THE FIRST CUSTODIAN FUND (INDIA) LTD.

CORPORATE OFFICE : SURYA MAHAL 3RD FLOOR, NAGINDAS MASTER ROAD, FORT, MUMBAI-400 023. INDIA
PHONE : 6635 9001 • 6635 9002 • FAX: +9122-2270 3539 • CIN : L67120WB1985PLC038900

3rd December, 2018

Listing Department
Bombay Stock Exchange Ltd.
Dalal street, Mumbai.

Dear Sir,

Re: Listing regulation 30
Sub: Order passed by SEBI against our director Mr. Manish Banthia

SEBI vide order dated November 29, 2018 passed an order against our director Mr. Manish Banthia in the matter of Paradigm Agro Products Ltd restrained from holding positions as director of any listed public company.

We have been informed that the director is taking steps to file appeal against the said order in SAT, copy of the order is enclosed herewith for your information.

Yours faithfully,
For First Custodian Fund (I) Ltd.

Managing Director

Encl: as above

WTM/MPB/EFD1-DRA3/ 64 /2018

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999

In Re: SEBI (Collective Investment Schemes) Regulations, 1999

In respect of:

S. No.	Name of the Entity	CIN/PAN/Address
1.	M/s. Paradigm Agro Products Limited	U74999MH1993PLC074700
2.	Sushil Gopaldas Mantri	AFCPM3249L
3.	Manish Rajendra Banthia	ADLPB8925F
4.	Rajendrakumar Dhanraj Banthia	AAWPB0958N
5.	Shrikant Gopaldas Mantri	AAHPM1105F
6.	Pravin Patkar	502, E Powai Prashat CHS, Opp IIT Main Gate, Powai, Mumbai- 400076

In the matter of Paradigm Agro Products Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a complaint dated December 02, 2014 alleging that the complainant has not received

the amount on maturity invested in the scheme floated by Paradigm Agro Products Limited (hereinafter referred to as "**PAPL / Company**"). The compalinant had also submitted the scheme document.

2. Pursuant to the complaint, an enquiry was conducted by SEBI into the alleged activity of mobilization of funds by PAPL and to see whether there was any violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act"**) and the Rules and Regulations made thereunder and possible violation of provision of SEBI (Collective Investment Scheme) Regulations, 1999 (hereinafter referred to as "**CIS Regulations"**).

3. Accordingly, SEBI vide its letter dated January 16, 2015 sought certain information from the company. In response to the said SEBI letter, PAPL vide its letter dated March 05, 2015 submitted the following:

   - Memorandum and Articles of Association
   - Contact details of PAPL.
   - Details of the past and present Directors
   - Copy of the application forms submitted by the applicant
   - Copy of the certificate of En-Friend Unit-1
   - Chart of Fund mobilized year wise
   - Details of year wise amount paid till date under the scheme
   - Audited financial statements for the financial years ended March 31, 2012, March 31, 2013 and March 31, 2014
   - Income Tax Returns for the Assessment Year 2012-13, 2013-14 and 2014-15
   - Copies of statements of bank accounts
   - List of all the investors with addresses

SHOW CAUSE NOTICE

4. Consequent to the completion of examination a common Show Cause Notice dated January 21, 2016 (hereinafter referred to as "**SCN**") was served / sent to PAPL, Mr. Sushil Gopaldas Mantri, Mr. Manish Rajendra Banthia, Mr. Rajendrakumar Dhanraj Banthia, Mr. Shrikant Gopaldas Mantri and Mr. Pravin Patkar (hereinafter referred to as "**Noticees No. 1 to 6**" respectively) in the matter of Paradigm Agro Products Limited to show cause as to why suitable actions/directions in terms of Sections 11, 11(4) and 11B of the SEBI Act should not be initiated against them for the alleged violation of the provisions of Section 12(1B) of SEBI Act read with Regulations 3, 5, 68 and Regulation 69 of the CIS Regulations.

5. It was alleged in the SCN that the scheme/plan EN Friend Series - 1 floated by the Noticees was in the nature of Collective Investment Scheme (hereinafter referred to as "**CIS**") as defined under Section 11AA of SEBI Act. Consequently, the units sold in the aforementioned plan would qualify as securities under Securities Contracts (Regulation) Act, 1956. It was further alleged that the PAPL by not applying for registration with SEBI as CIS has allegedly violated the aforesaid provisions of SEBI Act and CIS Regulations. Other Noticees in the extant matter were Directors of PAPL and were responsible for the conduct of the business of PAPL at the relevant point of time.

REPLY & HEARING

6. Noticees namely Mr. Sushil Gopaldas Mantri, Mr. Manish Rajendra Banthia, Mr. Rajendrakumar Dhanraj Banthia and Mr. Shrikant Gopaldas Mantri vide their letters dated February 12, 2016 and company vide its letter dated February 29, 2016 *inter alia* submitted as follows:

   - The company did not mobilise or pool any funds from the general public.

   - Teak Wood Plantation Scheme was the only scheme floated by the company in the year 1994 and the said scheme was wound up in 1998 much prior to the commencement of CIS Regulations.

- Registration of the scheme was not warranted as the said scheme was wound up and the company was not carrying the said scheme as on the date of commnencement of CIS Regulations.

- Mr. Sushil Gopaldas Mantri, Mr. Manish Rajendra Banthia, Mr. Rajendrakumar Dhanraj Banthia and Mr. Shrikant Gopaldas Mantri had resigned from the company w.e.f. March 01, 2001.

- Noticees requested for inspection in the matter.

7. Noticees No. 1 to 5 were granted an opportunity of inspection on March 31, 2016. The Authorised representative (hereinafter referred to as "**AR**") of the Noticees No. 1 to 5, Mr. Jaikishan Lakhwani conducted the inspection on their behalf. On the conclusion of inspection, the AR had stated that he would inform SEBI if any other additional documents would be required in the matter within 10 days. Pursuant to inspection, Noticees No. 1 to 5 vide their letters dated April 7, 2016 requested for extension of 10 days' time to provide a list of additional documents required by them owing to a long holiday weekend.

8. Noticees No. 1 to 5 were informed vide an email dated April 7, 2016 that their request for extension of time has not been acceded to. In response to the same, the said Noticees vide their letters dated April 9, 2016 submitted that as the matter pertains to the years 1994-1996 and no law requires them to maintain records and books of accounts beyond 8 years, it is essential that the inspection of documents is provided to their satisfaction. Further, the Noticees again reiterated their request to be provided certain documents as sought by their letter dated February 29, 2016. In addition they also requested for copies of internal notings in the matter. Noticees were informed vide an email dated May 25, 2016 that all the documents relied upon by SEBI while issuing the SCN have already been provided to them and were further advised to submit their reply to the SCN at the earliest.

9. Noticees No. 1 to 5 vide their letters dated June 25, 2016 requested to cross examine the complainant in the present matter. Noticees were informed vide an email dated

June 27, 2016 that the complaint was only a trigger point for SEBI's examination in the matter. No statement of the complainant was recorded by SEBI and consequently no cross examination can be provided in the matter. The company replying on behalf of all the Noticees vide its letter dated June 27, 2016 submitted affidavit from 4 of its investors confirming that the scheme was closed in 1998. Further, all those investors who had surrendered their unit certificates were paid back in full. It was also submitted that if SEBI believes that the company is governed under CIS Regulations, then SEBI should allow the company to apply for registration under CIS Regulations and once it is registered, the company should be allowed to collect back all the amount of fixed interest paid to then investors and also recover the principal amount paid back to the investors as the value of the asset under the scheme was reduced to zero and under CIS Regulations nothing would have been payable to the investors. The Noticees again reiterated their request to cross examine the complainant as examination in the matter was conducted by SEBI based only on the complainant's letter.

10. Vide letter dated June 29, 2016, the company replying on behalf of all the Noticees submitted that if SEBI considers the company as CIS under CIS Regulations then in that circumstances, the company requested its letter to be considered as an application for winding up of the scheme under Regulations 73 and 74 of CIS Regulations. As per CIS Regulations the company will be sending the information memorandum to the investors within 2 months from the date of receipt of intimation from the Board. On completion of the winding up, the company will file with Board such report as specified by the Board. The company again vide its letter dated July 11, 2016 submitted an affidavit from one of its investors confirming that the scheme was closed in 1998. On August 10, 2016, the company vide its letter sought SEBI's reply on its application for winding up of the scheme and the name of the person / official refusing them the cross examination of the complainant.

11. The company vide its letter dated April 8, 2017 reiterated its earlier submissions and *inter alia* submitted as follows;

- It submitted a certificate dated April 6, 2017 issued by the Chartered Accountant, Paresh D Shah & Co. stating that no funds were collected after January, 1996 by the company.

- Despite the asset value of the scheme becoming zero, the company fulfilled its obligation and paid interest to the investors and also repaid the principal amount outstanding to all the investors who deposited the unit certificate with the company.

12. Vide letter dated April 25, 2017, the company submitted as follows:

- It referred to the certificate issued by the Chartered Accountant, Paresh D Shah & Co. wherein it was certified that the company had appointed an Escrow Agent, Mr. Suman Lodaya, Chartered Accountant (hereinafter referred to as "**Mr. Lodaya**") and the entire outstanding amount of ₹ 24,51,000/- has been deposited in account number 10501131003399 maintained with Oriental Bank of Commerce, Fort Branch.

- The company is in receipt of a letter dated April 24, 2017 from Mr. Lodaya which states that he has *suo moto* dispatched the cheques to all the investors who have not submitted their original unit certificate to the company.

- It has been demonstrated that the company is not in control of the balance amount that is payable to the investors as the same was in control of the Escrow Agent and he has already dispatched the cheques to the investors.

13. The company again vide its letter dated June 5, 2017, submitted as follows:

- The scheme was wound up in 1998 as the scheme was no longer viable and the property being teak wood plants had been totally damaged. Despite all the assets of the scheme having been damaged, the company decided to honour all the postdated cheques for interest and also to refund the Principal amount invested.

- The scheem does not qualify as a scheme under CIS Regulations because the scheme was essentially a deposit taking scheme.

- Instead of sharing returns being the profits from the scheme, the scheme guaranteed a fixed return, i.e., a return of 15% per annum. The scheme does not meet the criteria as specified under Section 11AA (2) (ii) of SEBI Act. Further, the investors never contributed to this scheme with the intention of receiving profits in lieu of investments. It may kindly be noted that all the investors opted for and received only fixed return of 15% and none of the investors received return that was derived from / had any link with the profit of the scheme which was negative as the Principal amount invested had reduced to zero because of crop failure.

- Kindly refer to Regulation 25 of CIS Regulations which states that "*No CIS shall provide guaranteed or assured returns.*" Whereas in the instant case, it was a deposit taking scheme which was supposed to give investors a fixed return i.e., 15%.

14. The company vide its letter dated October 16, 2017 informed SEBI that roughly 50% of the cheques issued by it, have already been enchased and the company is making endeavors to locate the remaining investors / depositors at its cost to pay to them also. Kindly note that this payment is being paid at total risk to the company in as much as without receiving the original deposit receipts. Company will have to make the payment again to a third party, if a duly executed and transferred original deposit receipt is produced by the third party. Further, the company reiterated its request for inspection, cross examination and approval of winding up the scheme. Besides from repeating its submission and requests, the company vide its letter dated October 30, 2017 further submitted that since the validity of the cheques are for three months from date of issue, Escrow Agent will issue new cheques to the remaining investors after verifying records. In this regard, the company is also making concrete endeavours to locate the new addresses (if any) of the remaining investors/depositors at its cost in order to refund to them at the earliest even if they have not deposited original receipts with us. It may kindly be noted that back in 1994, KYC was not PAN or Aadhar linked. The company vide its letter dated April 17, 2018 submitted Winding Up and Repayment Report (hereinafter referred to as "**WRR**") of the scheme with details of payment signed by an Auditor to SEBI.

15. Noticees were granted an opportunity of hearing in the extant matter on June 13, 2018 at SEBI Bhavan, Mumbai at 4:00 pm vide hearing notice dated May 17, 2018. In response to the same, the company vide its letter dated June 11, 2018 replying on behalf of everyone except Mr. Pravin Patkar *inter alia* submitted as follows:

- Noticees requested to adjourn the scheduled hearing to any date after June 30, 2018, as their AR was travelling.

- It is submitted that by not providing the documents as requested by the Noticees and opportunity of cross examination of the complainant, SEBI has not only denied natural justice but also has denied an opportunity of fair trial to the Noticees which has caused serious prejudice to them. Therefore, it is submitted that the hearing in the matter at this stage can be only on the issue of inspection of documents and cross examination.

- The outstanding payments remaining to be paid to investors on the date when CIS Regulations came into effect was not on the account of any act of omission or commission on their part. In this regard attention is being drawn to WTM's order dated February 23, 2018 in the matter of *Popular Agro Farms Pvt. Ltd.* wherein it was held that *"It appears that the company had launched its "Popular Triple Tree Bonanza" scheme before the promulgation of the Securities Law (Amendment) Act, 1995 (whereby sub-section (1B) was inserted in Section 12 of the SEBI Act, 1992 w.e.f. 25.01.1995) and the CIS Regulations and had not raised any funds subsequently. I note that the Noticees vide letter dated September 25, 2017 have submitted a WRR, certified by a chartered accountants' firm, indicating that the company has made refunds to all the investors from whom it had mobilized funds under its various. The WRR also contains a letter dated July 25, 2017 from the chartered accountants' firm certifying that the Maturity value against all the three schemes of the company have been closed as per the statement attached and that no further amount has been mobilized by the company against the said schemes. It further states that the certificate has been issued based on the details and*

documents submitted by the company. I further note that the company has already been dissolved as its status on MCA21 portal is showing as struck off. Considering that the company has made refunds to all the investors and has submitted a WRR to this effect, I find it appropriate not to proceed any further in this matter, after issuing a warning to the Noticees."

- In view of the above, the Noticees requested to drop the proceedings as the scheme was wound up and was not in operation even before the CIS Regulations came into effect. Therefore, their scheme was never under the jurisdiction of SEBI. Further, the company has already made refunds to all investors and has submitted a WRR to the effect.

16. Based on Noticees No. 1 to 5 adjournment request, all the Noticees in the present matter were granted an opportunity of hearing on July 18, 2018 at SEBI Bhavan, Mumbai at 3:00 pm, vide hearing notice dated June 20, 2018. Further, Noticees No 1 to 5 were informed that their request for cross examination and inspection was considered by WTM and considering that no statement of the complainant was recorded, cross examination in the matter is not warranted. With respect to inspection of documents, Noticees No. 1 to 5 were informed that since all the documents relied upon by SEBI while issuing the SCN in the extant matter were already provided to them, no further inspection is warranted in the matter.

17. The company vide its letter dated June 28, 2018 submitted a CA certificate certifying that "*all the funds mobilized were invested in the assets of the scheme and the company had made its last investment in the teakwood plantation under the En-friend scheme in the year 1996 and the company has never booked any income by way of sale of Teakwood or produce from the assets under the scheme."* It is therefore, clear that the investment in the assets of the said scheme had been wiped off and the assets of the scheme had eroded to zero. As per CIS Regulations, investors are entitled only to get return on their investment which is equal to the return generated by CIS on the amount invested minus the investment management fee. Further, as per "*SEBI Internal Guidelines on selection of cases for Enforcement Action*", no action under

Sections 11 and 11B of SEBI Act is to be taken in cases like the one against the Noticee.

18. On the scheduled date for hearing, Mr. Jaikishan Lakhwani, and Ms. Isha Raman, Advocates along with Mr. Shrikant Gopaldas Mantri appeared on behalf of Noticee No. 1 to 5 and *inter alia* made the following submissions :

- The ARs reiterated the submissions already made vide their earlier replies.
- The Plantation scheme started in 1994 and was closed in 1996 and in 1998 investors were informed and the investors repaid through postdated cheques along with Certificates for three years. The net amount due to repay to the investors is only ₹ 24 lakh. For the repayment of the same, the Noticees appointed an Escrow Agent. The Agent has already repaid ₹ 11.69 lakh.
- The ARs have also relied upon the Order of SEBI in the matter of Popular Agro Limited.
- The Noticees were advised to submit the Bank Statements for the money repaid for the relevant period.
- No one appeared for Mr. Pravin Patkar. The ARs submitted that he was the M.D. of the company and he left the Company in 1998.
- The Noticees were given two weeks' time (i.e. August 02, 2018) to file additional written submissions along with supporting documents, if any.

The hearing in the matter was concluded.

19. Pursuant to the hearing, the company vide its letter dated August 01, 2018 reiterated its earlier submissions and *inter alia* submitted as follows:

- It may kindly be noted that the documents related to procedural part of the proceedings was also not provided during the inspection. Your Honor's attention is drawn to order of Hon'ble Delhi High Court dated July 09, 2018 in the matter

of Amit Jain (W.P.(C)8394/2014), where the SCN for alleged violation of SEBI (PIT) Regulations,1992 was struck down on the following procedural grounds-

"*It is necessary for the Board to form an opinion that there are grounds for adjudging under any of the provisions of Chapter VIA of the SFB1 Act, before appointing Adjudicating Officer. (Para 33 of the order). In this case, there was no noting by the Whole Time Member expressly stating that he has formed such an opinion for initiating adjudication process. The Whole Time Member has not even made any endorsement that he is of an opinion that there are grounds for adjudging under Chapter VIA of the SEBI Act and therefore, the question of inferring that he had formed such an opinion does not arise. Accordingly, the SCN was set aside*."

In light of the above, it is clear that documents related to procedural part of the proceedings are equally important to determine the issue arising out of SCN.

- Principles of fairness demand that the entire relevant material on record should be made available for inspection to the person whose conduct is in question. Immaterial is the fact that the authority is or is not relying upon the same. The reason is that every enquiry has to conform to the basic rules of natural justice and one of the elementary principles is that every action must be fair, just and reasonable.

- Further, it has also not been conveyed to us whether the decision to not provide the pending documents is that of the Enforcement Department/ Investigation Department of SEBI or that of the Hon'ble Quasi-Judicial Authority. If the decision not to provide the documents asked for in inspection has been taken by the Investigation Department/Enforcement Department or the Board, it may kindly be noted that Board is one of the parties in this matter before your Honour. Your Honour as Quasi-Judicial Authority is totally independent and has to act in that manner.

- It is humbly submitted that the scheme was wound up in 1998 as the scheme was no longer viable and the property being teak wood plants, was totally damaged.

It may kindly be noted that the amount raised by the company under the scheme was ₹ 2,18,55,000/-. This amount was completely deployed for the purpose of development of land, the plantation, purchasing fertilizers and pesticides irrigation facility, labour payments and infrastructure development etc. for plantation under the scheme.

- As per CIS Regulations, investors are entitled ONLY to get return on their investment which is equal to the return generated by the Collective Investment Management Company on the amount invested minus the investment management fee. It may kindly be noted that the company has already refunded the principal amount invested by the investors/depositors along with the interest. Therefore if SEBI holds this scheme as CIS, then the company will be entitled to recover the money paid to investors in excess of proportionate assets of scheme that has been paid by the noticee to the investors/depositors.

- All the (cheque of) balance payable to investors of the Paradigm Enfriend Series - I was issued to investors and sent to them via courier at the registered address. As at March 31, 2018 out of the cheques issued of ₹ 24,51,000/- to the investors, ₹ 11,46,000/- cheques were cleared/encashed and balance of ₹ 13, 05, 000/- are not encashed and are lying in Escrow Account (Copy of relevant bank statement and CA certificate is enclosed).

- At the time of hearing, the Noticees were asked to present the bank statements pertaining to period when payments to investors were made, communication regarding closure of scheme, notice of refund etc. Kindly note that these documents now pertain to a period which is 20 years back. It is impossible to provide such records from such an early date and we do not have complete set of records from that period.

- Please note that even as per Section 209 (4A) of Companies Act, 1 1956 prevailing during the period under consideration – "*The books of account of every company*

relating to a period of not less than eight years immediately preceding the current year together with the vouchers relevant to any entry in such books, of account shall be preserved in good order: Provided that in the case of a company incorporated less than eight years before the current year, the hooks of account for the entire period preceding the current year together with the vouchers relevant to any entry in such books of account] shall be so preserved."

- The Companies Act, 2013 also has continued with the same provisions as provided under Section 128 (5) of the Act. Also under Income Tax Act, 1961, "*Assessees are required to preserve the specified books of account for a period of' 6 years from the end of the relevant assessment year, i.e., for a total period of 8 previous years''.* Therefore even the principle of law has outlined a period of upto 8 years to preserve the record.

20. The company vide its letter dated August 08, 2018 submitted a second WRR showing the repayment made to the investors, duly certified by a Chartered Accountant. The company vide its letters dated August 14, 2018 and August 17, 2018 again repeated its submissions with respect to its scheme not falling under SEBI's jurisdiction. Further, it also submitted that it is not necessary that all schemes in which money is collected from investors are CIS as defined under CIS Regulations. SEBI in its submission before Hon'ble Supreme Court of India (hereinafter referred to as "**SC**") in the matter of *Humanity Salt Lake* Vs. *Union of India & Ors.* dated March 3, 2017 has stated that in over 1,000 cases, it has closed the matters as it did not fall under its jurisdiction / regulations. Vide its letter dated October 15, 2018, the company submitted the information obtained by it from SEBI under the Right to Information Act, 2005. As per the said information, 1,478 cases were found to be not falling under the category of CIS and out of these cases, 486 cases were referred to the Ministry of Corporate Affairs, as deposits taken by non-NBFC companies are regulated by MCA and SEBI has no jurisdiction over these cases. In view of the same, it is submitted that company's scheme was not in the nature of CIS and the same was wound up in 1998. The company was not required to apply for registration under CIS Regulations. Therefore, the scheme did not fall within the jurisdiction of SEBI.

FINDINGS & CONSIDERATIONS

21. I have perused the SCN, written and oral submissions and other materials available on record. On perusal of the same, the following issues arise for consideration. Each issue is dealt with separately under different headings.

    (i) Whether the scheme floated by the Noticees is in the nature of a CIS?

    (ii) If answer to issue No. (i) is in affirmative, whether the scheme floated by the company is governed by the relevant provisions of SEBI Act and CIS Regulations?

    (iii) If answer to issue No. (ii) is in affirmative, whether PAPL has violated the provisions of SEBI Act read with CIS Regulations?

    (iv) If answer to issue No. (iii) is in affirmative, whether Noticees No. 2 to 6 are responsible for the same?

    (v) If answer to issue No. (iv) is in affirmative, what directions, if any should be issued against the Noticees?

22. Before proceeding to deal with the above mentioned issues, I deem it necessary to deal at the outset, with a preliminary issue raised by the Noticees No. 1 to 5 related to "inspection and cross examination". The said Noticees have submitted that certain documents and internal notings as sought by them have not been provided to them for inspection. In this regard, they have relied upon the order of Hon'ble SC in the matter of *SEBI* Vs. *Price Waterhouse et. al* dated January 10, 2017. Further, it has been submitted that documents related to the procedural part of the proceedings were also not provided for inspection. It is submitted that principles of fairness demand that the entire relevant material on record should be made available for inspection to the person whose conduct is in question. It is also submitted that it is immaterial whether the authority is or is not relying upon the same. With respect to cross examination, the said Noticees have submitted that the denial of the opportunity to cross examine the complainant, not only violates principles of natural justice but the

Noticees have also been denied a fair trial, causing serious prejudice to them.

23. I note that SEBI vide its email dated May 25, 2016 and vide hearing notice dated June 20, 2018 had informed the said Noticees that all the documents relied upon by SEBI while issuing the SCN has been provided to them, hence no further inspection is warranted in the extant matter. I note that it is neither the case of Noticees that documents relied upon in the SCN have not been furnished to them, nor it is the case of Noticees that any particular document in possession of SEBI which has bearing on the issues involved and was relied upon, has been denied to the Noticees, as a result of which prejudice has been caused to Noticees. Further, the Noticees have not demonstrated as to how the failure to furnish the documents as sought by them, have caused prejudice to them. In this regard, I would like to refer to the order of Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") in the matter of M*/s. Amadhi Investments Limited* Vs. *SEBI* dated August 3, 2011 wherein it was observed as follows:

"…Do the rules of natural justice require that an authority must allow inspection of all the material in its possession which is not even referred to or relied upon in an inquiry against the delinquent? We are of the considered view that the answer to this issue has to be in the negative. It needs no over emphasis that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. In a catena of cases the Apex Court has observed that what particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of Tribunal or body of persons appointed for that purpose. It has also been held by the Apex Court that while applying the principles of natural justice it must be borne in mind that they are not immutable but flexible and they are not cast in a rigid mould and they cannot be put in legal straight jacket. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case.

…If any material collected during the course of investigation has not been relied upon in the show cause notice, it will not deprive the appellant to present his case before the

Board. We have no hesitation in holding that the whole time member was right in observing that inspection of these documents was asked for with the sole aim of delaying the disposal of the proceedings and that the Board is not obliged to provide inspection of these documents.

We are, therefore, of the considered view that the appellant is not entitled to inspection of complete records pertaining to the case…"

In *M/s Rajesh N Jhaveri* Vs. *SEBI* dated April 16, 2012, the Hon'ble SAT observed that justice can be rendered if the person is provided with the material relevant to him and which is proposed to be used against him for which he should be given reasonable opportunity of defence.

24. Based on the aforesaid orders of Hon'ble SAT, I note that it is not necessary for SEBI to make available all the material that might have been collected during the course of examination but has not been relied upon for proving charge against the Noticees. No prejudice can, therefore, be said to have been caused to the Noticees on this count. Further, the order of Hon'ble High Court of Delhi in the matter of *Amit Jain* Vs. *SEBI* has no bearing on the present matter as the facts in both the matters are distinct. In the Amit Jain's matter, the issue was whether the WTM had formed an opinion that there were grounds for adjudging penalty under Section 15A(b) of the SEBI Act, whereas in the present matter, the issue is whether the documents related to procedural part of the proceedings should be provided during inspection. As seen from the aforesaid orders of Hon'ble SAT that only those documents have to be made available for inspection which have been relied upon in the SCN and which enables the Noticees to make proper representation against the proposed action. Moreover, the reliance placed by the Noticees on the order of Hon'ble SC in the matter of *SEBI* Vs. *Price Waterhouse et. al* is not correct. Hon'bleSAT in the matter of *Shri B. Ramalinga Raju* Vs. *SEBI et. al* dated May 12, 2017 considered the order of Hon'ble SC and observed as follows:

"…Fourthly, Apex Court in case of Price Waterhouse has specifically recorded that the directions given in that case are general directions given as and by way of clarifications

without going into the merits of the case. Therefore, directions given in the facts of Price Waterhouse cannot be said to be the ratio laid down by the Apex Court applicable to all other cases. In these circumstances, appellants are not justified in contending that the directions given by the Apex Court in case of Price Waterhouse must be applied to the case of the appellants…"

25. In view of the above, it is held that the principles of natural justice were followed while granting an opportunity of inspection to the Noticees No. 1 to 5.

26. With respect to cross examination, I note that the Noticees were informed vide hearing notice dated June 20, 2018 that the WTM has considered their request and since no statement of the complainant has been recorded in the matter, no cross examination is warranted. Further, the Noticees were also informed vide an email dated June 27, 2016 that the complaint of Ms. Vasundhara Kejriwal was only a trigger point for SEBI's examination. No statement of the complainant was recorded by SEBI and consequently, no cross examination can be provided in the matter. I note that when a fact is sought to be established on the basis of the statement of a person which is refuted by the entities charged in the matter, the latter has a right to cross examine the person whose statement is sought to be relied upon.

27. In the present matter, the foundation of the SCN is the examination conducted by SEBI for which the complaint of Ms. Vasundhara Kejriwal was only the trigger. Bare reading of the SCN makes it clear that the allegations levelled against the Noticees are not based on the complaint / testimony of the complainant, rather the SCN is based on the information / documents collected by SEBI during the course of its examination in the matter. In view of the same, the submission of the Noticees that the denial of cross examination by SEBI has not only violated principles of natural justice but the Noticees have also been denied a fair trial, is untenable.

28. I, now proceed to address the primary issues involved in the matter.

Issue No. 1 - *Whether the scheme floated by the Noticees is in the nature of CIS?*

29. The details of the 'Scheme' offered by the company have to be 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:

...

(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

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

iii. being a contract of insurance

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

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

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

benefit society

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

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

[ix. such other scheme or arrangement which the Central Government may, in consultation with the Board, notify,]

shall not be a collective investment scheme."

30. Perusal of the above section shows that any arrangement or scheme to be considered as CIS has to satisfy the four conditions mentioned in Section 11AA (2) of SEBI Act and the same should not fall within any of the exceptions mentioned in Section 11AA (3) of SEBI Act.

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.

I note that PAPL had circulated brochures soliciting subscription for its teak wood plantation scheme, EN FRIEND SERIES - 1. Admittedly, the company accepted the money from investors for subscribing to its scheme and raised ₹ 67,95,000/- from them other than the Promoters and their relatives and shareholders. I note that the investors were offered a guaranteed regular return from 3rd year onwards and if the investor so desired, the company would buy back the units at a rate so as to provide an annualized return of 18%. Further, there is no document on record submitted by the Noticees to evidence that the money collected from investors was actually demarcated / segregated investor wise for specific / segregated assets. Moreover, it is noted from the terms and conditions of the scheme that only after realization of the full payment, the company will identify within 45 days, 50 sq. ft. area to be allocated to the investor and the 2 teak trees will be identified at the end of 5 years from the date of issue of Letter of Allotment. Thus, at the time of collection of money from the investors, no particular piece of land and/ or teak trees are ascertained

against which the money was paid by the investors. Therefore, the submissions of the Noticees that the company did not mobilise or pool any funds from the general public are not acceptable. The facts show that the payments made by the investors, were pooled and utilised by PAPL for the purposes of the scheme, the scheme being to accept payments for expected sum payable and to use the proceeds for investing in teakwood plantation. Hence, the instant scheme satisfies the first condition stipulated in Section 11AA (2) (i) of the SEBI Act.

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.

As discussed above, the company collected funds from its customers. It is observed from the clauses/contents in the brochure that the scheme offered its investors guaranteed return from 3rd year onwards. Further, any return higher than the guaranteed, would be given to the investor in the form of bonus. It is also noted from the perusal of the company's brochure that the company stated that one of the benefits of the scheme is Tax-free Capital Appreciation. On an investment of ₹ 3,000/-, the expected sale value at the end of 20 years is ₹ 1,20,000/- i.e., capital appreciation is 40 times. In light of the above, it is observed that the contribution/investment is made by the investors in the scheme with a view to receive/earn profit/return.

The Noticees have submitted that the scheme does not meet the criteria as specified under Section 11AA (2) (ii) of the SEBI Act as it guarantees a fixed return and is therefore, a deposit taking scheme. I am not inclined to agree with the submission of the Noticees. On a perusal of the brochure of the company, it is noted that the company expects the return from the basket of crops to be around or more than 20% and any return higher than the guaranteed will be given to the investor in the form of bonus. Further, the company expected an output of 810 cu. ft. of teakwood against 2 teak trees against a minimum guarantee of 60 cu. ft. Any output higher than that guaranteed, would be passed on to the investor. The aforesaid indicates that the company conveyed / projected to its investors that it is going to generate profit from

its scheme and thereby is soliciting their investment in its scheme. Moreover, the company declared that it will give bonus to its investors, if the returns are higher than the guaranteed returns, which will not be the case if it is a deposit taking scheme. It is immaterial whether the scheme yielded any profit or not as the investors had invested hoping to earn profit from the scheme. Furthermore, the company had also given the investors, an option to receive the actual produce as stated in the scheme at periodic intervals and dispose the same on his own account. The fact that the scheme states that the actual produce can be received and disposed of by the investors and gives them an option of not receiving the returns, clearly distinguishes the extant scheme from a deposit taking scheme. This coupled with the fact that in its brochure, the company had declared that it is planning to build guest house cum resort facility with modern amenities at the plantation site which the investors can avail at 50% discount on regular tariff from the end of 3rd year to the 20th year, sets the scheme apart from a deposit taking scheme.

In view of the same, I conclude that the second condition, which stipulates that the contributions or payments were made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property as stipulated in Section 11AA (2) (ii) of the SEBI Act is also fulfilled.

iii. The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors and

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

31. As per the information available on record, it is apparent that PAPL was collecting money from public at large. At the end of the investment period, the investors were entitled to get an amount as expected return/profit or produce. The terms and conditions of the scheme unequivocally stated that the unit holder shall not interfere in plantation, control or management of short term and medium term crops, the trees and the lands or any part of the scheme from the beginning and throughout up to the

end of the scheme. Further, the unit holder does not have and shall not claim at any time any right, title or interest in the land allotted or the roots and trees trunks which will always belonging absolutely to the company. Further, I observe from the brochure inviting subscription in the scheme offered by PAPL that it does not have any feature, which states that the money collected under the scheme can be managed by the investor themselves or they have any say or control as to how and where the money has to be invested by the company. In view of the said facts, it necessarily follows that the scheme is managed and operated by the Noticees alone. The money invested by their investors is controlled and utilized by the Noticees on behalf of the investors. It is further a matter of fact that the investors took no part in the day to day workings of the Noticees business. It is therefore, clear that the instant scheme satisfies the conditions stipulated in Section 11AA (2) (iii) and (iv) of the SEBI Act.

32. With respect to Section 11AA (3) of SEBI Act, I note that PAPL has not claimed any of the exclusions mentioned therein except that of it being a deposit taking scheme. The same has already been dealt in preceding paragraphs. Thus the said exclusions under Section 11AA (3) of SEBI Act are not applicable to PAPL.

33. Noticees have referred to Regulation 25 of CIS Regulations which states that "*No CIS shall provide guaranteed or assured returns.*" Whereas in the instant case, it was a deposit taking scheme which was supposed to give investors a fixed return i.e., 15%. In this regard, I note that if this submission of the Noticees were to be given any credibility, it would lead to the absurd consequence of companies being able to circumvent the law governing CIS by not following the provisions enshrined in the SEBI Act and the CIS Regulations. The failure of the company not to adhere to the provisions of CIS Regulations cannot by any stretch of imagination be considered a valid reason to bring the scheme launched by the Noticees out of the scope of CIS, so long as such scheme falls within the four corners of the definition of CIS as provided by Section 11AA of the SEBI Act. Further, as discussed in preceding paragraphs, the company in its brochure had declared that any output higher than that guaranteed, would be passed on to the unit holder.

34. Based on the findings arrived at preceding paragraphs and in view of satisfaction of

all the four conditions and non-applicability of exclusions, I find that the instant scheme falls within the definition of CIS. As all the four conditions specified under Section 11AA(2) of the SEBI Act are satisfied in this case, the scheme promoted, launched, carried on and operated by the Noticees is a CIS in terms of Section 11AA(1) of the SEBI Act.

Issue No. 2*- If answer to issue No. (i) is in affirmative, whether the scheme floated by the company is governed by the relevant provisions of SEBI Act and CIS Regulations?*

35. Noticees No. 1 to 5 have contended that registration of the scheme was not warranted as the said scheme which was floated in 1994, was wound up in 1998 and as such the company was not carrying the said scheme as on the date of commencement of CIS Regulations.

36. In this regard, I note that even before CIS Regulations were framed by SEBI, Section 12(1B) of SEBI Act inserted with effect from January 25, 1995 barred any person to sponsor or carry on CIS after January 25, 1995 unless that person obtains a certificate of registration from SEBI. Proviso to Section 12(1B) of SEBI Act, however, permitted a person operating CIS prior to January 25, 1995 to continue with that CIS till such time regulations were made by SEBI. CIS Regulations came into force with effect from October 15, 1999. Here, it will be noteworthy to quote the observations of the Apex Court in the matter of *SEBI* Vs. *Gaurav Varshney and Anr.* dated July 15, 2016 wherein it was observed as follows;

"…In our considered view, an effective interpretation of Section 12(1B) can be rendered, only upon understanding the intent behind Section 12(1B), and the exception created through the proviso thereunder. On being so considered it is apparent, that on the insertion of Section 12(1B) in the SEBI Act on 25.1.1995, two classes of persons were created. The first class comprised of such person(s) who had commenced the activity of sponsoring or carrying on a collective investment scheme prior to 25.1.1995 (this category will be referred to hereinafter as, the proviso category). This category would be governed by the proviso under Section 12(1B). The second category created by Section 12(1B) was constituted of persons who had not commenced the activity of

sponsoring or carrying on a collective investment scheme prior to 25.1.1995 (this category will be referred to hereinafter as, the non-proviso category).

16. The persons covered by the proviso category, referred to hereinabove, were permitted to continue their existing collective investment activities, till the framing of the Collective Investment Regulations. On the framing of the Collective Investment Regulations, the said persons covered by the proviso category, were required to obtain a certificate of registration, which would enable them to continue to operate their existing collective investment scheme(s)…

…In other words, Section 12(1B) introduced a clear bar, prohibiting any action of sponsoring or initiating a collective investment scheme after 25.1.1995, without obtaining a certificate of registration from 'the Board', under the Collective Investment Regulations…

…The Collective Investment Regulations came into force on 15.10.1999. A person falling in the proviso category, namely, an individual who had commenced the activity of sponsoring or carrying on a collective investment initiative prior to 25.1.1995, was liable to move an application for registration under Regulation 5 of the Collective Investment Regulations…

…An "existing" collective investment scheme (- as the heading of Regulation 5, suggests) within the meaning of Section 12(1B) read with the Collective Investment Regulations, could only be one which had commenced prior to 25.1.1995, i.e. prior to the insertion of Section 12(1B) in the SEBI Act…

37. Taking support of the aforesaid decision of Hon'ble SC, it can be said that the scheme floated by PAPL in 1994 will qualify as "existing CIS" in terms of Section 12 (1B) of SEBI Act. The company has submitted that the scheme was wound up in 1998 as the scheme was no longer viable as the teakwood plants were damaged. In this regard, I note that the failure / economic unviability of the scheme is not equivalent to winding up of the scheme. It will be noteworthy here to reproduce Regulations 74 and 73 of CIS Regulations.

Existing collective investment scheme not desirous of obtaining registration to

repay

74*. An existing collective investment scheme which is not desirous of obtaining provisional registration from the Board shall formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in regulation 73.*

Manner of repayment and winding up

73. (*1) An existing collective investment scheme which: (a) has failed to make an application for registration to the Board; or*

(b) has not been granted provisional registration by the Board; or

(c) having obtained provisional registration fails to comply with the provisions of regulation 71;

shall wind up the existing collective investment scheme.

(2) The existing Collective Investment Scheme to be wound up under sub-regulation (1) shall send an information memorandum to the investors who have subscribed to the collective investment schemes, within two months from the date of receipt of intimation from the Board, detailing the state of affairs of the collective investment scheme, the amount repayable to each investor and the manner in which such amount is determined.

(3) The information memorandum referred to in sub-regulation (2) shall be dated and signed by all the directors of the collective investment scheme.

(4) The Board may specify such other disclosures to be made in the information memorandum, as it deems fit.

(5) The information memorandum shall be sent to the investors within one week from the date of the information memorandum.

(6) The information memorandum shall explicitly state that investors desirous of continuing with the collective investment scheme shall have to give a positive consent within one month from the date of the information memorandum to continue with the collective investment scheme.

(7) The investors who give positive consent under sub-regulation (6), shall continue with the collective investment scheme at their risk and responsibility : ***Provided*** *that if the positive consent to continue with the collective investment scheme, is received from only twenty-five per cent or less of the total number of existing investors, the collective investment scheme shall be wound up.*

(8) The payment to the investors, shall be made within three months of the date of the information memorandum.

(9) On completion of the winding up, the existing collective investment scheme shall file with the Board such reports, as may be specified by the Board.

38. Nothing has been brought on record to show that procedure mentioned under Regulations 74 and 73 of CIS Regulations were followed by the company to wind up its scheme. Further, from the facts of the case it is evident that substantial money collected by the company was not refunded to the unit holders till the time CIS Regulations came into effect on October 15, 1999. The same is evident from the bank statements submitted by the company for the period from October 15, 1999 to March 31, 2004. Moreover, as per company's own admission, from October 23, 2015 onwards, the company is in the process of refunding ₹ 24,75,000/- collected by the company under the scheme. Out of the said sum, ₹ 12,39,000/- is still lying in an account opened by it with Oriental Bank of Commerce. The same shows that not all the investors of the scheme have been refunded their money. In this regard it is noted that Explanation to Regulation 68 (1) of CIS Regulations states that the expression *'operating a collective investment scheme'* shall include carrying out the obligations undertaken in the various documents entered into with the investors who have subscribed to the collective investment scheme. One such obligation on PAPL was to distribute to its investors the proceeds from the assets of the scheme including land and since there are investors of the scheme who are yet to paid by the company, it is held that the scheme floated by the company is an ongoing concern / operational post October 15, 1999 and it will be subject to the applicable provisions of SEBI Act and CIS Regulations. The winding up for an 'existing CIS' can be done only in terms of Regulation 73 of CIS Regulations and can be said to be complete upon submitting

of WRR as per the satisfaction of SEBI.

Issue No. 3- *If answer to issue No. (ii) is in affirmative, whether PAPL has violated the provisions of SEBI Act read with CIS Regulations?*

39. It has already been concluded in preceding paragraphs that the scheme floated by PAPL is a CIS and is subject to the provisions of SEBI Act and CIS Regulations. I, now proceed to give my findings on whether PAPL has violated Section 12 (1B) of SEBI Act read with Regulations 3, 5, 68 and Regulation 69 of CIS Regulations, as alleged in the SCN.

40. The scheme floated by PAPL was an "existing CIS" at the time of coming into effect of CIS Regulations and the same has not been wound up in terms of Regulation 73 of CIS Regulations. Further, as per Section 12(1B) of SEBI Act, an existing CIS can continue to operate without obtaining certificate of registration till such time regulations are made for it. As per Regulation 5 (1), an "existing CIS" (prior to commencement of CIS Regulations) was, subject to the provisions of Chapter IX of CIS Regulations, required to make an application for grant of certificate within a period of two months. No material has been placed on record to show that the company had applied for registration or had informed SEBI that it is not desirous of obtaining registration after CIS Regulations came into effect and had wound up its scheme as per Regulation 73 of CIS Regulations. In view of the same, it is held that PAPL by not applying for registration with SEBI as CIS, even though it had not wound up, has violated Section 12(1B) of SEBI Act read with Regulations 3, 5, 68 and Regulation 69 of CIS Regulations.

Issue No. 4- *If answer to issue No. (iii) is in affirmative, whether Noticees No. 2 to 6 are responsible for the same?*

41. With respect to Noticees No. 2 to 6, the following is noted from the documents available on record:

Sl. No.	**Name of the Director**	**Date of Appointment**	**Date of Cessation**

1	Sushil Gopaldas Mantri	01/07/1996	Continuing
2	Manish Rajendra Banthia	01/07/1996	Continuing
3	Shrikant Gopaldas Mantri	25/10/1993	Continuing
4	Pravin Patkar	11/02/1994	01/03/2001
5	Rajendrakumar Banthia	11/02/1994	21/02/2002 but re-joined on 01/07/2004

42. As per company's own submission, the company has collected money during the years 1994 - 1995 and 1995 – 1996. From the above table, it is noted that Noticees No. 2 to 6 were the Directors of PAPL at the relevant period when the company was soliciting funds from the public.

43. Section 12 (1B) of SEBI Act stipulates that 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 unless he obtains a certificate of registration from the Board in accordance with the regulations. Regulation 3 of the CIS Regulations provides that no person other than a Collective Investment Management Company, which has obtained a certificate under the said regulations, shall carry on, sponsor, or launch a 'CIS'. The stipulation is on every person who sponsors or causes to be sponsored or carries on a collective investment scheme. It may be seen in a typical sponsoring of CIS, the company though in the eye of the law sponsors the schemes, the same is cause to be sponsored by the Directors who are involved in the process of sponsoring of the scheme and carrying it on. In view of this, the prohibition not to launch or carry on the unregistered CIS is on the company as well as on the Directors independently.

44. I note that the position of a 'Director' in a company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such Director and in case of default, he has to face the consequences thereof. A

Director cannot therefore wriggle out from his liability. A Director who is part of a company's board shall be responsible and liable for all acts carried out by the company. Accordingly, Noticees No. 2 to 6 are responsible for all the deeds / acts of the company during the period of their directorship and were obligated to ensure that PAPL obtains a certificate of registration from SEBI as its scheme had not wound up as per procedure laid down under Regulation 73 of CIS Regulations. In view of their failure to discharge the said responsibility, Noticees No. 2 to 6 are liable to be issued appropriate directions.

Issue No. 5- *If answer to issue No. (iv) is in affirmative, what directions, if any should be issued against the Noticees?*

45. PAPL has submitted bank statements for the period August, 1997 to March, 2004 demonstrating that it has repaid money to the investors. It has also submitted CA certificate to show that it has last made investment in the teakwood plantation under the scheme in the year 1996. Further, 5 affidavits have been submitted by PAPL wherein the deponent has submitted that sometime in 1998 the company had passed a resolution to refund the money to its investors as and when the investors surrender their unit certificates. In addition to it, as per company's reply dated March 5, 2015, total outstanding amount under the scheme was ₹ 24,75,000/-. Out of ₹ 24,75,000/, ₹ 24,51,000/- was transferred by the company to an account maintained by it with Oriental Bank of Commerce and ₹ 24,000/- was repaid to the investors. Banks statements supporting the same have been submitted by the company. As per the escrow agent appointed by PAPL, the escrow agent in the interest of investors, had sent cheques of the principal amount to 420 investors, even though they had not submitted their original unit certificate. Further, out of ₹ 24,51,000/- in the escrow account, cheques worth ₹ 12,12,000/- have been cleared as on July 31, 2018 and the balance, ₹ 12,39,000/- is still lying in the account. Banks statements and WRRs dated April 14, 2018 and July 31, 2018 supporting the same have been submitted by the company.

46. It is noted from the bank statements for the period between August 1, 1997 to March 31, 2004 that there are approximately 2,292 debits made by cheque withdrawals in

the account no. NTCA000020701 maintained by the company with Canara Bank for amounts in the range of ₹ 450- ₹ 18,000/-. The said withdrawal was done by individual entities. In addition to this, the escrow agent appointed by PAPL had sent cheques to 420 unit holders. However, as on July 31, 2018, a sum of ₹ 12,39,000/- was lying with in the account no. 1051131003399 of the company. I note that the aforesaid account is claimed by the company as an escrow account. However, from the bank statement it appears that the said account is not a designated escrow account operated by the Bank, rather it is operated by Mr. Lodaya. Be that as it may, all this on the one hand indicates that the company has made repayments to its unit holders but at the same time shows that there are still investors in the scheme whose money is yet to be refunded.

47. It is further noted that company has submitted that ₹ 2,18,55,000/- was collected by it and has also submitted a list of 900 investors and the amount refunded to the investors, if any. However, no documentary evidence viz. bank statements for the financial periods 1994-1995 and 1995-1996, copy of applications received, proof of allotment etc. has been furnished by the company. Therefore, it is difficult to ascertain exactly how much amount was collected by the company. In this regard, the company has placed reliance on Section 209 (4A) of Companies Act, 1956 and provisions of Income Tax Act, 1961 with respect to preservation of books of account. As per the said provision, records have to be maintained for a period of 8 years. In the extant matter, it has already been held that the scheme floated by PAPL is an "existing CIS" governed by provisions of CIS Regulations and the scheme is still an ongoing concern / operational as it has not been wound up in terms of Regulation 73 of CIS Regulations. To give a true and fair view of the scheme, the company is obligated to maintain and preserve its records with respect to collection of money and the refund made to its investors / unit holders. Further, from the WRRs submitted by the company, it is noted that there are 900 investors in the scheme and the amount mobilized was ₹ 2,18,55,000/-. If the company can submit the documentary evidence for the said details to the Chartered Accountants based on which they ought to have certified the WRR, then it indicates that the company has

the said details which it has not furnished to SEBI.

48. I further find that the reliance placed by PAPL on the Apex Court order in the matter of *Humanity Salt Lake* Vs. *Union of India & Ors*. is misplaced as the said order deals with, inter alia, the prayer for constitution of special expert committee. The Hon'ble Apex court records in its order, the representation of SEBI that all cases which are falling within the jurisdiction of SEBI have been dealt with by it and appropriate orders on these have been passed. It also recorded that in cases where SEBI has no jurisdiction, it has given details of each of the 1538 matters and the jurisdictional agency to which the same were referred to. Since the instant scheme is an "existing CIS" which is still operational as discussed in preceding paragraphs, it is falling within the jurisdiction of SEBI.

49. PAPL has further submitted that as per CIS Regulations, investors are entitled ONLY to get return on their investment which is equal to the return generated by the Collective Investment Management Company on the amount invested minus the investment management fee. It was further stated that the company has already refunded the principal amount invested by the investors/depositors along with the interest. Therefore, if SEBI holds this scheme as CIS, then the company will be entitled to recover the money paid to investors in excess of proportionate assets of scheme that has been paid by the noticee to the investors/depositors. In this regard, I note from para 10.5 of Part II of Ninth Schedule on "*Returns to Investors*" that at the end of the tenure of the CIS, the surplus of the CIS, if any, shall be calculated on the basis of realisable value of all the assets, including land, of the CIS. The surplus of the CIS distributed in cash shall be in proportion to unit capital. In view of the same it is observed that PAPL has not submitted any documentary evidence showing realisable value of all its assets under the scheme, including land when the scheme had been declared to have failed. Without prejudice to the said observation, it is noted that the benefits / protection granted under CIS Regulations to a collective investment management company is for a CIS scheme which is registered under the provisions of SEBI Act and CIS Regulations and is managed as per the provisions of CIS Regulations. In the extant matter, PAPL is an unregistered CIS and hence, cannot

place reliance on the beneficial provisions which are applicable only to a registered CIS.

50. Noticees No. 1 to 5 further submitted that as per SEBI's order in the matter of *Popular Agro Farms Pvt. Ltd.* and *SEBI Internal Guidelines on selection of cases for Enforcement Action*, no action under Sections 11 and 11B of SEBI Act is to be taken in cases where refund has been made to all the investors and a WRR has been submitted. The present matter is distinguishable on facts from the aforementioned matter and Guidelines. In the present matter, it has already been noted that total money raised by the company from the public is not supported by any documentary evidence and as noted from Noticee's submission, money is still lying in company's account no. 10501131003399 which is yet to be claimed by the investors. Moreover, the company till date has not submitted to SEBI details regarding the, dates on which it has paid to its investors, the mode and manner of such payment, investors yet to be paid and steps taken by the company to ensure the refund to its unpaid investors for instance coming out with a newspaper advertisement in the regions where its investors are located. In view of the same, the submission of the Noticees No. 1 to 5 is not acceptable.

51. Based on the above, I hold that though efforts have been made by PAPL to refund money to its investors, the same is not yet complete. SEBI Act along with the CIS Regulations, provide for various remedies in the interest of investor protection. Section 11B of the SEBI Act being one of the pivotal measure for the purpose of investor protection under which remedial tool of refund is envisaged. CIS Regulations provides for two different set of measures under Regulation 65(c) and Regulation 65(d) of the CIS Regulations. Under Regulation 65(d) of CIS Regulations, SEBI has powers to direct the disposal of the assets of the CIS in a manner as may be specified in the directions which can be by way of winding up of the scheme. Under Regulation 65(d) of CIS Regulations, SEBI has powers requiring the person concerned to refund any money or the assets to the concerned investors along with the requisite interest or otherwise, collected under the CIS. SEBI Act also has prescribed the other set of measures under Section 11B of the SEBI Act. Therefore,

SEBI in exercise of its mandate under Regulations 65 of the CIS Regulations read with Section 11B of the SEBI Act can take various investors protection measures in case of unregistered collective investment activities. The said measures can include winding up of the schemes and direction to refund the money collected. While the scheme can be directed to be wound up for repayment of the contributions of the investors, it does not absolve the obligation of the Directors who collected the money on behalf of the company by causing the company to run an unregistered CIS, from repayment. Therefore, the Directors who collected the money on behalf of the company are also liable for repayment under Section 11B of the SEBI read with Regulation 65(d) of CIS Regulations to refund the money collected by them, during their tenure of directorship. Accordingly, the contributions collected are liable to be repaid both by winding up of the scheme of the company and by repayment by the Directors in their personal capacity. Therefore, Mr. Sushil Gopaldas Mantri, Mr. Manish Rajendra Banthia, Mr. Rajendrakumar Dhanraj Banthia, Mr. Shrikant Gopaldas Mantri and Mr. Pravin Patkar are personally liable to refund the money collected by the company. However, as stated earlier the liability of the Directors is independent and the same can be enforced by way of direction to make refund under Regulation 65(d) of CIS Regulations read with Section 11B of SEBI Act.

52. 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, hereby issue the following directions:

    i. PAPL shall wind up the existing CIS and refund the money collected under the scheme 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 PAPL namely Mr. Sushil Gopaldas Mantri, Mr. Manish Rajendra Banthia, Mr. Shrikant Gopaldas Mantri and Mr. Rajendrakumar

Banthia shall ensure that directions under sub para (i) is complied with.

iii. PAPL and its present Directors namely Mr. Sushil Gopaldas Mantri, Mr. Manish Rajendra Banthia, Mr. Shrikant Gopaldas Mantri and Mr. Rajendrakumar Banthia shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.

iv. PAPL will specifically open a designated escrow account with a public sector bank and transfer the money lying in the account no. 1051131003399 maintained with Oriental Bank of Commerce. It will further give clear instructions to the said Bank under what conditions to make a refund to the investors.

v. Upon completion of the refund as directed above at sub para (i) including the money refunded earlier during the period August, 1997 to March, 2004, within a further period of seven days, PAPL and its present Directors namely Mr. Sushil Gopaldas Mantri, Mr. Manish Rajendra Banthia, Mr. Shrikant Gopaldas Mantri and Mr. Rajendrakumar Banthia shall submit a WRR, separately or jointly, to SEBI in accordance with the CIS regulations. The WRR shall be supported by a complete list of investors who have been refunded by the company including the claimants who approached the company after newspaper advertisement, the proof of the trail of funds claimed to be refunded along with bank account statements indicating refund to the investors and / or receipt from the investors acknowledging such refunds and / or proof of dispatch of pay order in the name of investors at their registered address 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.

vi. In case of failure of PAPL to repay the investors as per directions at para (i), Mr. Sushil Gopaldas Mantri, Mr. Manish Rajendra Banthia, Mr. Shrikant Gopaldas Mantri, Mr. Pravin Patkar and Mr. Rajendrakumar Banthia (all in their personal

capacity) shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details. Further they shall refund the money collected by the said company during their respective period of directorship under the scheme 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.

vii. Upon completion of the refund as directed above in sub para (vi), Mr. Sushil Gopaldas Mantri, Mr. Manish Rajendra Banthia, Mr. Shrikant Gopaldas Mantri, Mr. Pravin Patkar and Mr. Rajendrakumar Banthia shall file a report of such completion of payment with SEBI on the same lines as elaborated under sub paragraph (v), within a further period of seven days, certified by 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 has been categorized so by the Institute of Chartered Accountants of India holding such certificate.

viii. The unclaimed money if any at the time of winding up shall be kept in the escrow account.

ix. In the event of failure by PAPL to refund the money as directed under sub paragraph (i), the liability to refund the money to the investors will be on Mr. Sushil Gopaldas Mantri, Mr. Manish Rajendra Banthia, Mr. Shrikant Gopaldas Mantri, Mr. Pravin Patkar and Mr. Rajendrakumar Banthia as mentioned under sub paragraph (vi). During the said period when the onus to refund money to the investors is on the aforesaid Directors, they shall not alienate or dispose of or sell any of their assets except for the purpose of making refunds to company's investors as directed above.

x. In the event of failure by PAPL, Mr. Sushil Gopaldas Mantri, Mr. Manish Rajendra Banthia, Mr. Shrikant Gopaldas Mantri, Mr. Pravin Patkar and Mr. Rajendrakumar Banthia to comply with the directions as sub paragraphs (i) and (vi) above, SEBI shall initiate recovery proceedings under the SEBI Act against them.

xi. PAPL, Mr. Sushil Gopaldas Mantri, Mr. Manish Rajendra Banthia, Mr. Shrikant Gopaldas Mantri, Mr. Pravin Patkar and Mr. Rajendrakumar Banthia shall with immediate effect be 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. Considering the efforts already made by the company and its Directors to refund the money to its investors, the said prohibition shall continue for a further period of one year from the date of completion of the refund, as directed above.

xii. Mr. Sushil Gopaldas Mantri, Mr. Manish Rajendra Banthia, Mr. Shrikant Gopaldas Mantri, Mr. Pravin Patkar and Mr. Rajendrakumar Banthia shall be restrained from holding positions as Directors or key managerial personnel of any listed company and any intermediary registered with SEBI and they shall be restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI, for a period equal to the period of their debarment from the date of this order.

53. This order shall come into force with immediate effect.

54. A copy of this order shall be served upon all the Noticees, Stock Exchanges, Registrar and Transfer Agents and Depositories for necessary action and compliance with the above directions.

55. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/

concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the company and the individuals.

56. A copy of this Order shall also be forwarded to the Local Police/ State Government for information.

57. This order is without prejudice to any other actions that SEBI may take in accordance with securities laws.

-Sd/-

DATE: November 29, 2018 **MADHABI PURI BUCH**

PLACE: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA