WTM/AB/WRO/WRO/7170/2019-20

SECURITIES AND EXCHANGE BOARD OF INDIA

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 THE 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

In respect of:

Noticee No.	Noticee Name	PAN	CIN/DIN
1.	PRAGYA DAIRIES & AGRO	AAFCP3908E	U01400MP2010PLC023243
2.	PUNAM CHAND PATIDAR	BTUPP0108C	02977863
3.	NANA LAL PATIDAR	AJWPP3490J	02978194
4.	POOJA PATIDAR	AVBPP1293Q	02977813
5.	DURGA PATIDAR	APJPP6921M	02977847
6.	RAJESH JAIN	AEDPJ0277M	02978284
7.	ANSAR AHMED	AFFPA4197L	02336694
8.	ALOK SAHAI VIDYARTHI	ABSPV8334R	Not Available/Applicable
9.	PRAMILA JAIN	Not Available	Not Available/Applicable

IN THE MATTER OF PRAGYA DAIRIES & AGRO LIMITED.

(The aforesaid entities are hereinafter individually referred to by their respective names/notice numbers and collectively as "the Noticees".)

1. The present proceedings have emanated from an interim order cum Show Cause Notice dated November 09, 2018 (hereinafter referred to as "**Interim Order**") passed by Securities and Exchange board of India (hereinafter referred to as "**SEBI**") against Noticee No.1, Pragya Dairies & Agro Ltd. (hereinafter referred to as "**PDAL**") and its five promoter-directors, i.e. Noticee 2 to 6, one professional

director i.e. Noticee no. 7 and two promoters i.e. Noticee no. 8 and 9.

2. In the Interim Order, the Noticees herein were *inter alia* directed, as under:

   i. Not to collect any fresh money from investors under its existing Scheme;
   ii. Not to launch any new scheme/plan or float any new companies/firm to raise fresh moneys;
   iii. Not to dispose of any of the properties or alienate the assets obtained directly or indirectly through the money raised by PDAL under its existing Scheme;
   iv. Not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of PDAL;
   v. To immediately submit a full inventory of the assets owned by PDAL out of the amounts collected from the investors under its existing Scheme;

3. The Interim Order came to be passed against the Noticees as SEBI had *prima facie* found that PDAL was mobilizing funds through its various schemes which were in the nature of unregistered Collective Investment Scheme and hence in violation of Section 12 (1B) of the SEBI Act, 1992 (hereinafter referred to as the "**SEBI Act**") and Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "**CIS Regulations**") and that the fund mobilizing activity of PDAL through the schemes referred to as Business Plans and described as Joint Venture pertaining to Cattle/Ghee as offered by PDAL (hereinafter referred to as **'Collective Investment Schemes'**), post September 2013 *prima facie* amounted 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 (hereinafter referred to as "**PFUTP Regulations, 2003**").

4. Vide the Interim Order, the Noticees were also called upon to show cause as to why, for the illegal mobilization of money by PDAL under its various Collective Investment Schemes without obtaining the Certification of Registration from SEBI, the following directions should not be passed against them:

i. PDAL and its directors and promoters, viz. Punam Chand Patidar, Nana Lal Patidar, Pooja Patidar, Durga Patidar, Rajesh Jain, Ansar Ahmed, Alok Sahai Vidyarthi and Pramila Jain, to wind up the existing *Collective Investment Scheme* and to refund the money collected under the *Scheme* with returns which are due to investors as per the terms of offer of the said *Scheme*, supported by a Winding up and Repayment Report (in accordance with the CIS Regulations, 1999) to the satisfaction of SEBI (to be submitted to SEBI within 7 days of completion of the refund); and

ii. The Noticees to be restrained/prohibited from accessing the securities market and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of **four** years from the date of effecting the refund.

5. In terms of the Interim Order, the Noticees were also provided an opportunity to file their reply, if any, to the Interim Order within 21 days from the date of receipt of the Interim Order and to also indicate whether they desire to avail an opportunity of personal hearing on a date and time to be fixed on a specific request to be made by the Noticees, in that regard.

6. I note that Interim Order was served on Noticee no. 1, 2, 3, 4, 5, 6, 7 and 9 through paper publication as attempts to complete the service through speed post and affixture had failed. I also note that the service of the Interim Order was made on Noticee no. 8 through SPAD. In the interest of justice, an opportunity of personal hearing was granted to all Noticees on August 21, 2019. The service of hearing notice was done through paper publication, for Noticee no. 1, 2, 3, 4, 5, 6, 7 and 9. The service of hearing notice was done upon Noticee no. 8 through SPAD. Noticee no. 8 had requested for preponing the hearing on August 20, 2019 hence, hearing for Noticee no. 8 was held on August 20, 2019. At the time of hearing, Noticee no. 8 sought adjournment on the ground that he required some time to engage an advocate. Accordingly, the matter was adjourned to September 13, 2019 for Noticee no. 8, on which date the Advocate representing Noticee No. 8 was heard. Noticee no. 1, 2, 3, 4, 5, 6, 7 and 9, did not appear on the scheduled date of hearing on August 21, 2019. I note that no reply has been received from

Noticee no. 1, 2, 3, 4, 5, 6, 7 and 9.

7. Before proceeding to examine the matter on merits, it would be appropriate to refer to the relevant provisions of law which have been alleged to be violated by the Noticees. The relevant extract of these provisions are as under:

Relevant extract of SEBI Act, 1992:

"11AA. ***Collective investment scheme.***

(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 the exemptions from CIS 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.

(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 ProvisionsAct, 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.

….

Section 12(1B)

12(1)……

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

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

sub-section (2) of section 30.

Explanation-For the removal of doubts, it is hereby declared that, for 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."

Relevant extract of CIS Regulations:

*"**No Person Other than Collective Investment Management Company to Launch collective investment scheme***

3. No person other than a Collective Investment Management Company which has obtained a certificate under these regulations shall carry on or sponsor or launch a collective investment scheme."

Relevant extract of PFUTP Regulations, 2003:

*"**4. Prohibition of manipulative, fraudulent and unfair trade practices***

(1)…….

(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."

8. I note that SEBI had conducted an examination into the activities of PDAL. During the examination letters seeking further information were sent by SEBI to Noticee no. 1 to 7. However, there was no reply to any of the letters so sent. Hence, information was sought from the complainants during examination. Upon an examination of the documents provided by the complainants, the following was observed –

a. From the copies of certificates issued by PDAL, it was observed that the same states -*"Certified that the person described in Schedule hereto is Registered Joint Venture of Consideration as shown in Schedule under Plan of Company, subject to the regular payment of Subscription(s) as mentioned in the said Schedule and also subject to "General Terms and Conditions" printed overleaf and terms and conditions as per Rule Book, as may be amended from time to time, and Company shall pay in Indian Currency at its Customer Service Center through Head Office, the amount due under this certificate in accordance with Terms of said Schedule to the person to whom the same in 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 part of this certificate."* Further, the copy of the certificate mentions *inter alia* the following details:

(i) Name & Address of Joint Venturer
(ii) Registration no. and date of commencement;
(iii) Plan No. Term
(iv) Cost of Cattle/Ghee/Product
(v) Mode of Payment
(vi) Installment of Subscription payable
(vii) Expected sum Payable on Expiry of Term C.O.C. /Ghee/Product
(viii) Subscription Due Dates
(ix) Date of Last Payment
(x) Date of Expiry of Term
(xi) Distributor's Code
(xii) Expected sum payable.

(b) The copy of certificate also has *'First Installment Receipt-cum-Acceptance Letter'*, attached to it.

(c) From the copies of documents containing the details of the Business Plans of PDAL, it is observed that the same contain the following Tables:

TABLE 1

(INSTALMENT PLAN – R60 – 60 MONTHS) TERM-5 YEARS

NO. OF CATTLE	COST OF CATTLE/GHEE (IN RS.)	INSTALMENTS				CATTLE / GHEE PAYMENT OR ESTIMATED AMOUNT (IN RS.)	COMPENSATION ON ACCIDENTAL DEATH (IN RS.)
		YEARLY	HALF YEARLY	QTRLY.	MONTHLY		
		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

