BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER: EAD-9/VV/NK/2021-22/15199]

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

In respect of: -
Mr. Rajesh Jain
(PAN: AEDPJ0277M)

In the matter of Pragya Dairies & Agro Limited.

BACKGROUND OF THE CASE

1. Pragya Dairies & Agro Limited (hereinafter referred to as "**PDAL/Company**") is a company incorporated under the Companies Act, 1956 on March 18, 2010. The registered office address of PDAL is at '201, Mayank Villa, 123, Chikitsak Nagar, Indore, MP, 452001'.

2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had received complaint dated June 07, 2016 against PDAL on July 15, 2016. From the complaint it was known that PDAL has collected money from around 200 investors and invested in the schemes of the company. On November 30, 2016, complainants further provided the copies of certificates and scheme plans of PDAL.

3. As a matter of preliminary inquiry, SEBI, vide its letter dated October 03, 2016 and November 10, 2016 to PDAL and its directors including Mr. Rajesh Jain (hereinafter referred

to as **"Noticee")** being one of the director of PDAL, sought following information about fund mobilization schemes:

i. Memorandum and Articles of Association of the company.
ii. Audited annual reports of the company since inception.
iii. Income Tax returns of the company since inception.
iv. Name, addresses and occupation of all the promoters/directors of the company including PAN details, Voter ID , Aadhar Card , contact details and addresses.
v. Names and details of the Key Managerial Personnel of the company.
vi. Following Information in respect of schemes launched for raising funds:
    a) A statement of mobilization and deployment of funds under various schemes duly certified by the Statutory Auditors of the company(s);
    b) Terms and conditions of the schemes launched by company;
    c) Structure of the Plans/Schemes ;
    d) Details of the scheme(s) wise amount mobilized by company, along with the number of investors under the schemes;
    e) Assured/indicative/expected returns made in the scheme(s);
    f) Copies of offer documents, application form, pamphlets, brochures of the scheme(s) launched;
    g) Sample copies of the registration letter and allotment letter issued to the investors who subscribed to the scheme(s);
    h) Sample copies of the agreement letter / contract required to be entered into by investor / applicant under the scheme (s)
    i) Options available with the investor if he does not want to hold his investment till maturity;
    j) Whether any instrument is issued to the investors after receipt of fund;
    k) If such instruments are issued whether they are transferable;
    l) In case the 'Scheme(s)' pertain to booking / purchase of goods / properties / assets/ live stock / plantations / land/dairy / etc , please specify the options available with

investor if he does not want to posses the good/property after payment of initial amount;

m) Details of any other similar scheme(s), if any, floated by the company or its group/ associates company ;

n) Confirm whether 'Scheme (s)' floated by the company falls under the SEBI (Collective Investment Schemes) Regulations,1999.

o) Address of all the branches operating in India.

p) Was any broker / agents employed for said issue? If yes, please provide name and amount of brokerage/ commission paid.

q) Details of any action initiated/ taken by any other authority (including any court order) against the company in respect of money raised from public.

4. Letters to the company and its directors returned undelivered except one letter sent to Shri Ansar Ahmed, past director which was delivered to him as per India Postal tracking system. However, no reply in this regard has been received by SEBI.

5. Further, letter dated November 25, 2016 was sent to the auditor of PDAL viz. K. Motwani & Co., to provide the following information/documents:

i. Nature of business activities of the company.
ii. Nature of funds received by company.
iii. Documents/ explanations for "Trade Payables and Inventories" in the balance sheet as on March 31, 2012.

6. In response to above, the auditor vide letter dated December 20, 2016, *inter-alia* submitted as under:

a) "*The Company was engaged in trading of agriculture products, seeds, allied items, contract farming, seed production and consolidation of people in the form of joint venture so as to achieve its main object*."

b) *" The Company had received normal sales Proceeds of agriculture produce and other Agri based activities during the period starting from 01/04/2011 and ended on 31/03/2012 "*

7. The auditor further stated that it had already resigned as an auditor of the company. The auditor also provided the balance sheet of the company for FY 2011-12 and the Income Tax return pertaining to the said year.

8. SEBI also conducted a physical verification of the registered office address of the company at '201, Mayank Villa, 123, Chikitsak Nagar, Indore, MP-452001' on August 23, 2017. However, it was found that the company was not operating at the said address.

9. SEBI examined the matter and on the basis of information available on record it *prima facie* appeared that the company has mobilized huge funds from public under its various schemes which is in the nature of a Collective Investment Scheme as defined in Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992")** and mobilizing money from investors under the same without obtaining registrations from SEBI as required under the provisions of Section 12(1B) of the SEBI Act read with Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "**CIS Regulations, 1999**") and that the, fund mobilizing activity of the company through the *'Schemes'* referred to as Business Plans and described as Joint Venture pertaining to Cattle/Ghee post September 2013 *prima facie* amounts to a fraudulent practice in terms of Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations, 2003**"). . Therefore, SEBI, vide an interim *ex-parte* Order dated November 09, 2018 (hereinafter referred to as "interim order") passed certain directions *inter-alia* against PDAL and its directors including Noticee viz. Rajesh Jain. Thereafter, on March 06, 2020, Hon'ble Whole Time Member of SEBI (WTM) passed the final order under sections 11(1), 11(4), 11B AND 11AA of the Securities and Exchange Board of India Act, 1992 read with regulation 65 of Securities and Exchange Board of India (collective investment schemes) Regulations, 1999

and regulation 11 of the Sebi (prohibition of fraudulent and unfair trade practices relating to securities market) regulations, 2003 wherein Hon'ble WTM has held the schemes as CIS and issued certain directions to entities including Noticee *inter-alia* to refund the money to the extent of amount of monies collected by PDAL under its unregistered collective investment schemes during their respective period of directorship in PDAL with returns which are due to investors as per the terms of offer.

10. Based on the information collected during examination, it was observed that PDAL has mobilized funds even after September 06, 2013 and accordingly, SEBI initiated Adjudication proceedings on December 07, 2017 against PDAL and its directors including Noticee viz. Rajesh Jain who is one of the director of PDAL for the alleged violation of Regulation 4(2)(t) of PFUTP Regulations, 2003 for fund mobilization activities by the company and its directors (Past and Present), post September 06, 2013 without obtaining registration as required under the provisions of Section 12(1B) of the SEBI Act read with Regulation 3 of the CIS Regulations, 1999

APPOINTMENT OF ADJUDICATING OFFICER

11. Vide communication order dated December 16, 2020, the undersigned was appointed as Adjudicating Officer in the matter under Section 15 I (1) of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995(hereinafter referred to as "**The SEBI Rules**") read with Section 19 of SEBI Act to inquire into and adjudge the alleged violation of the fund raising activities which attracts the Regulation 4(2)(t) of PFUTP Regulations, 2003 by PDAL and its directors viz. Pooja Patidar, Punam Chand Patidar, Nana Lal patidar, Durga Patidar, Ansar Ahmed and Rajesh Jain (hereinafter referred to as **"Noticee")**

SHOW CAUSE NOTICE, REPLY AND HEARING

12. A common Show Cause Notice dated September 09, 2021 (hereinafter referred to as **'SCN'**) was issued to the PDAL and its directors including Noticee Viz. Rajesh Jain under rule 4(1)

of the Adjudication Rules to show cause as to why an inquiry be not held against them in terms of Rule 4 of the SEBI Adjudication Rule read with section 15 I of the SEBI Act; and penalty be not imposed under Section 15HA of the SEBI Act for the alleged violation.

13. SCN issued to Noticee through Speed Post Acknowledgment Due (**SPAD**) was returned undelivered by the Postal Department. Thereafter, a Notice under Rule 7(3) of the Adjudication Rules was published on October 28, 2021 in Indore and Shajapur editions of 'The Times of India' in English language and 'Dainik Bhaskar' in Hindi language which was the regional language of address of Noticee available on record. It was also published in the said newspaper publications that, the said SCN has been published/ uploaded on website of SEBI (www.sebi.gov.in) under the section Enforcement: Unserved Summons/ Notices' and can be downloaded from the website of SEBI (www.sebi.gov.in). Further, Noticee was also advised to submit his reply to the SCN within 14 days of publication of this notice. Vide aforesaid public notice, the Noticee was also granted opportunity of hearing through WebEx platform due to Covid-19 Pandemic on November 16, 2021, wherein it was clearly mentioned that in case Noticee fail to submit their reply to the SCN or avail opportunity of personal hearing in the matter, the matter shall be proceeded further on the basis of material available on record

14. Noticee through his Authorized Representative (**AR**) vide email dated November 10 &14, 2021 and letter received by SEBI on November 15, 2021 requested the copy of SCN alongwith annexures. A copy of SCN alongwith annexures to SCN were sent to AR of Noticee through SPAD vide letter dated November 22, 2021. In the said letter, Noticee was advised to reply to the SCN within 15 days from the date of receipt of the letter and another opportunity of personal hearing was provided by undersigned on December 27, 2021 at 11:00 AM by video conferencing through WebEx due to ongoing COVID Pandemic. Noticee vide email dated December 24, 2021 authorized his representative to appear in virtual hearing on December 27, 2021 before me, which was taken on record.

15. The Noticee vide email dated December 09, 2021 also submitted his reply to the SCN. The main submissions made by the Noticee in his reply are as follows:

a) SCN doesn't find name of Noticee in the complaint. In these circumstances sending the present SCN to Noticee is baseless and ill-founded and therefore should be recalled at the threshold.

b) Noticee could not find any glaring illegality or irregularity on his part to make him liable under any of the provisions as alleged in the SCN.

c) Mr. Rajesh Jain and 4 others in the year 2010 incorporated a Public Limited Company namely 'Pragya Dairies & Agro Ltd.', which was limited by shares. The Company was registered with the Registrar of Companies on 18.03.2010.

d) Company 'Pragya Dairies & Agro Ltd. was incorporated with the object to deal in the field of dairy, agriculture and production & business of allied products.

e) Mr. Rajesh Jain remained with the Company for about 4-5 months, thereafter he stopped attending the meetings of the Company. Mr. Rajesh Jain aggrieved with the working style of the rest of the Directors of the Company decided to resign from the Directorship of the Company in the year 2011 and accordingly sent a resignation letter dated 19.01.2011 to the CMD of the Company as per prevailing provisions of the Companies Act. 1956. The Chief Managing Director of the Company on 03.03.2011 duly accepted the resignation

f) Despite the resignation by Mr. Rajesh Jain in the year 2011, which was duly accepted by the CMD, the Company for the reasons best known to them, did not remove the name of Mr. Rajesh Jain from the records of the Company and even his name was reflected on the official website of the Company

g) Persons who invested their amount under the aforesaid scheme, while did not receive the amount on demand, lodged FIR against all the Directors, whose names were appearing in the record of the Company, which includes Mr. Rajesh Jain as his name was still reflecting in the official website of the Company.

h) As the name of Mr. Rajesh Jain was not removed from records of the Registrar of Companies, Noticee was receiving notices from the ROC. In response to one of the notices, he sent a reply on 0l. 07.2016, wherein he made his stand clear

i) On an advice received from the Charted Accountant, Noticee even completed necessary formalities of resignation under the provisions of Companies Act, 2013.

j) On 11.02.2016 Noticee through his advocate sent a notice to the CMD of the Company asking him to remove his name from the Board of Directors. Noticee also got published a Public Notice to this effect in the news papers.

k) Noticee was also falsely implicated in a criminal case. noticee filed a petition under section 482 of Cr.P.C. before the Hon'ble High Court of M.P. Bench at Indore for quashment of the prosecution. The Hon'ble Court after appreciating contention of Notice allowed the petition and quashed the prosecution against him.

l) Resignation of Noticee was never forwarded by working Directors of PDAL to the ROC.

m) Noticee resigned on 19.01.2011 and it was accepted by the CMD on 03.03.2011, then in that situation Noticee ceases to be a Director from the date of his resignation i.e. 19.01.2011.

n) It is settled position of law as has been decided by various High Courts, that in absence to any specific provisions in the Memorandum of Association or Article of Association regarding manner and method of resignation of the Directors, if a Director resigns then it shall come into force from the date when it is made or at the worst when it is accepted by the CMD. In these circumstances only on the basis, that the name of Noticee is still continuing in records of the Company or reflected on the official website of the Company cannot be a ground to make him an accused under the SEBI Act.

o) The provision i.e. regulation 4 (2) (t) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities market) 2003, has come into force with effect from 2013 but Noticee resigned from the post of the Director of the Company on 19.01.2011, therefore for no reason, Noticee can be implicated for the alleged irregularity. It is a settled principle of law that no penal provision of law can be made applicable to persons retrospectively. As the irregularity alleging to have been committed by Noticee was not there on the book of statute, while he was the Director of the Company. Therefore, in view of the aforesaid, prima facie issuance of SCN to

Noticee, on baseless and flimsy grounds, is uncalled for, which do not make out any case against him and prays for its recall.

16. AR of the Noticee, appeared for the hearing on scheduled date and time of hearing and reiterated the written submissions made in the email dated December 09, 2021 and also undertook to make additional submissions.

17. Noticee vide email dated December 27, 2021 submitted the copy of following case laws which AR of Noticee referred during the hearing:

a. Resignation has to be considered from the date it was tendered
    i. T.R. Murari V/s State para18.
    ii. PRM Abdul Huq V/s The Katapadi, para 5.
b. Penal provisions are prospective in nature
    i. Order of AO finding (g) page 42
    ii. 2008 (8) SCC 205, para 15

CONSIDERATION OF ISSUES

18. I have taken into consideration the facts and circumstances of the case, Submissions of Noticee and the material available on record. Issues that arise for consideration in the present case are:

I. Whether the Noticee has violated the provisions of Regulation 4 (2) (t) of SEBI (PFUTP) Regulations, 2003?

II. Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act?

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

FINDINGS

Issue No. I: Whether the Noticee has violated the provisions of Regulation 4 (2) (t) of SEBI (PFUTP) Regulations, 2003?

19. In order to deal with the preliminary objections raised by the Noticee in his submissions and merits of the case, it would be appropriate to mention the relevant facts of the case leading to the present proceedings against the Noticee.

20. From the details contained in the copies of Certificates issued by PDAL as well as from the details of various plans, it was noted that the PDAL has collected funds from the public during the FY 2010-11, 2011-12, 2012-13 and 2013-14 under various 'Collective Investment Schemes referred to as Business Plans. For soliciting money from public, the company has devised such schemes "joint venture consideration" for selling "cattles/ghee". Further, for fund mobilization, it has devised the following business plans ranging from 3 yrs 4 months, 5 years, 6 years 3 months, 7 years 6 months, and lump sum payment plans of 72 months, 102 months and 132 months. It was observed that the certificates issued by PDAL in respect of the investment under these plans mention 'Expected Sum Payable on Expiry of Term C.O.C./Ghee' (here C.O.C. appears to be denoting cost of cattle), which appears to be the maturity amount (inclusive of return on investment) payable to the investor at the end of the term.

21. Various documents including financial statements filed by PDAL with Registrar of Companies were accessed through the MCA21 portal. It was noted therefrom that PDAL had filed its balance sheet only up to the Financial Year (**FY**) 2011-12. The Balance Sheets of PDAL for FYs 2010-11 and 2011-12 indicate that PDAL had a current liability of Rs.6,86,87,882/- and Rs.12,98,27,007/- as on March 31, 2011 and March 31, 2012 respectively, on account of 'Sundry Creditors under Joint Venture'.

a) A model plan of 5 years is tabulated below :

Table 1 Business plans/schemes

No.of cattle	Cattle/ghee value (Rs)	Installments (Rs.)				Estimated value of cattle/ghee (Rs)	Insurance cover (Rs.
		Yearly	Hly	Qly	Mly		
		5	10	20	60		
10	60000	11500	5800	2950	1000	84000	90000
9	54000	10350	5220	2655	900	75600	81000
8	48000	9200	4640	2360	800	67200	72000
7	42000	8050	4060	2065	700	58800	63000
6	36000	6900	3480	1770	600	50400	54000
5	30000	5750	2900	1475	500	42000	45000
4	24000	4600	2320	1180	400	33600	36000
3	18000	3450	1740	885	300	25200	27000
2	12000	2300	1160	590	200	16800	18000
1	6000	1150	580	295	100	8400	9000

b) On perusal of the certificate issued by the company, the certificate read as follows :

"*Certified that the person described in Schedule hereto is Registered Joint Venture for consideration" as shown in Schedule under Plan of company, subject to the regular payment of subscriptions) as mentioned in the said Schedule and also subject to "General Terms and conditions" printed overleaf and terms and condition as per Rule Book as may be amended from time to time. And Company shall pay in Indian currency at its customer service centre through Head Office, the amount due under this certificate in accordance with Terms of the said Schedule to person to whom the same is herein expressed to be payable. It is hereby declared that Schedule, General Terms and conditions and other terms and conditions of Rule book, as amended from time to time, shall be deemed to be a part of this certificate".*

c) The face of the certificate also provides the following details:

1 Registration no. and date of commencement

2 Plan No. Term

3 Cost of cattle/ Ghee

4 Joint venture's Consideration, C.O.C/ Ghee

5 Expected sum payable on Expiry of term C.O.C / Ghee

22. From the analysis of certificates it appears that Investor invests in “Cattle/Ghee” scheme offered by company under payment plan and at maturity / expiry of term, investors would be payable expected sum of cost of cattle/ Ghee.

23. Further SEBI has obtained various documents / details available at MCA portal. As per the records of MCA basic details of PDAL are provided as follows

Date of Incorporation	:	18/03/2010
CIN	:	U01400MP2010PLC023243
PAN	:	AAFCP3908E
Registered Address	:	201, Mayank Villa, 123, Chikitsak Nagar Indore MP 452001 IN

24. The details Directors of PDAL are as follows :

Table-2 Directors of the company

Full Name	DIN	PAN	Design.	Date of Appntmt	Date of Cessation
Punam Chand Patidar	02977863	BTUPP0108C	Director	18/03/2010	Continuing
Nana Lal Patidar	02978194	AJWPP3490J	Director	18/03/2010	Continuing
Pooja Patidar	02977813	AVBPP1293Q	Director	18/03/2010	
Durga Patidar	02977847	APJPP6921M	Director	18/03/2010	
Rajesh Jain	02978284	AEDPJ0277M	Director	18/03/2010	03/03/2011
Ansar Ahmed	02336694	AFFPA4197L	Director	07/08/2014	13/08/2015

25. As per the Financial Statements of the company for 2 years, there is an incremental increase in liabilities and assets of the company:

Table 3- Balance sheet details

Liabilities	31.03.2011 (Rs)	31.03.2012 (Rs)	31.03.2013 31.03.2014 &31.03.2015 (Rs)
Sundry Creditors for Joint Venture	6,86,87,882	12,98,27,007	Not filed

ASSETS	**31.03.2011**	**31.03.2012**	**31.03.2013 to31.03.2015**
Freehold land : 27,92,000 **Advancefor purchase of land : 2,11,000** **Advance for land (Betma) : 3,74,000** **Advances for agro products : 50,000** **Advances to customers for (: 1,20,23,025** **Purchase (Tea) : 3,55,200** **Purchase (Vetinary product) : 3,62,273** **For agro product & ORC purchse)** **Purchase of Agro products : 28,20,300** **Total 1,89,87,798**	1,89,87,798		N/A
Freehold land : 27,92,000 **Advance for purchase of land : 2,11,000** **Advance for land (Betma) : 3,74,000** **Advances for agro products : 7,50,350** **Advances to customers for (: 83,64,096** **For agro product & ORC purchse)** **Total 1,24,91,446**		1,24,91,446	

26. From the analysis of Balance Sheets it is noted as under:

a. It is observed from the balance sheet that the company is engaged in fund mobilizing activities from public/ investors under the scheme of cattle/ghee in the form of Sundary creditors for joint ventures. Further, in respect to such collection of funds company has built up its land inventory and agro products.

b. During the financial Year 2011-12 significant rise in “Sundry Creditors for Joint Venture” was noted. The amount raised through Sundry Creditors for Joint Venture has increased during the financial Year 2011-12 from Rs. 6,86,87,882 to Rs. 12,98,27,007

c. Further it was noted that company has filed its annual return for only two Financial Year (FY 2010-11 and FY 2011-12).

27. **Bank statement analysis**

The bank statement of the company bearing Account No - 910020014112887 in Axis Bank, was analysed for the period from 24.04.2010 to 30.06.2017. From the bank statement analysis, it was noted that company has collected fund during the FY 2010-11, 2011-12,2012-13,2013-14,2014-15 and 2015-16. As per the said bank statement, company has collected total funds, in the form of cash deposit, amounting to RS 6, 57, 20, 439/- in the bank account of the company during the said period.

28. The detail of the 'Scheme' offered by the company was considered in light of Section 11AA of the SEBI Act. The said Section 11AA, which provides for the conditions to determine whether a scheme or arrangement is a 'collective investment scheme', reads as follows:

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

(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.

29. I note that the aforementioned schemes offered by the Company have to be considered in light of Section 11AA(2) of the SEBI Act, 1992. The aforesaid Section 11AA(2) of the SEBI Act, 1992, stipulates certain conditions to determine whether a scheme or arrangement is a 'collective investment scheme' and the same should not fall within any of the exceptions mentioned in section 11AA(3) of SEBI Act. Thus, I proceed to consider now whether the four conditions mentioned in section 11AA(2) of SEBI Act are satisfied in the instant case. The conditions as stipulated vis-à-vis the facts of the case are discussed in succeeding paragraphs.

Condition no. 1: Whether the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement.

30. From the copies of certificates issued by PDAL which are available on record, it is noted that PDAL collected funds from general public towards its scheme under "Registered Joint Venture for consideration" for selling of cattle/ghee and issued certificates to investors. As per the information contained in certificate, it is observed that the customer invests in the said scheme of cattle/ghee under installment plans and lump sum payment plans. It is noted that under the said scheme, the returns offered to the investors are 'Expected sum payable on Expiry of Term C.O.C./Ghee.

31. Further from balance sheet of the company as on 31.03.2012, it is observed that the company had mobilized a sum of Rs. 12,98,27,007/- and reported as *Advance under Joint Venture* in the balance sheet and thereafter utilized the same for purchase of land, agro products etc. Also from the

submission of auditor of the company it was noted that Company was engaged in trading of agriculture products, seeds, allied items, contract farming, seed production and consolidation of people in the form of joint venture to achieve its main object. Thus, *fund mobilization activity of PDAL* satisfies the first condition of "*pooling of contribution or payments and utilize the same for the purposes of the scheme or arrangement.* ", as stipulated in Section 11AA(2)(i) of the SEBI Act.

Condition no. 2: 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.

32. On perusal of the copy of certificates issued by PDAL, it appears that that investor invests money in the scheme either to get cattle/ghee or return on their investment. For example, on perusal of the certificate, the investor is **"Registered Joint Venture of consideration"** under a plan of R-75 for 6 yrs-3 months and invested Rs.37500/- towards cost of cattle/ghee. As per the certificate the term expires on 13.03.2017 and investor would be paid expected sum payable Rs.62500/-. "

33. Thus, investors' contributions or payments towards such scheme, as mention in above paragraphs, is made with an intention to earn profit/ income.

34. I further note that SEBI had received complaints from the investors of PDAL alleging that PDAL has failed to honor its promised returns and also failed to refund the amount invested by them. I also note that the 'Expected sum payable on expiry of Term C.O.C/Ghee' as was mentioned on the Certificates, is in substance, nothing but promise of returns to the investors. Thus, in view of the above, I find that the contributions/payments made by the investors towards the schemes pertaining to Cattle/Ghee as offered by PDAL, was with a view to receive profit or income.

35. In view of the aforesaid, it is clear that the instant 'scheme' satisfies the second condition as stipulated in Section 11AA(2)(ii) of the SEBI Act.

Condition no. 3: The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors, and

Condition no. 4: The investors do not have day-to-day control over the management and operation of the scheme or arrangement.

36. Based on the scheme, payment plan and contents of certificate, it may be stated that the investment solicited through "cattle/ghee" plans are for a certain duration which can be interpreted that the said investments were managed by company till the period of agreement period/maturity period mentioned in the certificate. Further, the complainants have alleged that the company is not refunding the amount invested by the investors. In view of the above, it is apparent that control over the management and operation of activities in accordance with the scheme vests with the company.

37. The aforesaid observations indicate that the property, contribution or investment forming part of the scheme, is managed by PDAL on behalf of the investors and the investors do not have any say or control over the day-to-day management and operation of the scheme.

38. Further, I also do not find any material on record, to show that the investors in the schemes of PDAL were/are any director or officers of PDAL. Thus, I find that the investors in the schemes of PDAL do not have day–to–day control over the management and operation of the aforementioned schemes being run by PDAL. I also note that though the schemes referred to as Business Plans are described as 'Joint Ventures pertaining to Cattle/Ghee' by PDAL, but I note that these schemes in effect do exhibit any features of a joint venture, but they mere pooling of funds, wherein the investors do not have any say in its day to day management and operation.

39. In view of the above, the fund mobilization activity of PDAL satisfies the third and fourth conditions stipulated in Section 11AA(2) (iii) and (iv) of the SEBI Act, 1992.

40. In view of the aforesaid, I am of the view that the schemes / plans run by PDAL satisfy the pre-requisites laid down under Section 11AA(2) of the SEBI Act to be classified as a

collective investment scheme. Further, PDAL has not obtained any Certificate of Registration from SEBI under the CIS Regulations. From the material available on record, I also note that, the schemes of PDAL does not qualify for exemption provided u/s 11AA (3) of SEBI Act.

41. Moving further with respect of the allegation against the Noticee of violation of regulation 4(2) (t) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (PFUTP Regulations, 2003), which reads as follows:-

4. Prohibition of manipulative, fraudulent and unfair trade practices

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely;

(a)…

"(t) illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any collective investment scheme by any person."

42. It may be noted the PFUTP Regulations was amended with effect from Sept 06, 2013 and clause (t) to reg. 4(2) was inserted. Thus, Subsequent, to introduction of Regulation 4(2) (t) of PFUTP Regulations, 2003, The illegal mobilization of funds by means of collective investment schemes are deemed to be fraudulent. The company carrying on unregistered collective investment schemes and all those persons who are directors as on and after the date of introduction of Regulation 4(2) (t) of PFUTP Regulations, 2003 i.e., September 06, 2013 will be liable for action, for violation of Regulation 4(2) (t) of PFUTP Regulations, 2003. Thus, money mobilized post September 06, 2013 is only being considered for the purpose of present proceedings

43. In the present case, I find from the bank statement analysis of the company that, the fund mobilization by PDAL continued subsequent to September 06, 2013 and it was noted that around Rs. 2,17,60,424 were collected from the public by the company and its directors post September 06, 2013 till November 2015.

44. Noticee has contended that complaint doesn't find the name of Noticee and also annexures do not find any glaring illegality or irregularity on the part Noticee to make him liable under any of the provisions as alleged and further stated that, the SCN is baseless and ill founded.In this regard, I note that complaint made by complainants is against PDAL and allegation as mentioned in the SCN against Noticee is that, fund mobilization activities by PDAL and its directors (Past and Present) including Noticee post September 06, 2013, *prima facie* amounts to a fraudulent practice in terms of Regulation 4(2) (t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003.

45. However, I note from the submissions made by Noticee that, Noticee has submitted his resignation on January 19, 2011 and it was accepted by the Chief Managing Director of the Company of PDAL (CMD) on March 03, 2011.I also note that resignation of Noticee was not forwarded by CMD of PDAL to the Registrar of Companies (ROC) due to which his name kept on appearing as director of PDAL and he also kept on receiving notices from ROC. On perusal of Annexure C submitted by Noticee along with his reply, I note that Noticee has completed necessary formalities of resignation under the provisions of Companies Act, 2013 and also vide letter dated July 01,2016 informed ROC, Gwalior about his resignation from the post of director of PDAL . Noticee has also sent a notice dated February 11, 2016 to the CMD of the Company asking him to remove his name from the Board of Directors and official website of the company. From the perusal of Annexure E to the reply of Noticee, I note that, Noticee has also got a Public Notice published in the newspapers to this effect. Further, Noticee filed a petition under section 482 of Cr.P.C. before the Hon'ble High Court of M.P. Bench at Indore for quashment of the prosecution in the criminal case against PDAL and its directors including Noticee. I note from the perusal of Annexure G, which is order passed by Hon'ble High Court that, Hon'ble Court allowed the petition by Noticee and has quashed the prosecution against Noticee, as Noticee has resigned from the company on January 19, 2011 and which was accepted by CMD of PDAL on March 03,2011 and since then he was not working with the company and thereby, was not managing day to day affairs of the company.

46. Since, the information about resignation of Noticee was not updated in records of ROC. Therefore, the information about resignation of Noticee was not available with SEBI initially during the examination of matter i.e., in the year 2016 and thus, adjudication proceedings were approved in the matter against Noticee for the violation of regulation 4(2) (t) of PFUTP Regulations.

47. On the perusal of Form Nos. DIR-11 / DIR-12 filed with RoC, I note that, Noticee had joined as a director on March 18, 2010 and had resigned on March 03, 2011.I have also noted the Judgments relied upon by Noticee in his submissions.

48. I also note that, Hon'ble WTM order dated March 06, 2020 with respect to Noticee *inter-alia* states that, "*Noticee no. 6, had joined as a director on 18/03/2010 and had resigned on 03/03/2011"*

49. Thus, in view of the submissions made by Noticee, perusal of material available on record and Hon'ble WTM order dated March 06, 2020, it is clear that Noticee had joined as a director on March 18, 2010 and has submitted his resignation on January 19, 2011 which was accepted by the CMD of PDAL on March 03, 2011 which indicates that Noticee was not director of PDAL as on September 06, 2013. Since, clause (t) to regulation 4(2) was inserted in PFUTP Regulations from September 06, 2013 and as per regulation 4(2) (t) of PFUTP Regulations, 2003, only those directors of the company carrying on unregistered collective investment schemes, who are directors as on and after the date of introduction of Regulation 4(2) (t) of PFUTP Regulations, 2003 i.e., September 06, 2013 will be liable for action for violation of regulation 4(2) (t) of PFUTP Regulations, 2003. Therefore, in view of the same, the allegation against the Noticee of violation of regulation 4(2) (t) of PFUTP Regulations does not stands established.

50. Since the alleged violation of Regulation 4(2) (t) of PFUTP Regulations is not established against the Noticee, therefore consequent Issues II & III mentioned in paragraph 18 requires no examination.

ORDER

51. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under section 15 I of the SEBI Act read with rule 5 of the Rules, I am of the view that no penalty is warranted against the Noticee viz. Mr Rajesh Jain in the matter and accordingly the matter is disposed of.

52. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date : February 28, 2022 **Vijayant Kumar Verma**

Place : Mumbai **Adjudicating Officer**