; — Attach

(4) Notice of resignation; — Attach

(5) Evidence of cessation; — Attach

(7) Optional attachment(s) - if any. — Attach

EGM Resolution for removal.pdf
Requisition as per section 100.pdf
Attendance Sheet of EGM.pdf
BR & Notice of EGM & Explantry Stat.pdf
Chg Sheet & SAT Order.pdf

Remove attachment

Declaration

I * GURJANT SINGH GILL

☐ A person named in the articles as a _____ of the company

(in case if a new company) or

☒ authorized by the Board of Directors of the Company vide 006

number dated 20/04/2016

to sign this form and declare that all the requirements of Companies Act, 2013 and the rules made thereunder in respect of the subject matter of this form and matters incidental thereto have been complied with. I also declare that all the information given herein above is true, correct and complete including the attachments to this form and nothing material has been suppressed.

* To be digitally signed by. GILL GURJANT SINGH

* Designation Director

* Director identification number of the director; or DIN or PAN of the manager or CEO or CFO; or Membership number of the secretary 00067087

Certificate by practicing professional

I declare that I have been duly engaged for the purpose of certification of this form. It is hereby certified that I have gone through the provisions of the Companies Act, 2013 and Rules thereunder for the subject matter of this form and matters incidental thereto and I have verified the above particulars (including attachment(s)) from the original certified records maintained by the Company/applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed. I further certify that

☒ The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order ;

☒ All the required attachments have been completely and legibly attached to this form;

☒ It is understood that I shall be liable for action under Section 448 of The Companies Act, 2013 for wrong certification, if any found at any stage.

* To be digitally signed by GURJANT KUMAR SINGH

○ Chartered accountant (in whole-time practice) or ○ Cost accountant (in whole-time practice) or

◉ Company secretary (in whole-time practice)

*Whether Associate or fellow ◉ Associate ○ Fellow

Membership number 31642

Certificate of Practice Number 11616

Modify | Check Form | Prescrutiny | Submit

This eForm has been taken on file maintained by the Registrar of companies through electronic mode and on the basis of statement of correctness given by the filing company.

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For Office Use only

Affix filing details

e form Service request Number (SRN) G07387467 E form Filing Date 15/07/2016 (DD/MM/YYYY)

This e-Form is hereby registered

Digital signature of the authorising officer

Confirm Submission

Date of Signing 06/12/2017 (DD/MM/YYYY)

ANNEXURE-C

142

Matter Listed on 15.05.2018

CIVIL APPEAL NO. 13301 OF 2015

(CONFIDENTIAL REPORT)

FROM

HON'BLE JUSTICE (RETD.)
R. M. LODHA COMMITTEE
(In PACL Matter)

D.R.-cum-P.S. to Hon'ble Mr. Justice Kurian Joseph

From: Section - XVII

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K. J. JOHN & CO.

Advocates, Supreme Court & High Court

Pratap Venugopal
Surekha Raman (Ms.)
Dileep P.
Purushottam Kumar Jha
Anuj Sarma
Debarshi Bhuyan
Niharika (Ms.)
Kanika Kalaiyarasan (Ms.)

Office: SF 039, 052 & 055,
Fortune Arcade
Plot 69, 'K' Block, Sector-18,
Noida – 201 301

Tel: (0120) 4272738
4272739
4272740
Fax: (0120) 4352830
(Telefax):(011) 23070428
E-mail: mail@kjjohnco.in

Chambers: 428, M.C.Setalvad Lawyers' Chambers,
Bhagwan Dass Road,
New Delhi –110 001

Date of Hearing : 15.05.2018
Court No. : 5
Item No. : 03

14th May, 2018

The Registrar,
Supreme Court of India,
New Delhi.

Dear Sir,

Re: Civil Appeal No.13301 OF 2015
Subrata Bhattacharya Vs. Securities and Exchange Board of India.

In the captioned matter, the Justice (Retd.) R. M. Lodha Committee (in the matter of PACL Ltd has instructed us to handover a sealed cover containing a copy of communications dated 16.03.2018, 14.04.2018 and 12.05.2018 together with Affidavits of Undertaking in original, pertaining to proposal for facilitation of sale of properties of PACL Ltd. The said sealed cover is enclosed.

Yours faithfully
For K.J.JOHN & CO.

(PRATAP VENUGOPAL)
Advocates for Securities and Exchange Board of India

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14.05.2018

Justice (Retd.) R. M. Lodha Committee
(in the matter of PACL Ltd.),

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Justice (Retd.) R. M. Lodha Committee

(in the matter of PACL Ltd)

JRMLC/PACL/2988/2018

To,

March 16, 2018

PACL Ltd.,
7th floor, Gopaldas Bhawan,
28 Barakhamba Road New Delhi: 110001

Dear Sirs,

Re: Consideration of proposal in accordance with order dated 23.02.2018 of the Hon'ble Supreme Court of India in Civil Appeal No.13301/2015 and connected matters.

1. The Justice (Retd) R.M. Lodha Committee (in the matter of PACL) (the "Committee") in furtherance of the abovementioned order dated February 23, 2018 of the Hon'ble Supreme Court of India, whereby the Hon'ble Court has stated that the sale of the property can be conducted in terms of the report of Justice Lodha Committee and under the supervision of the said Committee, is willing to consider a proposal of PACL Ltd. for effecting sale of its properties in their entirety in accordance with the terms and conditions as contained hereunder.

2. The Committee has already sold through auction, one hundred thirteen (113) properties, details of which have already been communicated vide letter dated 09.02.2018 annexed herewith, and certain properties stand released by Shri. R.S. Virk, District Judge (Retd.), appointed by the Committee, after hearing of objections/ representations from various parties, which are available on the SEBI website.

3. PACL Ltd. is therefore required to furnish to the Nodal Officer of the Committee, within a period not exceeding four (4) weeks from the date of this communication, all details of properties owned by PACL Ltd., either directly or indirectly, in terms of the order dated August 04, 2017 of the Hon'ble Supreme Court, categorising such properties as those free from encumbrances /claims and those that are not.

Address for correspondence only:
SEBI Bhavan BKC, Plot No.C4-A, 'G' Block, Bandra-Kurla Complex, Bandra (East), Mumbai - 400051

4. PACL Ltd. may, as expeditiously as possible and in any event within two weeks from the date of this communication, submit to the Committee a proposal to be accompanied by a Demand Draft of Rs.500 Crores in favour of SEBI and payable at Mumbai, together with an unconditional Undertaking in respect of the Properties referred to in 3 hereinabove, including the properties with MR Numbers that have been seized by the CBI, (the **"Properties"**).

5. The unconditional undertaking referred to in 4 herein above, should include the following :–

a) The amount to be brought in by PACL Ltd. with respect to the properties shall not be less than the amount arrived at after computing the cumulative value of the Properties based on the prevailing circle rate and having regard to the prevalent market value (the **"Consideration"**).

b) The liability of PACL Ltd. towards investors shall not cease with the payment of the Consideration by PACL Ltd. or the payment of Purchase Price by any prospective buyer, and PACL shall continue to ensure deposit of further amounts as may be required till every investor claim is satisfied.

c) Out of the entire Consideration amount, forty (40) per cent, which shall include the Rupees Five Hundred (500) Crore deposited as EMD, shall be deposited by PACL Ltd. within a period of four (4) months and the balance of the entire Consideration within a period not exceeding one (1) year from the date of acceptance of the proposal of PACL Ltd. by the Committee.

d) PACL shall declare that the terms and conditions contained in the Undertaking shall be binding on PACL and its Directors..

e) The Undertaking will include a personal undertaking from Mr. N.S. Bhangoo, Pearl Group Chairman, declaring therein that he will be unconditionally bound by the terms and conditions as contained in the Undertaking.

Address for correspondence only:
SEBI Bhavan, BKC, Plot No.C4-A, 'G' Block, Bandra-Kurla Complex

f) PACL shall declare that persons/entities, whose proposals are brought by it are not related to or associated with PACL.

g) The proposal shall also include a list of the Properties (with the MR numbers if the property has been seized by the CBI), together with the corresponding circle rate for that particular property and the value as arrived at upon computing it on the basis of the circle rate should be stated against each of the Properties.

h) The proposal shall be accompanied by necessary proof of the circle rate used for computing the value of the Properties.

i) Any default in the payment of the Consideration value or any part thereof shall result in the forfeiture of any amount already paid to/ deposited with SEBI including EMD.

6. The Committee, upon receipt of a proposal from PACL Ltd., shall put up the same on the SEBI website for the viewing of any person(s)/entity/entities desirous of submitting a proposal for purchase of the Properties in their entirety, at a consideration higher than the Consideration value of the proposal submitted by PACL Ltd.

7. Any person(s)/entity/entities desirous of offering a price higher than the value of the proposal submitted by PACL for the Properties in their entirety, would be required to submit their proposal to the Committee specifying the total value of the proposal within a period not exceeding one (1) month from the date of intimation of the proposal of PACL Ltd. on the SEBI website, together with a demand draft of Rupees Five Hundred (500) Crores, drawn in favour of SEBI, in order for such proposal to be considered by the Committee.

8. Further, any person(s)/entity/entities desirous of offering a higher price would be required to do so by submitting a proposal for purchase of the properties in their entirety, with consideration thereof being higher by at least 2 (two) per cent of the

Address for correspondence only:
SEBI Bhavan BKC, Plot No.C4-A, 'G' Block, Bandra-Kurla Complex, Bandra (E), Mumbai

total Consideration value of the proposal submitted by PACL Ltd. Further, suc person(s)/entity(ies) would also be required to provide an undertaking stating th they are not related to and/or associated with PACL Ltd. The proposal would als undertake to abide (mutatis mutandis) by the same terms and conditions, as fixe for PACL Ltd.

9. In the event of acceptance by the Committee of the proposal of any person /entities, the EMD deposited by PACL Ltd. shall be refunded without any interest.

10. In the event, the proposal of any such persons/ entities is not accepted by the Committee, the EMD amount of Rupees Five hundred (500) Crores deposited by such persons /entities shall be refunded without any interest by the Committee.

11. In the event no proposal from any person(s)/entity(ies) offering a consideration higher than the Consideration value of the proposal submitted by PACL Ltd. is received, the Committee shall proceed with the processing of the proposal of PACL Ltd. only upon being satisfied that the said proposal conforms to the terms and conditions, as mandated by the Committee.

12. The commencement of the sale of Properties upon acceptance of the proposal of PACL Ltd. or the proposal of any other person(s)/ entity(ies), as the case may be, shall be carried out on the basis of the terms provided hereunder:

a) The Properties shall be sold on "as is, where is, whatever is" basis and the Committee shall make no representation /warranty with respect to the title etc. of the Properties.

b) The entire proceeds of the sale of properties shall be credited directly to the designated SEBI account under intimation to the Committee.

c) Any default in the payment of the Consideration/Purchase Price or any part thereof shall result in the forfeiture of any amount already paid to/ deposited with SEBI including EMD.

Address for correspondence only:
SEBI Bhavan BKC, Plot No.C4-A, 'G' Block, Bandra-Kurla Complex, Bandra (E), Mumbai - 400 051

d) Sale Certificate(s) shall be issued only upon receipt of entire Consideration /Purchase Price within the time frame provided in the Undertaking along with the property documents, whether in original or as copies of the original, as available with the Committee.

13. The decision of the Committee on all matters shall be final and is subject to the decision of the Hon'ble Supreme Court alone.

Yours faithfully,

(Nodal Officer cum Secretary to the Committee)

Encl: A/a

Address for correspondence only:
SEBI Bhavan BKC, Plot No.C4-A, 'G' Block, Bandra-Kurla Complex, Bandra (East), Mumbai – 400051

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PACL LIMITED

www.pacllid.com

CIN: U74899HR1996PLC053177

14.04.2018

To,

The Justice (Retd.) R.M. Lodha Committee
(In the matter of PACL Ltd.),
Mumbai

Subject: Proposal of PACL to facilitate sale of immoveable properties

Dear Sirs,

1. PACL is in receipt of communication dated 16.03.2018 bearing no. JRMLC/PACL/2988/2018 whereby the Committee has decided to consider proposal of PACL ('the Company') to effect sale of its entire properties in terms of approval of the Committee.
2. PACL understands and makes an offer for only those properties that have been seized by CBI and given unique MR No. to identify the properties and further handed over the documents to the Committee.
3. PACL further understands that out of the abovementioned properties there are 113 properties have been sold by the Committee and sale certificates have been issued by the Committee pursuant to order dated 04.08.2017 of Hon'ble Supreme Court in CA No. 13301/2015.
4. PACL further understands that out of the aforementioned properties, certain properties have been released by Shri Ritinder Singh Virk, District Judge (Retd.) and those properties are now no more available for auction/sale.

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That in view of the same, the Company makes the following offer for kind consideration of this Hon'ble Committee:

a. That the company has adequate domain knowledge and is well versed with the true value of its property and hence offers to bring in buyers to purchase its assets for a total consideration of NOT LESS THAN Rs. 15,000 Crore (Rupees Fifteen Thousand Crores)and/or higher amount even than Rs. 15,000 Crore till the Company discharges its entire liability towards the entire investors claims received before the Committee, whichever is higher

b. That out of Rs. 15,000 Crore the Company shall bring in atleast Rs. 7,500 crore in the first year and atleast another Rs. 7,500 crore in the second year through either sale of its assets to buyers/investors or through facilitating JV/Collaboration with Govt. entities to develop its properties. The Company will forward all proposals to enter into JV/Collaboration agreement for development of its land with Govt./Govt. Entities directly to SEBI.

c. The Company further offers that in the event of being granted one more year's time i.e. 3rd year, it shall be able to sell assets to the tune of another 5,000 crore thus bringing the total to a tune of Rs. 20,000 crore in 3 years time.

d. The process of deposit of amounts as mentioned shall be in following manner:

   i. Company shall provide this Hon'ble Committee with a list, consisting of name of proposed buyer, MR Number and Circle rate of properties for which the sale certificate has to be issued along with

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cheque/draft of amount not less than circle rate of the properties mentioned in the list.

ii. The Company as a process, shall provide list of properties/assets to be sold for not less than Rs 500 Crore, along with description of property, names of proposed buyers who have issued cheques, MR number of properties for which the cheque is issued and circle rate in favour of SEBI for its verification and issuance of sale certificate by this Hon'ble Committee.

iii. The Company shall endeavour to provide to the Committee details of the last three recorded transactions of sale of immoveable properties in the same area/circle as the properties/assets referred to in (ii) herein above.

iv. Once the list along with cheques/drafts is received, this the particulars of the proposed buyer and circle rate may be verified.

v. The cheques/drafts may be encashed after verification is found to be satisfactory and sale certificates in favour of the proposed buyer(s) issued within 15 days from date of realisation of the cheques/drafts.

vi. In all those cases where list is forwarded by the Company with advance/part consideration towards any property, the credentials of the proposed buyer and circle rate of the property will be verified, however, subject to satisfaction, the sale certificate shall be issued only after the entire consideration is received.

vii. The Company while forwarding the list shall certify that none of the proposed buyer are related to/associated with PACL.

viii. The proposed buyers shall give an undertaking that they are not associated/related to PACL.

e. The Company undertakes not to submit list of buyers for any of its properties/assets containing offers below the circle rate.

f. The Company on acceptance of its proposal will forthwith file an affidavit of undertaking of all its Directors including a personal undertaking of Shri. N.S.Bangoo, Pearl Group Chairman declaring that they will be unconditionally bound by the terms of the present offer and in the event, it is found that the Company is in violation of the terms of offer, they will be liable for contempt proceedings of the Hon'ble Supreme Court.

g. The Company undertakes that the buyer for its properties are ready and willing to purchase the property on "as is where is, whatever is" basis and the Committee is not responsible or makes any representation/warranty with respect to the title of the properties.

h. The Company further shall get the cheque/draft issued in favour of designated SEBI account under intimation to the Committee.

i. The Company further assures that all drafts will be for the entire amount of the property and no agreement to sell on concept of part payment will be entertained or recommended. Only those proposed buyers will be recommended/facilitated by the Company who will be offering 100% of the consideration amount.

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j. The Company shall further inform the proposed buyers that the apart from sale certificate by the Committee only those documents will be provided by the Committee which are available with them whether in original or as copies and no queries shall be entertained regarding title or chain of documents.

6. That in view of the above, the Company humbly seeks approval of the Hon'ble Committee to repay the entire claim of all its investors within a period and in a manner as aforesaid provided.

7. The Company offers and requests this Committee to put up its offer on its website to invite any better offer to recover more than Rs. 15,000 crore in two years and Rs. 20,000 crore in three years if opportunity given, out of sale of its assets, properties as mentioned hereinabove, to enable repayment to all investors.

Authorised Signatory
PACL Limited

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AMARJIT SINGH BEDI

Advocate on Record
Supreme Court of India

Chamber:
355, Lawyers Chamber,
Patiala House Courts,
New Delhi-110 001
Tel.: +91-11-2307 0566
Fax: +91-11-4069 1363

Office:
Bungalow No. 2
LGF, Nizamuddin East
New Delhi-110013
Tel.: +91-11-40526826
Cell: +91-9818748886

E-mail: amarjit.bedi@gmail.com

12.05.2018

To,

The Nodal Officer Cum Secretary to the Committee,
Justice (Retd.) R.M. Lodha Committee
(in the matter of PACL Ltd.)
SEBI Bhavan, BKC, Plot No. C4-A,
'G' Block, Bandra-Kurla Complex, Bandra (East),
Mumbai – 400051

Ref: JRMLC/PACL/3004/2018

Dear Madam,

This is in reference with your aforesaid communication dated 07.05.2018. In compliance of the same, please find enclosed, signed affidavits of undertaking of the Directors of M/s PACL and Mr. N.S. Bhangoo for your further necessary action.

Thanking you,

Yours truly,

Amarjit Singh Bedi

Advocate

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

IN

CIVIL APPEAL NO. 13394/2015

IN THE MATTER OF:

PACL LTD. ...APPELLANT

VERSUS

SEBI ...RESPONDENT

AFFIDAVIT OF UNDERTAKING

I, Sukhdev Singh, S/o Shri Rahgbir Singh aged about [illegible] years, R/o VPO Jhalian Kalan District Ropar, presently at Tihar Jail, New Delhi do hereby solemnly affirm and state as under:

1. That I am the Managing Director of PACL Ltd., I am fully conversant with the facts involved in the present case and am competent to depose to the present Affidavit of undertaking.

2. I hereby unconditionally undertake to this Hon'ble Court, on behalf of PACL and its Directors, including myself, as follows:

a. PACL Ltd. ("the Company") – has submitted a proposal dated 14.04.2018 to facilitate sale of its properties, documents pertaining to which had been seized by the Central Bureau of Investigation (CBI) and handed over to

the Justice (Retd.) hereinafter referred to as "the Committee", pursuant to orders of this Hon'ble Court, which details had been put up on the website www.auctionpacl.com and excludes the 113 properties sold by the Committee through auction process as also the properties released by Shri R.S.Virk, District Judge (Retd.), appointed by the Committee with the permission of this Hon'ble Court to decided objections with respect to the sale of properties of the Company. This unconditional undertaking is being submitted in pursuance of the aforesaid proposal.

b. The Company would facilitate the Committee to sell its properties referred to in (a) herein above, to buyers who would purchase the same for a total consideration of not less than Rs. 15000 Crores (Rupees Fifteen Thousand Crores only) and/or higher amount (s) until the Company discharges its entire liability towards every and all investors claim(s), as decided by the Committee, whichever is higher.

c. The Company undertakes to bring in Rs. 7,500 Crores out of the Rs. 15000 Crores referred to in (b) herein above within 1 (one) year from the date of acceptance of the proposal by the Committee and at least another 7500/- Crores in the 2nd year by facilitating sale of its assets as set out in the proposal.

d. The Company further undertakes that in the event of being granted further time of 1 (one) year after the expiry of the two year period referred in (c) herein above, it would facilitate sale of assets to bring in a further amount of Rs. 5000 Crores.

e. The Company declares that it will not in any manner facilitate sale of its properties/ assets to persons/ entities related to or associated with the Company.

f. The Company Seller undertakes not to receive, directly or indirectly, any gift, consideration, reward, commission, fees, brokerage or inducement to any person(s)/entity(ies) in service of the proposed Buyer or otherwise in relation to the facilitation by the Company of the sale of its assets /properties and also forbear from showing favour or dis-favour to any person(s) /entity(ies) in relation to the sale of its assets/ properties.

g. The Company undertakes that any breach of the aforesaid undertaking by the Company or any one employed by or acting on behalf of the Company, shall entitle the Committee to impose such liability/ penalty as the Committee may deem proper, including but not limited to termination of the proposal, imposition of penal damages, and to recommend appropriate action against the Company and /or anyone employed by or acting on behalf of the Company, by this Hon'ble Court.

h. The Company undertakes not to indulge, either directly or indirectly or in any manner whatsoever, in misrepresentation of any nature to prospective buyers of its assets /properties.

i. The Company undertakes to furnish list of properties (with MR numbers if the property had been seized by the CBI) together with corresponding circle rate for each property (with necessary proof thereof) and value arrived at computed on the basis of circle rate along with any proposed sale transaction facilitated by the Company.

j. In the event of failure by the Company to honour any or all of its obligations under the proposal and /or this undertaking, the Company and its Directors would be liable for appropriate action of this Hon'ble Court.

3. The Company undertakes to facilitate sale of its assets /properties in accordance with the proposal to buyers who are ready and willing to purchase such assets /properties on "as is, where is, whatever is" basis and understands that the Committee is not responsible or makes any representation /warranty with respect to title of the properties.

4. The Company undertakes that in the case of every sale facilitating by the Company the consideration in full would be in the form of

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a cheque/ demand draft issued in favour of the designated SEBI account.

5. The decision of the Committee on all matters would be final and subject to the jurisdiction of this Hon'ble Court alone.

DEPONENT

VERIFICATION:-

Verified at New Delhi on this the ____th day of May, 2018 that the contents of paragraphs 1 to 5 of my above Affidavit are true and correct to the best of my knowledge, information and belief, that no part of it is false and nothing material has been concealed there from.

DEPONENT

ATTES
By Super
Central Jail
Tihar, New Delhi

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

IN

CIVIL APPEAL NO. 13394/2015

IN THE MATTER OF:

PACL LTD. ...APPELLANT

VERSUS

SEBI ...RESPONDENT

AFFIDAVIT OF UNDERTAKING

I, Narinder Singh Mehta, S/o Late Shri Pratap Singh Mehta aged about 60 years, R/o Siastpur PO – Sainfalpur, Ropar, Punjab, presently at New Delhi do hereby solemnly affirm and state as under:

1. That I am one of the Directors of PACL Ltd., I am fully conversant with the facts involved in the present case and am competent to depose to the present Affidavit of undertaking.

2. I hereby unconditionally undertake to this Hon'ble Court, on behalf of PACL and its Directors, including myself, as follows:

a. PACL Ltd. ("the Company") – has submitted a proposal dated 14.04.2018 to facilitate sale of its properties, documents pertaining to which had been seized by the Central Bureau

of Investigation (CBI) and handed over to the Justice (Retd.) hereinafter referred to as "the Committee", pursuant to orders of this Hon'ble Court, which details had been put up on the website www.auctionpacl.com and excludes the 113 properties sold by the Committee through auction process as also the properties released by Shri R.S.Virk, District Judge (Retd.), appointed by the Committee with the permission of this Hon'ble Court to decided objections with respect to the sale of properties of the Company. This unconditional undertaking is being submitted in pursuance of the aforesaid proposal.

b. The Company would facilitate the Committee to sell its properties referred to in (a) herein above, to buyers who would purchase the same for a total consideration of not less than Rs. 15000 Crores (Rupees Fifteen Thousand Crores only) and/or higher amount (s) until the Company discharges its entire liability towards every and all investors claim(s), as decided by the Committee, whichever is higher.

c. The Company undertakes to bring in Rs. 7,500 Crores out of the Rs. 15000 Crores referred to in (b) herein above within 1 (one) year from the date of acceptance of the proposal by the Committee and at least another 7500/- Crores in the 2nd year by facilitating sale of its assets as set out in the proposal.

d. The Company further undertakes that in the event of being granted further time of 1 (one) year after the expiry of the two year period referred in (c) herein above, it would facilitate sale of assets to bring in a further amount of Rs. 5000 Crores.

e. The Company declares that it will not in any manner facilitate sale of its properties/ assets to persons/ entities related to or associated with the Company.

f. The Company Seller undertakes not to receive directly or indirectly, any gift, consideration, reward, commission, fees, brokerage or inducement to any person(s)/entity(ies) in service of the proposed Buyer or otherwise in relation to the facilitation by the Company of the sale of its assets /properties and also forbear from showing favour or dis-favour to any person(s) /entity(ies) in relation to the sale of its assets/ properties.

g. The Company undertakes that any breach of the aforesaid undertaking by the Company or any one employed by or acting on behalf of the Company, shall entitle the Committee to impose such liability/ penalty as the Committee may deem proper, including but not limited to termination of the proposal, imposition of penal damages, and to recommend appropriate action against the Company and /or anyone employed by or acting on behalf of the Company, by this Hon'ble Court.

h. The Company undertakes not to indulge, either directly or indirectly or in any manner whatsoever, in misrepresentation of any nature to prospective buyers of its assets /properties.

i. The Company undertakes to furnish list of properties (with MR numbers if the property had been seized by the CBI) together with corresponding circle rate for each property (with necessary proof thereof) and value arrived at computed on the basis of circle rate along with any proposed sale transaction facilitated by the Company.

j. In the event of failure by the Company to honour any or all of its obligations under the proposal and /or this undertaking, the Company and its Directors would be liable for appropriate action of this Hon'ble Court.

3. The Company undertakes to facilitate sale of its assets /properties in accordance with the proposal to buyers who are ready and willing to purchase such assets /properties on "as is, where is, whatever is" basis and understands that the Committee is not responsible or makes any representation /warranty with respect to title of the properties.

4. The Company undertakes that in the case of every sale facilitating by the Company the consideration in full would be in the form of a cheque/ demand draft issued in favour of the designated SEBI account.

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5. The decision of the Committee on all matters would be final and subject to the jurisdiction of this Hon'ble Court alone.

DEPONENT

VERIFICATION:-

Verified at New Delhi on this the 8th day of May, 2018 that the contents of paragraphs 1 to 5 of my above Affidavit are true and correct to the best of my knowledge, information and belief, that no part of it is false and nothing material has been concealed there from.

DEPONENT

SEAL OF OATH COMMISSIONER SUPREME COURT OF INDIA NEW DELHI
SUMEER KUMAR SHRIVASTVA
SL. NO. 28/2016
APPOINTED BY
HIGH COURT OF DELHI
PERIOD FROM 27.01.2016
TO 26.01.2018

ATTESTED

OATH COMMISSIONER
SUPREME COURT OF INDIA
NEW DELHI

I IDENTIFIED THE DEPONENT WHO HAS SIGNED IN MY PRESENCE
NAME
OCCUPATION
SIGNATURE

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

IN

CIVIL APPEAL NO. 13394/2015

IN THE MATTER OF:

PACL LTD. ...APPELLANT

VERSUS

SEBI ...RESPONDENT

AFFIDAVIT OF UNDERTAKING

I, Sikender Singh Dhillon, S/o Late Shri Joginder Singh Dhillon aged about 68 years, R/o House No. 14, Pyara Singh Colony, Ropar, Punjab, presently at New Delhi do hereby solemnly affirm and state as under:

1. That I am one of the Directors of PACL Ltd., I am fully conversant with the facts involved in the present case and am competent to depose to the present Affidavit of undertaking.

2. I hereby unconditionally undertake to this Hon'ble Court, on behalf of PACL and its Directors, including myself, as follows:

a. PACL Ltd. ("the Company") – has submitted a proposal dated 14.04.2018 to facilitate sale of its properties, documents pertaining to which had been seized by the Central Bureau

of Investigation (CBI) and handed over to the Justice (Retd.) hereinafter referred to as "the Committee", pursuant to orders of this Hon'ble Court, which details had been put up on the website www.auctionpacl.com and excludes the 113 properties sold by the Committee through auction process as also the properties released by Shri R.S.Virk, District Judge (Retd.), appointed by the Committee with the permission of this Hon'ble Court to decided objections with respect to the sale of properties of the Company. This unconditional undertaking is being submitted in pursuance of the aforesaid proposal.

b. The Company would facilitate the Committee to sell its properties referred to in (a) herein above, to buyers who would purchase the same for a total consideration of not less than Rs. 15000 Crores (Rupees Fifteen Thousand Crores only) and/or higher amount (s) until the Company discharges its entire liability towards every and all investors claim(s), as decided by the Committee, whichever is higher.

c. The Company undertakes to bring in Rs. 7,500 Crores out of the Rs. 15000 Crores referred to in (b) herein above within 1 (one) year from the date of acceptance of the proposal by the Committee and at least another 7500/- Crores in the 2nd year by facilitating sale of its assets as set out in the proposal.

d. The Company further undertakes that in the event of being granted further time of 1 (one) year after the expiry of the two year period referred in (c) herein above, it would facilitate sale of assets to bring in a further amount of Rs. 5000 Crores.

e. The Company declares that it will not in any manner facilitate sale of its properties/ assets to persons/ entities related to or associated with the Company.

f. The Company Seller undertakes not to receive directly or indirectly, any gift, consideration, reward, commission, fees, brokerage or inducement to any person(s)/entity(ies) in service of the proposed Buyer or otherwise in relation to the facilitation by the Company of the sale of its assets /properties and also forbear from showing favour or dis-favour to any person(s) /entity(ies) in relation to the sale of its assets/ properties.

g. The Company undertakes that any breach of the aforesaid undertaking by the Company or any one employed by or acting on behalf of the Company, shall entitle the Committee to impose such liability/ penalty as the Committee may deem proper, including but not limited to termination of the proposal, imposition of penal damages, and to recommend appropriate action against the Company and /or anyone employed by or acting on behalf of the Company, by this Hon'ble Court.

h. The Company undertakes not to indulge, either directly or indirectly or in any manner whatsoever, in misrepresentation of any nature to prospective buyers of its assets /properties.

i. The Company undertakes to furnish list of properties (with MR numbers if the property had been seized by the CBI) together with corresponding circle rate for each property (with necessary proof thereof) and value arrived at computed on the basis of circle rate along with any proposed sale transaction facilitated by the Company.

j. In the event of failure by the Company to honour any or all of its obligations under the proposal and /or this undertaking, the Company and its Directors would be liable for appropriate action of this Hon'ble Court.

3. The Company undertakes to facilitate sale of its assets /properties in accordance with the proposal to buyers who are ready and willing to purchase such assets /properties on "as is, where is, whatever is" basis and understands that the Committee is not responsible or makes any representation /warranty with respect to title of the properties.

4. The Company undertakes that in the case of every sale facilitating by the Company the consideration in full would be in the form of a cheque/ demand draft issued in favour of the designated SEBI account.

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5. The decision of the Committee on all matters would be final and subject to the jurisdiction of this Hon'ble Court alone.

DEPONENT

VERIFICATION:-

Verified at New Delhi on this the 8th day of May, 2018 that the contents of paragraphs 1 to 5 of my above Affidavit are true and correct to the best of my knowledge, information and belief, that no part of it is false and nothing material has been concealed there from.

DEPONENT

SEAL OF OATH COMMISSIONER SUPREME COURT OF INDIA SUNEER KUMAR SHRIVASTVA APPOINTED BY HIGH COURT OF DELHI PERIOD FROM 27.07.2016 TO 26.07.2018 SL. NO. 28/2015

I IDENTIFIED THE DEPONENT WHO HAS SIGNED IN MY PRESENCE.
NAME
OCCUPATION
SIGNATURE

ATTESTED
OATH COMMISSIONER
SUPREME COURT OF INDIA
NEW DELHI

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

IN

CIVIL APPEAL NO. 13394/2015

IN THE MATTER OF:

PACL LTD ....APPELLANT

VERSUS

SEBI ...RESPONDENT

AFFIDAVIT OF UNDERTAKING

I,Nirmal Singh Bhangoo, S/o Late S. Gurdial Singh Bhangoo aged about 63 years, R/o Kothi 2138, Phase VII, SAS Nagar, Mohali, Punjab. 140110 presently at Ivy Hospital, Sector -71, Mohali, Punjab in custody under Bathinda Central Jail, Bathinda Punjab do hereby solemnly affirm and state as under:

1. That I am a former Director of PACL Ltd. and Managing Director of PGF Ltd

2. I have read and understood the terms and conditions contained in the proposal dated 14.04.2018 submitted by PACL Ltd. to the Justice (Retd.) R M. Lodha Committee (In the matter of PACL Ltd.) hereinafter referred to as "the Committee".

3. I undertake to be unconditionally bound by the terms and conditions of the offer referred to (2) herein above and in the event of PACL Ltd. being

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in violation of the terms of offer, I will also in addition to any other penalty/action that may be imposed/initiated by the Committee also be liable for contempt of this Hon'ble Court.

DEPONENT

L.T. I NIRMAL SINGH
PATHANGOO S/o GURDIAL SIN
PATHANGOO

VERIFICATION

Verified at Bathinda, Punjab on this 11th day of May 2018, that the contents of para 1 to 3 of my above Affidavit are true and correct to the best of my knowledge, information and belief, that no part of it is false and nothing material has been concealed therefrom.

DEPONENT

ANNEXURE A1
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Received 4:10pm
03/07/2018

PACL LIMITED

CIN: U70101RJ1996PLC011577

www.pacltd.com

PACL/DLH/2018/129

Date: 03/07/2018

To,

Ms. Anita Kenkare,
Nodal Officer Cum Secretary,
Hon'ble Justice (Retd.) R.M. Lodha Committee,
(In the matter of PACL Ltd.)
Securities and Exchange Board of India,
SEBI Bhavan, C4-A, 'G', Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400051

Subject: Revised Proposal

Dear Madam,

1 We have perused the counter proposals received by SEBI and put up on its website www.sebi.gov.in/pacl.html.

2 We have also learnt from Jan Lok Pratishtan that you have had informal meetings with two counter bidders namely GroValue Marketing Pvt. Ltd. ('Grovalue') and Trig Guardforce Limited ('TriGuard') and have permitted these counter-bidders to rectify their offer and bring them in conformity with SEBI's requirement and as approved by Hon'ble Supreme Court.

3 We have on a reappraisal and on receiving further support from various investors decided to enhance our offer to facilitate sale of our properties to a revised amount of Rs. 23,000 Crore (Twenty Three Thousand Crore) payable in following manner:

a. First Year : Rs. 7,000 Crore
b. Second Year: Rs. 8,000 Crore
c. Third Year: Rs. 8,000 Crore

4 We may also point out that proposal of GroValue is not realistic and genuine for the following reasons:

a. As per the records available on the ROC website Grovalue has a total turnover of less than Rs. 20 crore, yet it is has made bid for more than Rs. 20,000 crore. Its total paid up capital is mere Rs. 1 Lakh and authorized capital is Rs. 5 Lakh and it is offering Rs. 21,000 crore.
b. That before making the bid of Rs. 21,000 Crore, Grovalue has not even done any due diligence. The said proposal was prepared on 15.06.2018 without ever seeking any clarification from SEBI and/or PACL and decided to invest Rs. 21,000 crore and therefore the current offer is nothing but a sham to grab the rights to sell the assets of PACL with no consequences whatsoever in the event if it fails.
c. Grovalue has not even shown the roadmap or disclosed the names of the buyer who are interested and willing to invest Rs. 21,000 crore as on its own it has no financial capabilities to purchase assets of Rs. 21 crore.
d. That Grovalue has made an offer of Rs. 21,000 crore without deposit of even Rs. 500 crore as was required under clause 7 of the offer of SEBI dated 16.03.2018.
e. The offer of Grovalue is also not genuine as can be seen that it intends to recover Rs. 21,000 crore by selling assets of PACL at circle rate (mentioned in clause 2(g) of its proposal).
f. On perusal of Balance sheet of the group entities of Grovalue – does not reflect the financial capacity to undertake the project of this magnitude
g. It is further submitted that in para 2(a) of its proposal Grovalue has offered to bring buyers who shall be giving undertaking. In this context, this Hon'ble Committee may call for the records and assets of the said buyers
h. Grovalue is offering to deposit Rs. 500 crore after 20 working days of receipt of acceptance of the said proposal. Therefore, the said company has nothing to loose and no risk involved in making a bid with unrealistic amounts as its liability will start only after acceptance of the bid.
i. Grovalue has no experience of selling properties across pan India in different jurisdiction and under different local laws. You are giving right of selling property to a third party who has no presence in real estate market, has no branches to deal with the parties across the country
j. Grovalue even as per its own proposal is ready to forfeit a maximum of Rs. 500 crore in case it fails to honour its commitment of Rs. 21,000 crore. The sum is too paltry and gives incentive to frivolous offers such as made by Grovalue
k. Grovalue is acting only as a broker and not as a buyer of the property
l. Grovalue has also not disclosed as to how it has determined an offer of Rs. 21,000 crore.

5 We may also point out that proposal of Trig Guardforce Limited is not realistic and genuine for the following reasons:

a. As per claim of Trig it has made a conditional offer i.e. it requires vacant and peaceful possession of assets of PACL. If such a condition is accepted a much higher offer can be made by many other investors.

b. It further requires officer of SEBI and PACL to be available to accompany and grant inspection of properties of PACL. Again neither SEBI nor PACL has the resources to provide manpower for inspection of assets of PACL across pan India.
c. That before making the bid of Rs. 21,000 Crore, Trig has not even done any due diligence. The said proposal was prepared on 19.06.2018 without ever seeking any clarification from SEBI and/or PACL and decided to invest Rs. 21,000 crore and therefore the current offer is nothing but a sham to grab the rights to sell the assets of PACL with no consequences whatsoever in the event if it fails.
d. Trig has not even shown the roadmap or disclosed the names of the buyer who are interested and willing to invest Rs. 21,000 crore as on its own it has no financial capabilities to purchase assets of Rs. 21 crore.
e. Trig has made an offer of Rs. 21,000 crore without deposit of even Rs. 500 crore as was required under clause 7 of the offer of SEBI dated 16.03.2018.
f. The offer of Trig is also not genuine as can be seen that it intends to recover Rs. 21,000 crore by selling assets of PACL at circle rate (mentioned in clause 2 of its proposal).
g. On perusal of Balance sheet of the group entities of Trig– does not reflect the financial capacity to undertake the project of this magnitude
h. Trig is offering to deposit Rs. 500 crore after 15 days of acceptance of proposal. Therefore, the said company has nothing to loose and no risk involved in making a bid with unrealistic amounts as its liability will start only after acceptance of the bid.
i. Trig is a detective, security consultant and has no experience of selling properties across pan India in different jurisdiction and under different local laws. You are giving right of selling property to a third party who has no presence in real estate market, has no branches to deal with the parties across the country
j. Trig is acting only as a broker and not as a buyer of the entire assets of PACL
k. Trig has also not disclosed as to how it has determined an offer of Rs. 21,000 crore.

6 We also submit that an offer of PACL cannot be compared with an offer of third party as the Companies accounts are frozen, all assets are attached and the Company has the best domain knowledge of all its assets and how to recover maximum price. There is an incentive for the Company to adhere to the timelines of recovery since the directors will be able to get bail only if they adhere to the timelines; whereas any third party who does not deposit a substantial amount as EMD, cannot be put at same pedestal as of the Company. As once the assets are sold through a third party then the company cannot discharge its liabilities. It is submitted that bail of the directors of the company are also linked with success of this offer/proposal, hence failure of granting rights to such a company would also effect the bail of the directors of

PACL. If an offer is accepted from any third party without securing collateral atleast to the tune of 50% of the offer amount, then it is bound to lead to frivolous and non-serious offers.

7 That this Hon'ble Committee may take an EMD of atleast 20% of the total offer value for a company like Grovalue since it has no financial credibility

8 PACL submits that, it only intends to repay all its investor and discharge all its liabilities out of its assets seized by this Hon'ble Committee. It has no objection if this Committee hands over its rights to sell its assets any company, if it is ready and willing to take over the entire liability of PACL, then it has no objection if this Hon'ble Committee then hands over or permits the said company to sell its assets.

9 The Committee may kindly understand that PACL's offer is not only to recover now Rs. 23,000 crore by sale of its assets but to continue to recover further monies till the last investors claim is repaid which is not the counter proposal of either Trig or Grovalue.

10 We would therefore request you may kindly call us for a meeting to explain our revised proposal.

11 We wish to clarify that unlike the two other counter-bidders we are ready with Rs. 500 crore and can submit the same immediately.

Thanking you,

Yours truly,

Sikender Singh Dhillon,
Director

ANNEXURE A11
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PACL LIMITED

CIN: U70101RJ1996PLC011577
PACL/DLH/2018/142

www.pacltd.com
Date: 17/07/2018

To

Nodal office cum secretary
Hon'ble Justice (Retd.) R. M. Lodha Committee
(In matter of PACL Limited),
Securities & Exchange Board of India,
SEBI Bhavan, Plot No.C-4A, G-Block,
Bandra Kurla Complex, Bandra (East), Mumbai -400051

Sub: Final Proposal-PACL Properties

Madam,

1. We have pursued the invitation for counter proposal in furtherance of revised proposal dated July 03, 2018 submitted by PACL and put on the website of SEBI i.e. www.sebi.gov.in/PACLhtml

2. We are submitting our final proposal to facilitate sale of our properties to an amount of Rs. 28,000 crores (rupees twenty eight thousand crores) payable in following manner:

a. First year Rs. 7,000 crores

b. Second year Rs. 8,000 crores

c. Third year Rs. 8,000 crores

d. Fourth Year Rs. 3,000 Crores

e. Fifth Year Rs. 2,000 Crores

3. We reiterate the justification provided by us for accepting our offer explained in detail in our previous proposals dated 14.04.2018 and 03.07.20418.

4. We are also enclosing cheques amounting to Rs. 500 crores along with list of properties against with the cheques have been received in favour of SEBI, that in event our proposal is accepted, you may kindly encash the same and intimate us accordingly (that on acceptance of our proposal, some of the cheques expired since they were collected before meeting held on April 12, 2018, will be replaced within two days from intimation of acceptance of proposal).

Thanking you,

Yours truly,

(Sikender Singh Dhillon)

Director

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Tajinder Kaur
DEPONENT

VERIFICATION

Verified at New Delhi on this on this 25 day of Aug 2018 by the above named deponent. That the contents of the above affidavit are true and correct, no part of it is false and nothing material has been concealed therefrom.

Tajinder Kaur
DEPONENT

IDENTIFIED BY

NOTARY
Name: R.P Bansal
Area: New Delhi
Regd. No. 10378-14
Expiry Date: 27/06/2019
GOVT. OF INDIA

ATTESTED
Notary Public, Delhi
(As Presented)
25/08/18