TABLE 2

(INSTALMENT PLAN – R40 – 40 MONTHS) TERM-3 YEARS 4 MONTHS

NO. OF CATTLE	COST OF CATTLE/GHEE (IN RS.)	INSTALMENTS				CATTLE / GHEE PAYMENT OR ESTIMATED AMOUNT (IN RS.)	COMPENSATION ON ACCIDENTAL DEATH (IN RS.)
		YEARLY	HALF YEARLY	QTRLY.	MONTHLY		
		3.25	6.5	13	40		
10	40000	11500	5800	2950	1000	**45000**	-
9	36000	10350	5220	2655	900	**40500**	-
8	32000	9200	4640	2360	800	**36000**	-
7	28000	8050	4060	2065	700	**31500**	-
6	24000	6900	3480	1770	600	**27000**	-
5	20000	5750	2900	1475	500	**22500**	-
4	16000	4600	2320	1180	400	**18000**	-
3	12000	3450	1740	885	300	**13500**	-
2	8000	2300	1160	590	200	**9000**	-
1	4000	1150	580	295	100	**4500**	

TABLE 3

(INSTALMENT PLAN – R90 – 90 MONTHS) TERM-7 YEARS 6 MONTHS

NO. OF CATTLE	COST OF CATTLE/GHEE (IN RS.)	INSTALMENTS				CATTLE / GHEE PAYMENT OR ESTIMATED AMOUNT (IN RS.)	COMPENSATION ON ACCIDENTAL DEATH (IN RS.)
		YEARLY	HALF YEARLY	QTRLY.	MONTHLY		
		3.25	6.5	13	40		
10	90000	11500	5800	2950	1000	150000	90000
9	81000	10350	5220	2655	900	135000	81000
8	72000	9200	4640	2360	800	120000	72000
7	63000	8050	4060	2065	700	105000	63000
6	54000	6900	3480	1770	600	90000	54000
5	45000	5750	2900	1475	500	75000	45000
4	36000	4600	2320	1180	400	60000	36000
3	27000	3450	1740	885	300	45000	27000
2	18000	2300	1160	590	200	30000	18000
1	9000	1150	580	295	100	15000	9000

TABLE -4

(INSTALMENT PLAN – R75 – 75 MONTHS) TERM-6 YEARS 3 MONTHS

NO. OF CATTLE	COST OF CATTLE/GHEE (IN RS.)	INSTALMENTS				CATTLE / GHEE PAYMENT OR ESTIMATED AMOUNT (IN RS.)	COMPENSATION ON ACCIDENTAL DEATH (IN RS.)
		YEARLY	HALF YEARLY	QTRLY.	MONTHLY		
		7.5	15	30	90		
10	75000	11500	5800	2950	1000	125000	90000
9	67500	10350	5220	2655	900	112500	81000
8	60000	9200	4640	2360	800	100000	72000
7	52500	8050	4060	2065	700	875000	63000
6	45000	6900	3480	1770	600	75000	54000
5	37500	5750	2900	1475	500	62500	45000
4	30000	4600	2320	1180	400	50000	36000
3	22500	3450	1740	885	300	37500	27000
2	15000	2300	1160	590	200	25000	18000
1	7500	1150	580	295	100	12500	9000

TABLE - 5

(LUMP-SUM PLAN – F72 – 72 MONTHS)

NO. OF CATTLE	COST OF CATTLE/GHEE (IN RS.)	CATTLE / GHEE PAYMENT OR ESTIMATED AMOUNT (IN RS.)	COMPENSATION ON ACCIDENTAL DEATH (IN RS.)
1	5000	10000	5000
2	10000	20000	10000
3	15000	30000	15000
4	20000	40000	20000
5	25000	50000	25000
10	50000	100000	50000

TABLE - 6

(LUMP-SUM PLAN – F132 – 132 MONTHS)

NO. OF CATTLE	COST OF CATTLE/GHEE (IN RS.)	CATTLE/ GHEE PAYMENT OR ESTIMATED AMOUNT (IN RS.)	COMPENSATION ON ACCIDENTAL DEATH (IN RS.)
1	5000	20000	5000
2	10000	40000	10000
3	15000	60000	15000
4	20000	80000	20000
5	25000	100000	25000
10	50000	200000	50000

TABLE - 7

(LUMP-SUM PLAN – F102 – 102 MONTHS)

NO. OF CATTLE	COST OF CATTLE/GHEE (IN RS.)	CATTLE / GHEE PAYMENT OR ESTIMATED AMOUNT (IN RS.)	COMPENSATION ON ACCIDENTAL DEATH (IN RS.)
1	5000	15000	7500
2	10000	30000	15000
3	15000	45000	22500
4	20000	60000	30000
5	25000	75000	37500
6	50000	150000	75000
7	100000	300000	125000

(d) From the details contained in the copies of Certificates issued by PDAL as well as from the details of various plans contained in the above Tables, 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, which are described in the Certificates as Joint Ventures pertaining to Cattle/Ghee. The said Business Plans have been offered with options of investing money in monthly/quarterly/half-yearly/yearly instalments or as lump-sum payment and the schemes have varied tenures, like 3 years 4 months, 5 years, 6 years 3 months, 7 years 6 months, 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.

9. 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'. Further, the copies of Certificates issued by PDAL, which are available on record, pertain to FYs 2010-11, 2011-12, 2012-13

and 2013-14, which indicates that PDAL had raised funds even after FY 2011-12. Further, SEBI had also obtained bank statement of the PDAL's account (no. 910020014112887) maintained with Axis Bank, for the period from 24.04.2010 to 30.06.2017. From the same, it appeared that PDAL had collected funds during the FYs 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16. The said bank statement showed a total cash deposit of Rs.6,57,20,439/- in the bank account of PDAL during the said period. From all the above mentioned documents, it appears that PDAL has raised funds at least to the tune of ₹ Rs.12,98,27,007/- from investors.

10. In view of the above findings of examination, the Interim Order analyzed whether the schemes floated by PDAL satisfies the conditions laid down in section 11AA(2) of SEBI Act. The observations of the Interim Order in this regard and my findings on the same as discussed hereunder:

(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.

Observations of the Interim Order:

a. From the copies of Certificates issued by PDAL, which are available on record, it is noted that PDAL has collected funds from general public under its schemes referred to as Business Plans, which are described as Joint Ventures pertaining to Cattle/Ghee. The amounts have been collected in instalments or as lump-sum amount. 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.

b. Further, from balance sheet of PDAL as on 31.03.2012, it is observed that PDAL had mobilized a sum of Rs.12,98,27,007/- as on March 31, 2012, in respect of the said joint ventures. From the various entries in the Balance Sheet, it is noted that PDAL has incurred expenses on purchase of land, agro products etc. Further, it is also noted from the submissions of the auditor of PDAL that the

company was engaged in trading of agriculture products, seeds, allied items, contract farming, seed production and joint ventures to achieve its main object.

My Observations:

I note that none of the Noticees have refuted the above findings of the Interim Order. Further, from the above observations in the Interim Order, I find that the contributions/payments made by the investors were pooled and utilized for the purposes of the schemes pertaining to Cattle/Ghee. I also note that the said schemes being run by PDAL, were not Joint Ventures, which is further discussed at para 10 (iii) and (iv) of this order.

(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.

Observations of the Interim Order:

a. On perusal of the certificates issued by PDAL as well as the Tables pertaining to its Business Plans, it appears that the investors had invested money in the scheme to get a return on his investment in the form of 'Expected sum payable on Expiry of Term C.O.C./Ghee'. For example, on perusal of the copy of certificate issued to an investor, it is noted that under a plan of R-75 which is for a term of 6 yrs-3 months, the investor had invested Rs.37500/- in the form of monthly instalments of Rs.500 beginning on 29/11/2010 towards cost of cattle/ghee. As per the certificate, the term was to expire on 28.02.2017 upon which the investor was supposed to get Rs.62500/- as 'Expected sum payable on Expiry of Term C.O.C./Ghee'. Thus, it is clear that the investors' contributions or payments towards such scheme, as mentioned in above paragraphs, were made with an intention to earn profit/ income.

My Observations:

I note that none of the Noticees have refuted the above findings of the Interim Order. Further, I 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.

(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.

Observations of the Interim Order:

a. Based on the scheme, payment plan and contents of certificate, it is observed that the investment solicited under the schemes referred to as Business Plans, which are described as Joint Venture pertaining to cattle/ghee, were for a certain duration which indicates that the said investments were managed by PDAL till the period of agreement period/maturity period mentioned in the certificate. Further, the complainants have alleged that PDAL is not refunding the amount invested by the investors. In view of the above, it is apparent that the control over the management and operation of activities pertaining to the schemes entirely vested with PDAL.

b. The aforesaid observations indicate that the property, contribution or investment forming part of the scheme are 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.

My Observations:

I note that none of the Noticees have refuted the above findings of the Interim Order. Further, I note that PDAL is incorporated as a 'Company limited by

shares' under the Companies Act 1956. From the MoA of PDAL, I also note that Noticee no. 2, 3, 4, 5, 6, 8 and 9 were subscribers to the MoA of PDAL and it was these Noticees that had come together to set up PDAL. I also note that PDAL has a Board of Directors of which Noticee no. 2 to 7 are/were directors at different points of time. Thus, being incorporated as a Company, the Board of Directors of PDAL is responsible for the management of the affairs of PDAL. 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.

11. Upon a consideration of the preceding paragraphs, I find that the schemes referred to as Business Plans and described as Joint Venture pertaining to Cattle/Ghee as offered by PDAL satisfy the four requirements of a *'Collective Investment Schemes'* as defined in Section 11AA of the SEBI Act, viz. –

(i) There was pooling of contributions;
(ii) Contributions were made with a view to receive assured realizable value;
(iii) The contributions were managed on behalf of the investors, and
(iv) The investors did not have day to day control over the management of the schemes.

12. I note that PDAL has not obtained any Certificate of Registration from SEBI under the CIS Regulations. In view of the above, I reiterate the findings in the Interim Order that the Collective Investment Schemes have been carried out by PDAL in contravention of Section 12(1B) of the SEBI Act read with Regulation 3 of the CIS Regulations. I also find that the fund mobilizing activity of PDAL through the Collective Investment Schemes post September 2013 amounts to a fraudulent practice in terms of Regulation 4(2)(t) of the SEBI (PFUTP) Regulations, 2003.

13. I note that none of the Noticees except Noticee no. 8 has replied to the Interim Order. Noticee no. 8 was heard at the personal hearing held on September 13, 2019. Noticee no. 8 vide his reply dated December 21, 2018 has raised the following contentions to the directions contained in the Interim Order:

a. Noticee no. 1 lured me to join PDAL considering my experience in insurance marketing.
b. Noticee no. 1 suggested me to become a signatory to the Memorandum of Association of PDAL, stating that it is just a formality to incorporate a company.
c. Noticee no. 1 proposed that since he is short of heads to incorporate a company and I need not contribute any capital and have to just sign the documents for the purpose of incorporation of the company and whatever minimum equity shares are required to be subscribed he will pay for them and after some time he will find out some other person and transfer the shares from my name and would relieve me from the list of shareholders.
d. Since, I was intending to join them as employee, I had no reason to doubt their intentions or had the capacity to refuse them, because I was assured matching salary with assured incentives. Under these circumstances unwillingly I became one of the subscribers to the MoA and was allotted 2500 equity shares without any financial or other consideration to the company.
e. I was never appointed as director of PDAL.
f. Subsequently, Noticee no. 1 transferred the shares of PDAL from my name to his own name.
g. I was not involved in any decision making or other business activities of the company other than trading of goods and had no knowledge about the collection of funds by the directors of the company.
h. I deny having any knowledge of running any Collective Investment Scheme by the company and its directors.
i. I was never the promoter of the company, nor had any control of the affairs of the company at any point of time, as I was simply a shareholder for a very limited period of time without any involvement in the management and cannot be said to be a person-in-charge and responsible for any collective investment scheme business.

14. I note that, it is the case of Noticee no. 8 that he was not involved in any decision making or other business activities of PDAL other than trading of goods and had no knowledge about the collection of funds by the directors of PDAL. It is pertinent to mention that Noticee no. 8 has not denied the signing of MoA at the time of incorporation of PDAL. Thus, I note that being one of the signatories to the MoA, he has also subscribed to the initial share capital of PDAL. Now, some of the clauses mentioned in the Object Clause of the MoA of PDAL are reproduced as under:

A. THE MAIN OBJRCTS OF THE COMPANY TO BE PURSUED BY THE COMPANY ON ITS INCORPORATION ARE

1. *To carry all business & commercial activities pertaining to manufacture, production, sell, import-export or deal otherwise commercially in all kinds of dairy, agro & horticulture, seed, catelefeed, feed Supplements, Organic Foods, pesticides, fertilizers, Medicines, Aushadhi, Irrigation & Agricultural Equipments, Bio-gas Plant, Solar-light, etc. products including milk, cream, butter, ghee, cheese, fruits, vegetables, cereals, spices and all other variants of dairy and agro products including incidental and related activities thereto and manage & run dairy farms, live stocks& animal husbandry, to act as advisors and consultants therefor and in relation to these activities to enter into a joint venture activities also.*
2. *To carry on business as dealers, distributors, importers, exporters, agents, intermediaries, commission agents, marketing and sales promotional agents, joint ventures for all kinds of dairy and agro products including their variants.*

……..

B. OBJECTS INCIDENTAL OR ANCILARY TO THE ATTAINMENT OF THE MAIN OBJECTS OF THE COMPANY ARE:

…….

3. *To enter into partnership or any agreement for sharing profits, union of interest, joint adventure, reciprocal concession or otherwise with any individual, firm or company carrying on or engaged in or about to carry on or engaged in any business or enterprise which the company is authorized to carry on or engage in any business or transaction capable of being conducted*

so as directly or indirectly to benefit this Company and or take of otherwise acquire and hold shares or stock in or securities of and to subsidies or otherwise assist any such company and to sell, hold, reissue, with or without guarantee or otherwise deal with the same.

……..

10. *Subject to the provisions of Section 58 A and other relevant sections of the Companies Act 19565 and rules made thereunder and Directives of Reserve Bank Of India to receive money on deposit with or without allowances of interest, to borrow or raise money with or without security and/or secure the payment of money by mortgage or by the issue of bond mortgages, hypothecation, lien or any other security founded or based or charged upon all or any of the property or rights of the Company or in such other manner as the Company shall think fit and for the purposes aforesaid to charge all or any of the Company's property or assets movables or immovable liquid or otherwise present and future , including its uncalled capital and collaterally or further to secure any securities of the Company by a trust deed or other assurance and to redeem, purchase or pay off any such security , provided that the Company shall not do banking business as defined in the Banking Regulation Act, 1949.*

……...

C OTHER OBJECTS ARE:

……...

31. *To carry on business of Finance, Financiers, Promoters, Guarantors, Hire purchase Transactions, financing of hire purchase transaction and to finance directly or by way of leasing and or hire purchase finance to industrial enterprises/undertakings, by making advances or subscribing/investing to the share capital, providing seed capital and to finance for purchase of land, industrial sheds, building, machineries, plant, automobiles, Truck, Buses, Jeeps, cars, lorries, tractors and other industrial/consumer/household goods, items and for that purpose to receive money accept deposit/loans, to draw, accept, discount endorse, acquire, sell purchase any negotiable or transferable securities as per R.B.I. Guidelines.*

……...

51. *To carry on business of & engage in all commercial activities pertaining to finance, lease, hire purchase or easy payment system, investment, buy, sell, purchase, discount, lend, hold, underwrite, acquire, trade, and to act as broker, sub broker, advisor, consultant, secretaries, agent, administrator, marketing, economists, merchant banker, register, share transfer agent, portfolio manager of share, stocks, securities, debentures, bond, mutual fund, commodities, future, option, derivatives, credit instruments, project, govt. securities, bills and bond and to hirer purchase, equipment finance, lease back finance, deferred finance, discounting, letting or hire of properties, all such properties goods, mortgage, project finance, general finance, finance for land, building, plant, machinery, vehicles, all articles and things and to act as advisors and consultants therefore.*

……..

15. On perusal of the above clauses and the other Object Clauses of the MoA, I find that the object of PDAL is so wide that it would cover any business activity under the sun. I note that Noticee no. 2, 3, 4, 5, 6, 8 and 9 were signatories to the MoA. Hence, it is a fact that all these Noticees, had come together to promote a venture that was capable of doing any business activity including the Collective Investment Scheme. Thus, it will also not be incorrect to state that these Noticees had knowledge of the business activity that were to be conducted by the newly formed company i.e. PDAL.

16. I note that Noticee no. 8 has admitted signing the MoA of PDAL, but denied being the promoter of PDAL. Thus, I find that it is the case of Noticee no. 8 that he was tagged as 'promoter' of PDAL merely because he was the signatory to the MoA. I note that it is not disputed by Noticee no. 8 that he was one of the signatories to the MoA, thus it is a matter of record that Noticee no. 8 was one of the persons involved in the incorporation of PDAL. Further, as discussed in the previous para, I note that Noticee no. 8 cannot deny having knowledge of the business activity that were to be conducted by PDAL, since he had signed the Object Clause of the MoA. I note that Noticee no. 8 was also an employee of PDAL from October 29, 2010 to September 15, 2011, working as National head – Product Division. Thus, I do not find merit in the contention of Noticee no. 8 that he was merely a promoter because he was a signatory to the MoA at the time of incorporation, rather I find

him to be associated with PDAL even beyond the date of incorporation of PDAL, precisely till September 15, 2011 when he resigned from PDAL as an employee.

17. I also note that Noticee no. 8 has stated that he had transferred the shares that he had subscribed to at the time of incorporation of PDAL, to Noticee no. 2, for which he has submitted a copy of the share transfer form as evidence. Noticee no. 8 states that he was the shareholder in PDAL for a very short period i.e. from March 18, 2010 to May 27, 2010. However, from the copy of the share transfer form given by Noticee no. 8, I do not find any evidence that this has been lodged with PDAL for transfer. Nor do I find any other supporting documentary evidence such as proof of bank entry for payment of consideration or copy of share certificate showing endorsement by PDAL, that would indicate that the share transfer was successfully recorded in the Register of Members of PDAL. Without prejudice to the fact that the shares that were subscribed by Noticee no. 8 have failed to have been proven to be transferred to Noticee no. 2, I find that Noticee no. 8 is the promoter of PDAL as he was one of the signatories to the MoA of PADL and he was the subscriber to the initial share capital of PDAL and was also associated with PDAL even after its incorporation, as an employee in the position of National Head- Products Division, right at the time when PDAL was running the Collective Investment Schemes. Thus, I find Noticee no. 8 liable for violation of section 12(1B) of SEBI Act for sponsoring or running the Collective Investment Schemes without seeking registration from SEBI.

18. From the details contained in the copies of Certificates issued by PDAL as available on record, as well as from the details of various plans/schemes floated by PDAL as available on record and from the copies of bank statements of PDAL, it is noted that the PDAL has collected funds from the public during the FY 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16, under various Collective Investment Schemes. The following are the details of the present and past directors/promoters of PDAL, as per information available on the *MCA21 Portal*:

DETAILS OF THE PRESENT AND PAST DIRECTORS/PROMOTERS OF PDAL:

Noticee no.	**NAME OF THE PERSON**	**DIN**	**From**	**To**

2	PUNAM CHAND PATIDAR	02977863	18/03/2010	Continuing
3	NANA LAL PATIDAR	02978194	18/03/2010	Continuing
4	POOJA	02977813	18/03/2010	29/09/
5	DURGA PATIDAR	02977847	18/03/2010	29/09/
6	RAJESH JAIN	02978284	18/03/2010	03/03/2011
7	ANSAR	02336694	07/08/2014	13/08/2015
8	ALOK SAHAI	NA	----------	----------
9	PRAMILA JAIN	NA	----------	----------

19. I note that Noticee no. 2 and 3 are the present Directors and continue to be responsible for the affairs of PDAL. *As per Form No. DIR-12 filed by PDAL with RoC, Noticee no. 4 and 5, who were appointed as directors on 18/03/2010 had resigned on 18/03/2010 itself. However, the Form 20B filed by PDAL for FY 2011-12 lists them as directors as on 29/09/2012. The same indicates that they were still directors during the period of fund mobilization. Further, as per Forms Nos. DIR-11 / DIR-12 filed with RoC, Noticee no. 6, had joined as a director on 18/03/2010 and had resigned on 03/03/2011 which indicates that he was director of PDAL during the period of fund mobilization whereas Noticee no. 7 had joined as director on 07/08/2014 and had resigned on 13/08/2015, which indicates that he was a director of PDAL during the period of fund mobilization. Further, Noticee no. 2, 3, 4, 5, 6, 8 and 9 are also the promoters of PDAL. Thus, as directors and/or promoters of PDAL, the Noticee no. 2 to 9 are liable for the alleged contraventions by PDAL.

20. In view of the observations made in this order, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 and Sections 11(1), 11B and 11(4) thereof and Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, and in suppression of directions at para 23 of the Interim Order, hereby issue the following directions:

    i. PDAL shall wind up the existing Collective Investment Schemes and refund the money collected by the said company under the schemes with returns which are due to investors as per the terms of offer within a period of three months from the date of this order. The refund shall be made through ‘Bank Demand Draft’ or ‘Pay Order’ both of which should be crossed as “Non-Transferable” or through any other appropriate banking

channels, with clear identification of beneficiaries and supporting bank documents;

ii. The present directors of PDAL namely, Noticee no. 2 and 3 shall ensure that direction given to PDAL under para 20 (i) is complied with;

iii. Upon completion of the refund as directed above at para 20 (i), within further period of fifteen days, PDAL and its present directors namely, Noticee no. 2 and 3 shall submit a winding up and repayment report (WRR), separately or jointly, to Chief General Manager- EFD-1-SEBI, in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999. The WRR shall be supported by the proof of the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds along with a certification of such repayment from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who on the date of issuance of such certificate has been categorized so by the Institute of Chartered Accountants of India, holding a Peer Review Certificate;

iv. In case of failure of PDAL to repay the investors as per directions at para 20 (i), Noticee no. 2, 3, 4, 5, 6 and 7 jointly and severally, shall refund the money collected by PDAL, under its various Collective Investment Schemes with returns which are due to investors as per the terms of offer, within a further period of two months. The refund shall be made through 'Bank Demand Draft' or 'Pay Order' both of which should be crossed as "Non-Transferable" or through any other appropriate Banking channels, with clear identification of beneficiaries and supporting bank documents. It is clarified that liability of Notice no. 4, 5, 6 and 7 shall be to the extent of amount of monies collected by PDAL under its unregistered collective investment schemes during their respective period of directorship in PDAL;

v. Upon completion of the refund as directed above in para 20 (iv), Noticee no. 2, 3, 4, 5, 6 and 7, shall file a report of such completion of payment with Chief General Manager- EFD-1-SEBI, within a period of fifteen days, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution.

vi. In event of failure by Noticee no. 1, 2, 3, 4, 5, 6 and 7, to comply with the directions as sub para (i) and sub-para (iv) above, as the case may be, SEBI to initiate recovery proceedings under the SEBI Act against the said Noticees;

vii. Noticee no. 1, 2, 3, 4, 5, 6 and 7, shall not alienate or dispose of or sell any of their assets except for the purpose of making refunds to its investors as directed above;

viii. Noticee no. 1, 2, 3, 4, 5, 6, 7, 8 and 9, shall abstain from collecting any money from the investors in respect of the Collective Investment Scheme being run by PDAL.

ix. Noticee no. 1, 2, 3, 4, 5, 6 and 7, are restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly, till the directions for refund/repayment to the investors are complied with, as directed at pre paras to the satisfaction of SEBI and WRR/ Report of completion of payment with SEBI is submitted to SEBI and for a further period of four years from the date of completion of the refund, as directed above.

x. Noticee no. 8 and 9, are restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly, for a period of four years from the date of this order.

21. This Order shall come into force with immediate effect.

22. A copy of this Order shall be forwarded to the Noticees, recognized stock exchanges and depositories for necessary action.

Sd/-

Place: Mumbai
Date: March 06, 2020

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA