

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTIONS 11(1) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, REGULATION 65 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (COLLECTIVE INVESTMENT SCHEME) REGULATIONS, 1999 AND REGULATION 11 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET), 2003.

IN THE MATTER OF YALSCO REAL ESTATE AND AGRO FARMING LIMITED –

COMPANY		CIN	PAN
1.	YALSCO REAL ESTATE AND AGRO FARMING LIMITED	U70101CT2010PLC022218	AAACY4581F
DIRECTOR		DIN	PAN
2.	PREM LAL DEWANGAN	03334596	AFVPD1362E
3.	MAMTA DEWANGAN	03334618	AIHPD0642E
4.	NISHA DEWANGAN	03334656	APVPD0574N

BACKGROUND –

- 1.1 Securities and Exchange Board of India (“SEBI”) had received a letter dated September 16, 2015, from the Additional Collector, Rajnandgaon, Chhattisgarh *inter alia* containing a complaint against Yalsco Real Estate and Agro Farming Limited (“Yalsco/Company”) along with a deposition from one of its Directors, viz. Mamta Dewangan. Vide the aforementioned letter, the Additional Collector had forwarded several documents such as copy of the Memorandum of Association and Articles of Association of Yalsco, a list containing the names of 9512 investors of the Company and the amounts invested by them in the Company, etc. and had requested SEBI to examine the activities of the Company under the relevant provisions of law.
- 1.2 Pursuant to receipt of the aforementioned letter and based on the information obtained from the MCA21 Portal and documents provided by the Additional Collector, Rajnandgaon, SEBI carried out a preliminary examination against the Company. A letter dated October 16, 2015 was sent by SEBI to the Company and its Directors seeking information regarding mobilization of funds and advising them to furnish said information latest by November 2, 2015.

1.3 Vide a reply dated November 27, 2015, Yalsco provided *inter alia* the following documents/information to SEBI:

- a. *Copy of Memorandum and Articles of Association of the Company as filed with the Registrar of Companies.*
- b. *Copy of Certificate of Commencement of Business issued by RoC, Gwalior.*
- c. *Detailed particulars of past/present Directors of the Company along with PAN and contact details.*
- d. *Allotment cum Sale Agreement copy in respect of one Smt. Sushma Patel.*
- e. *Specimen copy of Booking Agreement booklet containing "Application Form" and Agreement for Plot's booking, etc.*
- f. *Specimen copy of Certificate to be issued to customers/investors.*
- g. *List of properties acquired by the Company (land bank worth 315 acres of land with acquisition value of ₹13.35 Crore approx.).*
- h. *Number of investors from whom funds were collected by the Company (4716 customers worth ₹11.60 Crore approx.)*
- i. *Number of investors to whom amounts were refunded by the Company (231 investors worth ₹1.16 Crore approx.).*

SHOW CAUSE NOTICE DATED FEBRUARY 5, 2019 –

1.4 Pursuant to an examination of the mater, SEBI had issued a Show Cause Notice dated February 5, 2019 ("**SCN**"), to Yalsco and its Directors, viz. Prem Lal Dewangan ("**Prem Lal**"), Mamta Dewangan and Nisha Dewangan alleging violations of Section 12(1B) of the SEBI Act, 1992 ("**SEBI Act**"), Regulation 3 of the SEBI (Collective Investment Scheme) Regulations, 1999 ("**CIS Regulations, 1999**") and Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market), 2003 ("**PFUTP Regulations 2003**") (as funds were also mobilized by Yalsco after September 6, 2013) and had called upon them to show cause as to why the scheme(s) offered by the Company should not be declared as 'Collective Investment Scheme' and further, in case the aforesaid scheme(s) of the Company is found to be a 'Collective Investment Scheme', why appropriate directions under Sections 11(1) and 11B of the SEBI Act read with Regulation 65 of the CIS Regulations, 1999 should not be issued against them for the aforesaid violations. The SCN also alleged that Noticee nos. 2 to 4 were the Directors of Noticee no. 1 and were responsible for the conduct of the business of the Company during the period of

mobilization of funds. The service of the SCN to Noticee nos. 1, 2 and 3, was effected through publication in national and local newspapers in the state of Chhattisgarh on March 25, 2019. The SCN was delivered to Noticee no. 4 i.e. Nisha Dewangan, through speed post on February 23, 2019. For making the aforesaid allegations against the Noticees, the SCN had relied upon the following documents which were annexed therein:

SR. No.	DETAILS	ANNEXURE No.
I.	Copy of letter dated September 16, 2015, from the Office of Collector, Rajnandgaon, Chhattisgarh.	A
II.	Copy of SEBI's letter dated October 16, 2015.	B
III.	Copy of Yalsco's Letters dated November 27, 2015.	C
IV.	Copy of letter dated March 15, 2016 from the Supdt. of Police, Rajnandgaon, Chhattisgarh.	D
V.	Copy of details of Directors of Yalsco obtained from <i>MCA21 Portal</i> .	E

PERSONAL HEARING –

2.1 An opportunity of personal hearing was granted by SEBI, to Yalsco and its Directors, on **September 17, 2019**. However, none of the Noticees had appeared for the personal hearing. Thereafter, another opportunity of personal hearing was granted by SEBI, to Yalsco and its Directors, on **August 20, 2020**. Prem Lal and Mamta Dewangan appeared for themselves and the Company (through video conference from the Central Jail, Durg, Chhattisgarh) and had reiterated the submissions contained in their reply dated March 13, 2019, to the SCN. Nisha Dewangan (sister of Mamta Dewangan) appeared for herself through video conference and had reiterated the submissions contained in her reply dated August 14, 2020, to the SCN. All the aforementioned Noticees were granted one weeks' time to file additional written submissions, if any.

2.2 Subsequently, vide an e-mail dated August 25, 2020, the Jail Superintendent of Central Jail, Durg, Chhattisgarh, had forwarded additional written submissions filed by the Company, Prem Lal and Mamta Dewangan, to SEBI.

2.3 In their submissions, the Company, Prem Lal and Mamta Dewangan had submitted as under:

- i. *“Prem Lal has been and continues to remain in judicial custody as an undertrial prisoner in the Central Jail, Durg, Chhattisgarh under Section 420 read with Section 34 of the Indian*

Penal Code, 1860 (“**IPC**”) and under Section 10 of the Chhattisgarh Protection of Depositors Interest Act, 2005 (“**Chhattisgarh PID Act**”).

Section 420 of the IPC states: “**420. Cheating and dishonestly inducing delivery of property.** – Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

Section 34 of the IPC states: “**34. Acts done by several persons in furtherance of common intention.** – When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

Section 10 of the Chhattisgarh PID Act states: “**10. Punishment for defaults by financial establishment.** – Where any financial establishment fraudulently defaults or any financial establishment acts in a calculated manner with an intention to defraud the depositors; every person including the promoter, partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs or of such financial establishment shall be punished with imprisonment for a term which shall not be less than 3 years but may extend to ten years and with fine which shall not be less than one lakh rupees but may extend to five lakhs rupees and such financial establishment shall also be liable to fine not less than three lakhs rupees but may extend to ten lakhs rupees.”

“2. Definitions

(h). “**Financial establishment**” means an individual, an association of individuals, firm or company incorporated under the Companies Act, 1956 (1 of 1956) receiving deposits under any scheme or arrangement or in any other manner but does not include, Corporation or Co-operative Society owned or controlled by the State Government or the Central Government, or Banking Company as defined under Section 5 of the Banking Regulation Act, 1949 (No. 10 of 1949);

(i) “**Fraudulent default**” means any financial establishment, which fraudulently defaults any repayment of deposits on maturity and/or any benefit in the form of interest, bonus, profit or dues in any other form as promised or on maturity or fraudulently fails to render services as assured against the deposit;

- ii. **Formation of the Company:** Prem Lal has stated that his wife and he belong to a rural area and several companies were operating in their area (district/region) which were raising funds from the public for the past 10–15 years. However, the head offices of such companies were situated in some other states. They had no knowledge as to whether these companies were actually working on any project or not, but in the brochures of the companies they made mention of large scale projects for which they were raising funds. Prem Lal has further stated that he was working as a Life Insurance Corporation of India (“LIC”) agent since 1997 and thereafter, started running a corporate agency of LIC post 2004. His corporate agency could not be renewed in 2010 since he was not running any other business. Companies from some other regions were raising funds from the investors of his region and utilizing the money so raised for development in other regions. Similarly, he also decided to form such a company ensuring thereby development, generation of employment as well as ensuring higher returns to the investors and capital growth in his own region. For this purpose, he consulted his lawyer who advised him to get the Company registered with the ROC and thereafter, such Company would act in accordance with the memorandum and no other approval would be required from any other authority. His lawyer cited examples of several other companies that were already running their business and he also apprised him of the fact that in case the Company fails to make refunds to the investors/clients, it shall be liable for legal action. Thus, Prem Lal, being unaware of the licensing process including the requirement to obtain a Certificate of registration from SEBI, started Yalsco.
- iii. **Business plan of the Company:** Prem Lal has stated that the business plan of Yalsco was based on Utpaad (product) Booking. Upon booking of a plot of land or any other Utpaad, agreements and certificates were issued to the client/investor specifying therein the details such as when the client/investor would receive the Utpaad, investment amount, quantity, mode of payment of booking amount whether in lumpsum or in instalments, etc. In case a client does not opt to receive the product at the time of maturity, Yalsco may determine the approximate value of the product and make payment accordingly. Thus, Yalsco duly purchased around 350 acres of land with the funds raised from the clients, where it launched various agricultural projects such as model fish farming, goat farming, guinea pig, mineral water plant, New Zealand rabbit, pomegranate, banana, jackfruit, etc.

- iv. **FIR lodged with the police and action taken by the District Magistrate:** Prem Lal has stated that the head office of Yalsco is situated in Rajnandgaon, Chhattisgarh and he himself is a resident of the same District. Apart from Yalsco, there were 20–25 fund raising companies which had opened their branch offices in Rajnandgaon and many of them had been operating for years. Most of those companies defaulted on payment and had ceased their operations. Therefore, investors of those companies were demanding police action. Actions had already been taken against most of the companies in other districts and regions and the local police was investigating the matter at branch level. Since Yalsco was a local company, all its projects were running in the local area only. As there was no complaint against Yalsco, police was unable to take any action. There was a lot of political pressure on the District Magistrate and the Superintendent of Police. The police somehow managed to lodge an FIR against Yalsco by putting pressure on clients much before the maturity period and the Company was not given even a single chance to make refunds to those clients and thus, under the Chhattisgarh PID Act, District Magistrate and police initiated action against Yalsco and its Directors on July 23, 2015. In accordance with the Chhattisgarh PID Act, in case any complaint is lodged against a company, the District Magistrate is supposed to inform the Company and an opportunity must be given to the Company to resolve the issue. However, no such opportunity was given to Yalsco and its Directors. Yalsco and its Directors had sought anticipatory bail. The Director's property and bank accounts as well as property and bank accounts of the Company were attached (including the properties acquired prior to formation of the Company) pursuant to which, Prem Lal became homeless. However, Prem Lal and Mamta Dewangan had not bought any property either in their own name or in the name of any friend or relative (after collecting funds from the public). The District Magistrate had attached the properties without any physical verification. Further, only the area of the land was mentioned in the record and no details of the projects (worth Crores of rupees) were put on record. Thus, before they could make refunds to the clients, Yalsco was shut down and they have been suffering for the last four and half years.
- v. **Attachment Order of District Magistrate and Order of Sessions Court:** The Chhattisgarh Administration, through the police and the Competent Authority, had impounded all the documents/records of the Company and had seized the office of the Company under the Chhattisgarh PID Act. Prior to attachment of the property and bank accounts, refunds had already been made to the complainants who had lodged FIR, yet the

property and bank accounts were attached by the District Magistrate under the aforesaid Act vide an Order dated March 5, 2016. As per the Chhattisgarh PID Act, the District Magistrate can attach only those bank accounts which come under his area of jurisdiction. There were hardly 200–300 investors in Rajnandgaon but the District Magistrate took action for not making refunds to all the investors/clients of Yalsco despite the refunds having been made to the complainants. The Order passed by the District Magistrate was confirmed by the Hon'ble Sessions Court/Special Court, Rajnandgaon (under Chhattisgarh PID Act), by way of a Final Order on January 24, 2018, while deciding the matter. On account of there being no corporate lawyer in their area, Yalsco and its Directors were not in a position to hire a corporate lawyer in the matter, therefore, they could not challenge the Order passed by the Sessions Court/ Special Court. It has been more than two years since the Order was passed by the Hon'ble Sessions Court/Special Court and the auction proceedings are underway. Though the refund process has already been completed, yet the matter against the Directors is under trial in Court under various penal provisions.

- vi. **Chargesheet filed before the Sessions Court and Statements given by the complainants and witnesses before the Court of law:** Rajnandgaon police filed the chargesheet before the Sessions Court. Charges were framed under Section 420 of IPC and Section 10 of Chhattisgarh PID Act on June 29, 2016. The chargesheet contains names of all the complainants / witnesses. A copy of the chargesheet is attached. The complainants and other clients were produced before the Court of law as witnesses and it was clear from the statements of the witnesses that the Company had never failed to keep its promises and no one ever approached the Company for refund before maturity. The clients were produced by the police as witnesses and the FIR was lodged before completion of the maturity period, and this issue was highlighted in print media as well as electronic media. We were trying to obtain anticipatory bail. Meanwhile, they made refunds to all the investors who were produced as witnesses and were asking for refund before the maturity period. Further, some additional amount was also paid to them. A copy of the statements given by all the witnesses before the court of law is attached.
- vii. **Rejection of the bail application made before the Chhattisgarh High Court, Bilaspur:** The Company's Directors had applied for bail before the Sessions Court and Chhattisgarh High Court, Bilaspur 3–4 times, but all the bail applications were rejected by the High Court on these grounds: (a) an amount of ₹21 Crore was yet to be refunded to approximately

9800 clients and (b) the money was raised from the public without obtaining license from RBI or SEBI. Yalsco and its Directors were supposed to repay an amount of ₹70,200 to the complainants. Prem Lal has stated that they had already made refunds to the complainants and witnesses for which evidence was also produced. However, bail was granted to only one of the Company's Directors, viz. Nisha Dewangan, before filing the chargesheet. Prem Lal has further stated that the police diary was produced before the Court on the basis of amount mentioned in the complainant's complaint. The Hon'ble High Court treated all clients as one party and always dismissed their bail applications. All necessary legal actions have already been taken against Yalsco and the Directors. A copy of the Order passed by the Chhattisgarh High Court (whereby bail application was dismissed) is attached.

- viii. **Decision of District Consumer Forum, Durg Chhattisgarh:** After one and half year of Prem Lal's confinement in jail, around 500 clients from Durg District had lodged a complaint before the District Consumer Forum, Durg, against Yalsco and its Directors alleging that the Company had been shut down and was not making any refund. The Consumer Forum rejected their complaint stating that action has already been taken by the District Magistrate, Rajnandgaon in respect of refunds to all the investors/clients under the Chhattisgarh PID Act and the same had also been confirmed by the Sessions Court. A copy of the decision given by District Consumer Forum, Durg and copies of other documents are attached.
- ix. **Application filed by agents and clients / investors of the Company before Sessions Court:** Property of the Company was attached by police and district administration and they were detained in jail. However, their clients / investors had no grievances. On the contrary, they were confident because the investors were getting good returns on their investments in a timely manner. But due to the attachment proceedings initiated by the administration, plot of land and all the projects are getting ruined as they have been left unguarded. In view of this, investors and agents filed an application before Hon'ble Sessions Court. A copy of the application so filed before the Hon'ble Sessions Court is attached.
- x. Prem Lal has submitted that the Chhattisgarh administration had already taken all legal actions against the Company and its Directors for its business activities (as detailed above) without obtaining license from SEBI, and further the Directors were put behind bars. It has been submitted that whatever happened was merely due to lack of knowledge of legal provisions. It has been further submitted that intention behind all these activities had never

been mala fide, instead they were ensuring capital growth in respect of the investments made by the clients / investors. It may be noted that the Directors have been booked under Section 10 of Chhattisgarh PID Act, and as per this Section there is a provision of imprisonment and fine both.

- xi. In view of all the circumstances, Prem Lal has requested no action be taken against them in respect of the ongoing proceedings initiated by SEBI.*
- xii. Photocopies of the following documents were attached:*
 - Hearing notice dated July 28, 2020, issued by SEBI.*
 - Chargesheet filed by the Rajnandgaon police before the Sessions Court, Rajnandgaon.*
 - Statements of witnesses produced before the Sessions Court, Rajnandgaon.*
 - Orders passed by the Hon'ble Chhattisgarh High Court, Bilaspur (whereby bail applications were dismissed).*
 - Decision of the District Consumer Forum, Durg.*
 - Application filed by the clients and agents of the Company before the Hon'ble Sessions Court.*

3.1 In her submissions, Nisha Dewangan submitted as under:

- i. "I am the sister of Mamta Dewangan. I was not aware that I was a Director in Yalsco. Further, all the fund mobilising activities were carried out by Prem Lal and Mamta Dewangan.*
- ii. I did not attend any meeting of the Company and I trusted my sister and her husband, Prem Lal. I further informed the police that of all the documents seized, only one of them had my signature. I was employed with Med Life agency."*

FINDINGS –

- 3.2 Yalsco was incorporated under the Companies Act, 1956 on December 16, 2010 with its registered office at Rajnandgaon, Chhattisgarh. As per the details available on the *MCA 21 Portal*, Noticee nos. 2, 3 and 4 were appointed as Directors of the Company on December 16, 2010.
- 3.3 In their submissions, Yalsco, Prem Lal and Mamta Dewangan had stated that: “... *the business plan of Yalsco was based on Utpaad (product) Booking. Upon booking of a plot of land or any other Utpaad, agreements and certificates were issued to the client/investor specifying therein the details such as when the client/investor would receive the Utpaad, investment amount, quantity, mode of payment of booking amount whether in lumpsum or in instalments, etc. In case a client does not opt to receive the product at the time of maturity, Yalsco may determine the approximate value of the product and make payment accordingly.*”
- 3.4 As per the information available on record, it is noted that the Company had solicited money by executing (a) booking agreement booklet containing “*Application Form*” and Agreement for Plot Booking, etc. and (b) on execution of the same, Registration Certificate was issued to investor, under the following payment plans:

TABLE I – PAYMENT PLANS
NATURE OF PLANS
EASY INSTALMENT PAYMENT PLAN
LUMPSUM PAYMENT PLAN

- 3.5 In its submissions dated November 27, 2015, the Company had admitted to having collected ₹11.60 Crore from 4716 customers and had also provided a list of properties (land) acquired by the Company, which were located in and around Rajnandgaon District. As per the details provided therein, the Company had acquired 315 acres of land worth an acquisition cost of ₹13.35 Crore. However, in its subsequent submissions dated August 25, 2020, the Company had stated that 350 acres of land were purchased with funds raised from clients/investors.

3.6.1 The details of the 'Scheme' offered by Yalsco have to be considered in light of Section 11AA of the SEBI Act. The aforesaid Section 11AA, which provides for the conditions to determine whether a scheme or arrangement is a 'Collective Investment Scheme', reads as follows:

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

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

2. Any scheme or arrangement made or offered by any person under which,

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

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

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

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

3.6.2 In the context of the above mentioned Section 11AA of the SEBI Act, the 'Scheme' offered by Yalsco is examined as under –

(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.*

a. I find that the Company had collected funds from the general public towards its scheme for the "sale, purchase and leasing of undeveloped agricultural land of different sizes" in accordance with the payment plans offered in the form of equal installments or lumpsum payments. It is noted that the Company had represented to the "customers"/investors that the funds so collected were to be utilized for the cost of land, brokerage, development charges, other inputs, saplings, plans, trees, crops, planting expenses, maintenance and other miscellaneous expenses. However, no precise

details of the plot or the location of the property was provided in the “*Agreement*” or in the ‘*Registration Certificate*’. The “*Agreement*” merely stated that “*Allotment of land shall be made after receiving payment, within a period of one year in case of lumpsum payment plan, and for EIPP, after the receipt of 50% of the payment. The land ownership would be transferred in the name of customer after the end of development period...*”

- b. It is therefore observed that funds have been mobilized from the public through ‘*Easy Instalment Payment Plan*’ or ‘*Lumpsum Payment Plan*’ towards the purchase and allotment of land, which was neither identifiable nor distinguishable at the time of execution of the “*Agreement*” between Yalsco and its “*customers*”/investors or upon payment of the consideration amount by such “*customers*”/investors.
- c. Further, from the balance sheets of the Company for the Financial Years 2010–11, 2011–12, 2012–13 and 2013–14, it is noted that the Company had mobilized funds amounting to approx. ₹22.66 Crores from 9512 “*customers*”/investors (no. of investors as per information provided by the Additional Collector, Rajnandgaon, Chhattisgarh, to SEBI) which were shown as “*Advance from customers*” and had also acquired land worth ₹19.92 Crores, which was shown as “*inventories*”, contrary to the submissions made vide the Company’s letter dated November 27, 2015 (refer to paragraph 3.5). The aforesaid entry (“*Advance from customers*”) represents the funds mobilized from the “*customers*”/investors under the aforementioned ‘*Scheme*’ of allotment of land during the aforesaid Financial Years, which have been utilised for the purpose of purchase of land, etc.
- d. Upon a consideration of the aforementioned, I find that the contributions/payments made by the “*customers*”/investors were pooled and utilized solely for the purpose of the ‘*Scheme*’ of allotment of land as offered by Yalsco.

(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.

- a. Under the 'Scheme' of allotment of land offered by Yalsco, an investor may opt for 'Easy Instalment Payment Plan' or 'Lumpsum Payment Plan', which would entitle him to a monetary amount at the end of the maturity period of such 'Scheme'. For example, from the 'Registration Certificate' issued by the Company to one "customer"/investor, viz. Ramadhar Nirmalkar, it is observed that he had opted for the 'Lumpsum Payment Plan' and had paid an amount of ₹10,00,000 with a view to receive profits or returns. The aforementioned investor had been getting a monthly income of ₹6000 from the Company along with a commitment of ₹26,20,000 (estimate appreciation of plot's price) at the end of the maturity period of such 'Scheme'. In this context, it is noted that the monetary amount is considerably higher than the amount invested by said investor. It is also noted from the "Agreement" that the Company may also offer to buy-back the plot of land on its appreciated price as agreed upon between the Company and its "customers"/investors.
- b. Upon a consideration of the aforementioned, I find that the contributions/payments made by the "customers"/investors towards the 'Scheme' of allotment of land as offered by Yalsco, was with a view to receive profits or returns, whether movable or immovable, from such 'Scheme'.

(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.

- a. It is observed from various clauses in the "Agreement" that the contributions by the "customers"/investors (whether by instalment or lumpsum payment) were being managed by Yalsco on behalf of the "customers"/investors during the agreed term of plan.

- b. The following clauses in the “Agreement” indicate that the contribution or investment forming part of scheme or arrangement, whether identifiable or not, were managed on behalf of the “customers”/ investors, who did not have day-to-day control over the management and operation of the ‘Scheme’:

“...the customer, by means of an application, which is the basis of this Agreement and which contains the salient terms and conditions of the various plans, has/have expressed his/her/their desire of buying the said undeveloped agricultural land and also opted to have the same developed by the Company on customers expense.”

“Whereas the Company has agreed to develop the said land by undertaking development activities and after that, it will hand over the said land to the customer after completion of development work in specified period if customer express his will to sell out the land, company will arrange the sale of that plot in favor of the customer to the third party”

“The customer shall pay in aggregate, sum of ₹ ____ towards plot size ____ for plot no. ____ in Khasra No. _____ with development charge of ₹ ____ as per the payment schedule opted by the customer towards consideration for the purchase and development of the plot and other allied expenses as may be allocable, or appropriable to the plot.”

- c. Upon a consideration of the aforementioned, I find that the contributions/payments made by the “customers”/investors towards the ‘Scheme’ of allotment of land, is managed on behalf of such “customers”/investors by Yalsco. Further, I find that such “customers”/investors do not have day-to-day control over the management and operation of the aforementioned ‘Scheme’.

3.6.3 In this context, it may be relevant to refer to the observations made by the Hon'ble Supreme Court of India in **P.G.F. Limited & Ors. Vs. UOI & Anr. (MANU/SC.0247/2013)**, wherein it observed: *“... Sub-section (2) of Section 11AA, which defines a collective investment scheme disclose that it is not restricted to any particular commercial activity such as in a shop or any other commercial establishment or even agricultural operation or transportation or shipping or entertainment industry etc. The definition only seeks to ascertain and identify any scheme or arrangement, irrespective of the nature of business, which attracts investors to invest their funds at the instance of someone else who comes forward to promote such scheme or arrangement in*

any field and such scheme or arrangement provides for the various consequences to result therefrom.”

3.6.4 Upon a consideration of the preceding paragraphs 3.6.1–3.6.2 and having regard to the observations of the Hon’ble Supreme Court, I find that the ‘Scheme’ of allotment of land as offered by Yalsco satisfies all the four requirements of a ‘Collective Investment Scheme’ as defined in Section 11AA of the SEBI Act, viz. –

- (i) There was pooling of contributions solely for the purpose of the ‘Scheme’;
- (ii) Contributions were made with a view to receive assured realisable value;
- (iii) The contributions were managed on behalf of the “customers”/investors, and
- (iv) The “customers”/investors did not have day-to-day control over the management of the ‘Scheme’.

3.6.5 Section 12(1B) of the SEBI Act states that: *“no person shall sponsor or cause to be sponsored or cause to be carried on any ‘collective investment schemes’ unless he obtains a certificate of registration from the Board in accordance with the regulations.”* Further, Regulation 3 of the CIS Regulations, 1999 also prohibits carrying on ‘Collective Investment Scheme’ activities without obtaining Certificate of Registration from SEBI. In addition, Regulation 4(2)(t) of the PFUTP Regulations, 2003 states that: *“Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves 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.”*

3.6.6 I note that Yalsco did not obtain any Certificate of Registration from SEBI under the CIS Regulations, 1999. I therefore, find that the ‘Scheme’ of allotment of land has been carried out by Yalsco in contravention of Section 12(1B) of the SEBI Act read with Regulation 3 of the CIS Regulations, 1999. I also find that the fund mobilizing activity of Yalsco through the ‘Scheme’ of allotment of land which continued after September 2013, amounts to a fraudulent practice in terms of Regulation 4(2)(t) of the PFUTP Regulations, 2003.

3.7 In their reply/submissions, Noticee nos. 2 and 3 have annexed four Orders of the Hon'ble High Court of Chhattisgarh, Bilaspur, viz. (i) Order dated February 17, 2016 in Misc. Criminal Case ("MCRC") no. 414 of 2016, (ii) Order dated September 2, 2016 in MCRC no. 3859 of 2016, (iii) Order dated February 7, 2017 in MCRC no. 491 of 2017 and (iv) Order dated April 22, 2019 in MCRC no. 2207 of 2019, which were all passed while deciding the bail applications filed by Noticee nos. 2, 3 and 4 under Section 439 of Code of Criminal Procedure, 1973. From the aforementioned Orders along with the Orders dated March 5, 2016 (of the District Magistrate) and January 24, 2018 (of the Sessions Court/Special Court), the following is noted:

- a. Noticee no. 4 was arrested on January 1, 2016 in connection with Crime no. 396 of 2015, registered at P. S. Basantpur, Distt. Rajnandgaon, for the offence punishable under Section 420, 467, 468, 471 read with Section 34 of the IPC.
- b. Noticee nos. 2 and 3 were arrested on May 16, 2016 in connection with Crime no. 396 of 2015, registered at P. S. Basantpur, Distt. Rajnandgaon, for the offence punishable under Section 420, 467, 468, 471 read with Section 34 of the IPC and Sections 6(1), 6(2), 6(3), 6(4) and 6(5) of the Chhattisgarh PID Act.
- c. In its Order dated September 2, 2016 in MCRC no. 3859 of 2016 (**Prem Lal Dewangan & Mamta Kiran Dewangan vs. State of Chhattisgarh**), the Hon'ble High Court had noted:

7. *"Perusal of the case diary would show that without permission of the RBI and SEBI, the applicants (Noticee nos. 2 and 3) were Directors of the Company and in the helm of affairs (of the Company) have collected different amounts i.e. about ₹21 Crores from down-trodden people, the number which has been appeared in the objection to be 9816 persons.*

8. *Perused the statements of different depositors and joint venture certificates which is part of the record. Perusal of the entire documents go to show that the amount was collected from different depositors with a promise to invest the same in real estate and return with a high value. No permission is on record to show that the applicant's Company (Yalsco) was authorized to collect the same from RBI or SEBI. Therefore, prima facie, it appears that the money was collected from a large number of depositors who were poor down trodden on the pretext and allurements to return the same with high value."*

- 3.8 I note that as per details available on the *MCA 21 Portal*, Noticee nos. 2, 3 and 4 were appointed as Directors of the Company on December 16, 2010 and were Directors during the period of mobilization of funds by the Company i.e. from 2010–11 to 2013–14. I further note that as per details available on the *MCA 21 Portal*, the aforementioned Noticees continue to remain as Directors of the Company as on date. Accordingly, I find that as Directors, Noticee nos. 2, 3 and 4 were responsible for the conduct of the business of the Company during such period of mobilization of funds. Having regard to the aforementioned, I find that Noticee nos. 2, 3 and 4 have violated Section 12(1B) of the SEBI Act, Regulation 3 of the CIS Regulations, 1999 and Regulation 4(2)(t) of the PFUTP Regulations 2003.
- 3.9 As stated in the preceding paragraphs, I find that Yalsco and its Directors had been mobilising funds under its ‘Scheme’ of allotment of land, which qualifies as a ‘*Collective Investment Scheme*’ as defined under Section 11AA of the SEBI Act. Even though the Noticees have given proof of action by the Competent Authority under Chhattisgarh PID Act (i.e. the District Magistrate, Rajnandgaon, appointed by the Chhattisgarh Government under the said Act) by treating the money mobilized by the Company as ‘*deposit*’, at the same time, the Noticees have not filed any specific reply denying the allegation of carrying on ‘*Collective Investment Scheme*’ activities without obtaining a Certificate of Registration from SEBI, as has been alleged in the SCN. Further, in their replies/submissions, the Company and its Directors have also admitted to having acquired 350 acres of land with funds mobilized from “*customers*”/investors under the ‘Scheme’ of allotment of land. Therefore, the allegations in SCN regarding the ‘Scheme’ of the Company being ‘*Collective Investment Scheme*’, do not stand vitiated.
- 3.10 I note that in cases where any person raises funds through an unregistered ‘*Collective Investment Scheme*’, SEBI normally directs such person not to access the securities market and not to deal in securities in any manner, for a particular period besides directing such person to make a refund to investors from whom funds were illegally mobilized. In the instant proceedings, the properties of the Company/Directors have been attached vide an Order dated March 5, 2016, of the Competent Authority under Chhattisgarh PID Act (which was confirmed vide an Order of the Sessions Court/Special Court, Rajnandgaon on January 24, 2018, under the Chhattisgarh PID Act). Further, the process for repayment/refund to the investors/depositors/purchasers of land under the unregistered ‘*Collective Investment Scheme*’ is being undertaken by the Competent Authority under the Chhattisgarh PID Act and the Competent Authority has also published a list of investors of the Company along with the amounts invested by them on the website:

<https://rajnandgaon.nic.in/notice/list-of-yalco-real-estate-and-agro-farming-ltd-companys-investors-for-perusal-of-claim-objection/> for perusal of claim objection. In this context, I am of the view that directing the Noticees to make refund under these proceedings or directing the attachment of the properties/assets of the Company, etc. which would lead to another set of proceedings overlapping with the proceedings under Chhattisgarh PID Act, is not desirable especially when both the proceedings are mainly aimed at repayment/refund to the investors/depositors/purchasers of land under the unregistered 'Collective Investment Scheme' of Yalsco. Further, such directions, if any, may give an opportunity to the Noticees to wriggle out of the proceedings initiated under Chhattisgarh PID Act. Accordingly, any direction which is being passed under paragraph 4.1 shall not come in the way of repayment/refund of money by the Competent Authority under Chhattisgarh PID Act, to the investors/depositors/purchasers of land under the unregistered 'Collective Investment Scheme' of Yalsco.

- 3.11 As regards the issue of debarment of the Noticees, it is observed that the Competent Authority appointed under the Chhattisgarh PID Act, has already started proceedings under the Chhattisgarh PID Act including attachment of the properties of the Company and other connected actions, etc. for default in return of 'deposit' by the Company. As noted from the preceding paragraphs, the allegations in the SCN regarding the 'Scheme' of the Company being an unregistered 'Collective Investment Scheme', do not stand vitiated. Having regard to the aforementioned, the conduct of all the Noticees calls for an appropriate direction including debarment for the violation of the SEBI Act, CIS Regulations, 1999 and PFUTP Regulations 2003.

ORDER –

- 4.1 Taking into consideration all the aforesaid facts, I, in exercise of the powers conferred upon me under Section 19 read with Sections 11(1) and 11B of the SEBI Act, Regulation 65 of the CIS Regulations, 1999 and Regulation 11 of the PFUTP Regulations 2003, direct that Noticee nos. 1 (Yalsco Real Estate and Agro Farming Limited), 2 (Prem Lal Dewangan), 3 (Mamta Dewangan) and 4 (Nisha Dewangan), viz. :
- a. shall not launch any new collective investment schemes without seeking registration from SEBI in accordance with the provisions of SEBI Act and CIS Regulations, 1999;

- b. shall not collect money from investors under its existing schemes;
 - c. shall continue to cooperate with the Competent Authority under the Chhattisgarh PID Act i.e. the District Magistrate, Rajnandgaon, Chhattisgarh, for the purpose of making repayment/refunds to the investors/depositors/purchasers of land under the unregistered '*Collective Investment Scheme*' offered by Yalsco;
 - d. are restrained from accessing the securities market and also prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of four years or till the completion of proceedings under Chhattisgarh PID Act, whichever is later. During the period of restraint, the existing holding, including units of mutual funds, shall remain frozen.
- 4.2 SEBI shall provide the details of the investors in the schemes of the Company and amount collected, if available with it, to the Competent Authority under the Chhattisgarh PID Act.
- 4.3 This Order shall come into force with immediate effect.
- 4.4 A copy of this Order shall be served on the Noticees and the Competent Authority appointed under the Chhattisgarh PID Act, immediately. A copy of this Order shall also be served on the recognized stock exchanges, depositories and the Registrar and Share Transfer Agents of all Mutual Funds.

Place: Mumbai
Date: February 2, 2021

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA