SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF PRIME PLANTATIONS PRIVATE LIMITED AND OTHERS

In respect of:

Sr. No./ Noticee No.	Name of the Noticee	PAN
1.	Prime Plantations Private Limited	AACCP1731G
2.	Adhunik Plantations Private Limited	AACCA8921D
3.	Twentieth Century Plantation Private Limited	AAACT1328F
4.	Ms. Vinod Kumar Saraf	ALRPS6933L
5.	Sharadchandra Bhagirath Jaju	ABRPJ2860M
6.	Motilal Saraf	AMPPS3565H
7.	Mahendra Banawarilal Bagaria	AABPB0291P
8.	Uma Mahendra Bagaria	AAJPB7782K
9.	Rekha Jaju	AACPJ3734A
10.	Kusum Saraf	ALWPS8256M
11.	Gopaldas Bhagirath Jajoo	ACPPJ2990K
12.	Rita Sharadchandra Jaju	AADPJ4918K
13.	Prema Gopaldas Jajoo	AHZPJ8751B

(*The above entities are individually referred to by their corresponding names/numbers and collectively referred to as "Noticees*")

1. Securities and Exchange Board of India ("**SEBI**") has received complaints from certain individuals, *inter alia* alleging that the companies viz., Prime Plantations Private Limited

(hereinafter referred to as "**PPPL**"), Adhunik Plantations Private Limited (hereinafter referred to as "**ACPL**") and Twentieth Century Plantation Private Limited (hereinafter referred to as "**TCPL**") (hereinafter collectively referred to as "**the Companies**"), have collected sums of monies from the investors and have also promised specific returns on their investment made in the *Companies*.

2. Accordingly, an examination into the business activities of the *Companies* for the period of 1992 to 2019 has been carried out by SEBI. In the course of examination, numerous letters have been exchanged between SEBI and the *Companies*. The factual findings with respect to the activities of the *Companies* as unearthed during the said examination are stated briefly as under:

i. *PPPL* was incorporated on June 16, 1992 and both, *APPL* and *TCPL* were incorporated on May 20, 1992.

ii. The details of the present as well as past Directors of the *Noticee nos. 1, 2,* and *3* are as under:

Table no. 1

Present Directors of Noticee nos. 1, 2 and 3:						
Name of Director	**DIN**	**PAN**	**Date of Joining in PPPL**	**Date of Joining in APPL**	**Date of Joining in TCPL**	**Date of Cessation**
Ms. Vinod Kumar Saraf (Noticee no. 4)	02081178	ALRPS6933L	16/06/1992	16/11/2011	20/05/1992	-
Sharadchandra Bhagirath Jaju (Noticee no. 5)	05242941	ABRPJ2860M	30/03/2012	30/03/2012	30/03/2012	-
Motilal Saraf (Noticee no. 6)	01685519	AMPPS3565H	16/06/1992	20/05/1992	16/11/2011	-
Mahendra Banawarilal Bagaria	00005883	AABPB0291P	16/06/1992	20/05/1992	20/05/1992	-

(Noticee no. 7)						

Table no. 2

Past Directors of Noticee 1, 2 and 3:					
Company Name	**Name of Director**	**DIN**	**PAN**	**Date of Joining in PPPL**	**Date of Cessation**
Prime Plantations Private Limited **(Noticee No. 1)**	Uma Mahendra Bagaria (Noticee no. 8)	00686226	AAJPB7782K	16/06/1992	16/11/2011
	Gopaldas Bhagirath Jajoo (Noticee No. 11)	02064833	ACPPJ2990K	16/06/1992	16/11/2011
	Rita Sharadchandra Jaju (Noticee No. 12)	02064853	AADPJ4918K	16/06/1992	16/11/2011
Adhunik Plantations Private Limited **(Noticee No. 2)**	Uma Mahendra Bagaria (Noticee no. 8)	00686226	AAJPB7782K	20.05.1992	16.11.2011
	Rekha Jaju (Noticee no. 9)	02064822	AACPJ3734A	20.05.1992	16.11.2011
	Kusum Saraf	02073458	ALWPS8256M	20.05.1992	16.11.2011

	(Noticee no. 10)				
Twentieth Century Plantation Private Limited **(Noticee No. 3)**	Uma Mahendra Bagaria (Noticee no. 8)	00686226	AAJPB7782K	20.05.1992	16.11.2011
	Rita Sharadchandra Jaju (Noticee no. 12)	02064853	AADPJ4918K	20.05.1992	16.11.2011
	Prema Gopaldas Jajoo (Noticee no. 13)	02064870	AHZPJ8751B	20.05.1992	16.11.2011
	Prabhwati Devi Saraf (Expired)	05168656	--	20.05.1992	16.11.2011

(a) The *Companies* were having a common scheme namely 'The Green Chip Scheme' (hereinafter referred to as "**the Scheme/GCS**") through which funds were mobilised from the public. The terms and conditions of the Scheme, as mentioned in the Application Form (for investing in the scheme) are discussed in the following paragraphs.

(b) The Scheme envisaged investment from the applicant(s) invited the public to subscribe in unit of 5 Teak Trees or multiple thereof. The salient features of the scheme floated by all the three *Companies* were identical/common so far as the terms and conditions of investment are concerned, except for the minimum amount of consideration/investment required to be made and the respective maturity periods for the schemes launched by the aforesaid 3 *Companies*.

(c) The Scheme entailed a minimum investment of INR 7,500 and multiples thereof for each unit of 5 Teak Trees in *PPPL* and *APPL*; whereas in *TCPL*, a minimum investment of INR 5,000 and multiple thereof was required for a unit of 5 Teak Trees or multiple thereof. In return of the said investment, investors are issued a certificate entitling them the ownership of 5 Teak Trees or multiple thereof, in lieu of the investment so made in the Scheme.

(d) The above stated scheme so floated by the three *Companies* proposed for planting of selected premium grade CP Teak Saplings in the year 1992. The said saplings were to be

nurtured by the *Companies* under supervision of Horticulturist appointed/nominated by the *Companies*. The projected yield of Teak Wood per tree was disclosed to be 25 to 35 Cubic Feet.

(e) The said Scheme started in the year 1992. The duration of the Scheme for P*PPL* was 14 years whereas for *TCPL*, the duration was 12 years and for *APPL*, the duration was 10 years. For all the three *Companies* the scheme commenced from the dates of receipt of application money in respect of the respective *Companies*.

(f) The *Companies* were supposed to inform the applicants/investors, three months before the maturity of the Scheme apprising that the trees are fully grown and ready for delivery.

(g) The investors at the maturity of the respective schemes may either opt for taking delivery of the duly cut Teak Trees or may opt for receiving realized sale proceeds in respect of those trees that they are entitiled to receive . The Teak Trees or the sale proceeds, as opted by investors, shall be delivered to investors within two months of the date of receipt/surrender of the Green Chip Certificate from the investor intimating therein his/her exercise of option.

(h) The *Companies* shall cut the Teak Tree, 30 cms above the ground level.

(i) If investor does not respond within a period of two months of the intimation given by the *Companies*, the *Company* will wait for the response of investor for a period of one year. In case the investor does not respond till completion of one year, the *Companies* shall cut the Teak Trees, sell such trees, and keep the sale proceeds to the credit of the investor for a period of further/additional two years. After such period of additional two years, the right of the investor on such sale proceeds shall cease to exist.

(j) The right to control and manage the saplings and the tree rests with the *Companies*.

(k) The Scheme will terminate with the *Companies* delivering Teak Tree or paying the sale proceeds to the investors.

3. Pursuant to the aforesaid examination conducted by SEBI, a show cause notice (hereinafter referred to as **"SCN"**) dated November 28, 2019 was issued to the *Noticees* alleging *inter alia* as:

(a) The Scheme under the name of 'Green Chip Scheme' is a collective investment scheme in terms of the definition of collective investment scheme, laid down under Section 11 AA (2) of the Securities and Exchange Board of India Act (hereinafter referred to as **"SEBI Act, 1992**");

(b) The *Noticee nos. 1* to *3* have not obtained the certificate of registration from SEBI for the said Scheme, and have acted in violation of Section 12 (1B) of SEBI Act, 1992 read with Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "**SEBI CIS Regulations**").

(c) Under the said Scheme INR 11,57,500, INR 12,06,000 and INR 3,42,500 have been mobilised by *PPPL*; by *ACPL* and by *TCPL* respectively;

(d) As per the Auditor's certificate filed by the three *Companies*, an amount of INR 2,12,500 is still due to be refunded by *PPPL*; INR 22,500 by *ACPL* and INR 1,45,000 by *TCPL*; and

(e) *Noticee nos. 4* to *13*, being Directors of the *Noticee nos. 1* to *3,* are jointly and severally responsible for the conduct of the business of the *Noticees nos.1* to *3,* during the period of mobilization of funds under the aforesaid scheme and thus have also violated the provisions of SEBI Act, 1992 and SEBI CIS Regulations.

4. The SCN called upon the *Noticees* to show cause as to why the above referred Scheme of the *Companies* be not declared as a CIS and as to why appropriate directions including the directions to wind up the said Scheme and to refund the money collected under the Scheme, with returns which are due as per the terms of the offer, shall not be issued against the *Noticees*. It is noted that in response to the SCN, the *Noticees*, vide letter dated February 03, 2020, have filed a common reply to the SCN. The personal hearing in the matter was conducted on July 29, 2020 and certain queries were raised to the *Noticees* during the said personal hearing, in response to which, vide letter dated August 23, 2020 a post hearing written submission has been filed by the *Noticees*. The key submissions made by the *Noticees* in response to the allegations made in the SCN are summarised as below:

i. The initial investment in the three *Companies* were initially made by the pooling of funds from the family, friends and relatives of Directors of the *Companies*. In pursuance thereof, 35 Acres (14.29 Hectares) of Land was purchased at Village Bhivari, Taluka Karanja Lad Dist Washim, Maharashtra in the year 1992. Details of contributions made and land purchased by the respective three *Companies* of the above site are as under:

Table no. 3

Sr. No.	Name of the company	Size of the land	Consideration
i.	Adhunik Plantation Pvt. Ltd.	4.84 hectares	INR 1,01,104
ii.	Twentieth Century Pvt. Ltd.	4.60 hectares	INR 93,302
iii.	Prime Plantations	4.85 hectares	INR 1,01,104
	Total	14.29 hectares	INR 2,95,510

ii. Approximately 40,000 Teak Tree saplings were planted on the said land admeasuring 14.29 Hectare in the year 1992. The land is still in the name of the *Companies* and around 14000 Teak Trees are still located on land. Out of the said trees still alive, only 66 trees have some commercial value and the rest trees have no further potential of growth.

iii. The Scheme was conceptualized to enable family members and friends to make investments in a restricted manner. It was decided that investment from public will not be accepted and the same was mentioned in the application form of the scheme.

iv. The sale of Teak saplings started in November 1996 by *APPL,* in September 1992 by *TCPL* and in November 1996 by *PPPL*. The family members and friends were allowed to continue investing till January 3, 1998 for *APPL* and till March 1, 1998 for *TCPL*.

v. The Scheme started on September 10, 1992 and continued till March 01, 1998. No investment was received by any of the *Companies* after March, 1998, that shows that even the last payment was received before the SEBI CIS Regulations were notified.

vi. The details of the number of certificate holders and the amount so pooled by the said certificate holders are tabulated herein below:

Table no. 4

Sr. No.	**Name of the Company**	**No. of certificate holders/No. of families**	**No. of Teak saplings**	**Amount**
i.	Adhunik Plantations Pvt. Ltd	37 certificate holders 19 families	360	3,42,500
ii.	Twentieth Century Plantations Pvt. Ltd	118 certificate holders 50 families	1175	12,06,000
iii.	Prime Plantations Private Limited	69 Certificate Holders	1225	11,57,500

vii. In terms of consultation obtained by the *Companies*, it was advised that the *Companies* do not meet the eligibility criteria laid down under the SEBI CIS Regulations and therefore they cannot obtain registration. Further, it was also felt that the financial implications and ramification of registration would not be in the interest of the Certificate Holders.

viii. After notification of the SEBI CIS Regulations, the *Companies* had conducted several meetings with the Certificate Holders to discuss the issue of winding up of the scheme with the option to either accept the Teak saplings or refund of investments.

ix. Due to various factors like drought, dropping level of ground water, insufficient power supply etc., the growth of Teak saplings was stalled. Despite best efforts the Teak saplings could not yield desired expected results.

x. The Certificate Holders unanimously decided to hold on to the saplings and the proposal to sell the saplings was not taken.

xi. In the year 2012, when it was clear that the Teak plants will not grow to their expected potential, it was decided to wind up the schemes and accordingly, the Board of Directors of the *Company* passed a resolution to wind up the Scheme and refund the amount to Certificate Holders on August 22, 2012. Accordingly, the following refunds have been made:

Table no. 5

Sr. no.	Name of the Company	Total amount mobilized/ No. of certificate holders	Amount refunded/No. of certificate holders	Amount yet to be repaid/No. of certificate holders
i.	Adhunik Plantations Pvt. Ltd.	3,42,500/37	4,12,500/34	22,500/3
ii.	Twentieth Century Plantations Pvt. Ltd.	12,06,000/118	10,91,000/110	145000/8
iii.	Prime Plantations Pvt. Ltd.	11,57,500/69	10,60,000/61	2,12,500/8

xii. The refunds were initiated on May 29, 2004 (for *PPPL* and *APPL*) and on May 04, 2005 (for *TCPL*).

xiii. The scheme did not make any assurance or promise for benefit on the investment made in it. The Clause 2 of the Teak Sapling certificate states that: *"It is understood between the Certificate Holder and the Company that the transaction covered by this certificate is a sale of Teak wood tree saplings and does not constitute an investment within the meaning of any laws of the country"* (underline supplied)

xiv. Further, in terms of the Clause 5 of the Terms and Conditions of the Sale Certificate, no land was allotted under the Scheme to the certificate holders, nor the *Companies* have issued any instrument which could be construed as "securities" within the meaning of Section 2 (h) of SEBI Contracts Regulations Act (SCRA). Clause 5 of Terms and Conditions of Teak Sapling Sale Certificate states as: *"This Scheme does not create for the Certificate Holder any title to the land where the trees stand or had stood prior to delivery to Certificate Holder.*

xv. The sale certificate was not in the form of a unit certificate or securities and it merely reflected the title of the Certificate Holder to the Teak Saplings, which was subject to the terms and conditions of the sale thereof.

xvi. The Scheme was limited to friends, families and relatives of the shareholders of the *Companies* and it was not open for subscription to the public at large to be a part of the Scheme. The Scheme was not marketed in any manner whatsoever nor was any agent engaged for the said purpose.

xvii. As the respective corpus of the funds pooled by the *Companies* was in the range of INR 3.42 Lakh to 12.06 Lakh, the schemes do not constitute CIS as the corpus was less than the prescribed amount of INR 100 Crore.

xviii. As it was not possible to achieve the capital requirements and other compliances laid down under the SEBI CIS Regulations, steps were taken long ago to pay back to the Certificate Holders.

xix. In terms of Clauses 10-14 of the Teak Sapling Sale Certificate, the Certificate Holders were entitled to exercise the option of either taking the payment of realizable proceeds or delivery of the Teak Tree. As the trees did not grow due to factors like drought, the Certificate Holders did not exercise any option at the end of the Scheme. Further, Clause 15 had provided that the *Company* shall not cut trees till the Certificate Holder responds or one year from the maturity date, whichever is earlier. In terms of Clause 16, at the end of one year from the maturity date, the *Company* had a right to cut the trees and store them or sell them and keep the realized proceeds credited to the account of the Certificate Holder. In case the certificate holder does not respond during the total period of three years from the date of maturity, the amount or the right over the Teak Tree shall stand forfeited.

xx. In many cases, the certificate holders did not exercise the said option in three years from maturity nor there was any growth in the trees, still the *Companies*, as a goodwill gesture refunded the amounts to the investors.

xxi. It was specified in Clause 3 of the certificate that the investment was in the agricultural forestry and the same is subject to unforeseen circumstances. The *Companies* had put best effort and Directors/Promoters have also infused INR 65.11 Lakh to revive the trees and to refund the Certificate Holders.

xxii. The market value of the Teak Trees at the time of maturity was less than the amounts so collected under the scheme and after cutting the trees, there was actual loss to the Certificate Holders, still the *Companies* have made refunds of the principal invested amount to the Certificate Holders.

xxiii. The majority of the Certificate Holders have given a Confirmation Letter wherein they have renounced their title/rights etc., arising out of the certificate and have accepted the refund.

xxiv. As the Sale Certificate clearly stated that the transaction is a sale of Teak wood tree sapling, which could be managed/nurtured by the *Company* on behalf of the Certificate Holder, it cannot be construed to be an investment.

xxv. No fix amount as return was assured nor any ownership on the land was offered. The option provided to the Certificate Holders was either to collect the trees or proceeds from the sale of the Teak.

xxvi. The subject 'agricultural land' falls within the domain of the State and therefore, cannot be regulated by SEBI

xxvii. The business activity underlying the Scheme does not constitute a CIS as defined by Section 11AA (1) and 11AA (2) of the SEBI Act.

xxviii. All relevant documents including copy of Teak sapling sale certificate, confirmation letter from certificate holders, postal receipts etc., have been furnished to SEBI. Majority of the amounts have already been refunded, and the unpaid amounts are due only to the fact that few of the Certificate Holders have not encashed the cheques or have retuned the said cheques for different reasons. Breakup of such Certificate Holders, who have not received the payment on one ground or other are as under:

Table no. 6

Name of the Company	**Certificate Holders whose cheques are cleared**	**Certificate Holders who have not deposited refund cheques or undelivered / returned cases**	**Total**	**% refunded**	**% outstanding**
PPPL	61	8	69	88%	12%
TCPL	110	8	118	93%	7%
APPL	34	3	37	92%	8%
Total	**205**	**19**	**224**	**92**%	**8**%

Table no. 7

	Corpus Amount Cleared in Bank	Additional Amount Cleared in Bank	Total Amount Cleared in Bank	Amount Outstanding for not deposited and undelivered / returned cases	% refunded	% outstanding
PPPL	9,45,000	1,15,000	1,060,000	2,12,500	82%	18%
TCPL	10,61,000	30,000	1,091,000	1,45,000	88%	12%
APPL	3,20,000	92,500	412,500	22,500	93%	7%
Total	23,26,000	2,37,500	2,563,500	3,80,000	86%	14%

xxix. The above clearly shows that only INR 3.80 Lakh is pending for payment to the Certificate Holders.

xxx. This said amount is due for refund for two reasons. Few investors did not deposit the cheques delivered to them and cheques issued to certain other investors remained undelivered and were returned to the *Companies*.

xxxi. The *Company* is willing to handover Teak Trees to the complainants as well to those Certificate Holders, who are yet to be repaid. In the alternative, the refund of the said amount to such Certificate Holders would be made or the *Companies* may remit the same amount to SEBI/IPEF.

xxxii. The auditor certified Winding up and Repayment report (WRR) has already been submitted which contains list of Certificate Holders who have been repaid and those who are yet to be repaid.

xxxiii. The WRR shows that the Schemes had matured in the year 2007-08 for *PPPL* and *APPL*, whereas the Scheme of *TCPL* had matured during the period of 2004-08. The said WRR also states that the refunds have been made during the period from FY 2012 to 2017.

xxxiv. Till September 01, 2016 (when the letter from SEBI was received), refunds of INR 21,59,500 were already made.

xxxv. Lots of efforts and investment for maintenance of the upkeep were done by the *Companies* like digging of wells for irrigation etc.

xxxvi. The complaints lodged by 6 complainants are false and frivolous as there was no provision in the Sale Certificate assuring such high returns in the range of 9900% to 26,650%, as claimed by the said complainants. As no amounts/returns were ever assured by the *Companies*, the complainants are not entitled to such amount as being sought by them.

xxxvii. As a goodwill gesture the *Companies* have agreed to refund the principal sum contributed towards the Teak saplings by each Certificate Holder. In furtherance of the above, the *Companies* have issued refund cheque to each of such complainants, however, the complainants have not enchased those cheques, resulting in the liability remain unpaid and outstanding. Copies of cheques have been filed in support thereof.

xxxviii. The complainants have not informed the *Companies* in writing about their choice between getting the tree or realizable sale proceeds. Further, the complainants have not communicated with the *Company* for 3 years from the maturity date, hence, in terms of Clause no. 16 of the terms and condition of the Sale Certificate, rights of the complainant to seek refund stand forfeited.

xxxix. Even assuming without admitting that the acts of the *Companies* were in violation of provisions of SEBI Act read with SEBI CIS Regulations, the same is only a technical violation as substantial refunds have already been made to the majority of the Certificate Holders and no loss has been caused to the public at large nor any profit has accrued to the *Companies* as has been alleged in the SCN. Further, the amounts involved are nominal. The alleged violation is not a repeated and only a 'one off' incident before the notification of the SEBI CIS Regulations. Reliance has been placed on the order of Hon'ble SAT passed in the matter of *Samrat Holdings Limited v. SEBI (Appeal No. 23/2000 decided in January 2001),* wherein Hon'ble SAT have observed that the discretion vested in an Adjudicating Officer has to be exercised judicially. Further reliance has been placed on the order of Hon'ble SAT in the matters of *Piramal Enterprises Limited v SEBI, (Appeal No. 466 with 467 of 2016)* and *DSE Financial Services Ltd v SEBI,* to support the submission that in technical violations, censure is a sufficient direction.

xl. The SCN has been issued after 20 years of the notification of SEBI CIS Regulations and by the time the said SCN was issued, majority of the refunds have already been made. The proceedings should be dropped on the ground of delay itself and reliance has been placed

on the order of Hon'ble SAT passed in the matter of *Mr. Rakesh Kathotia & Ors. vs SEBI (Appeal No.7 of 2016)* and *Ashok Shivlal Rupani & Anr. vs SEBI*. Reliance has also been placed on the order of Hon'ble SAT passed in the matter of *Pancard Club Limited Vs. SEBI (Appeal no. 254 of 2014)* to submit that rationale in taking action by SEBI must be guided by fair play and powers cannot be exercised merely on speculative inferences.

5. Keeping in view the aforesaid submission by the *Noticees*, before I proceed to appropriately deal with the submissions made by the *Noticees,* it is relevant to note here that the definition of collective investment scheme has been laid down under Section 11 AA (2) of the SEBI Act, 1992, based on which it has been alleged that the aforesaid scheme launched by the *Noticee nos. 1* to *3* was in the nature of collective investment scheme. Further, it is also noted that the *Noticees* have been confronted with the charges of violation of Section 12 (1B) of the SEBI Act, 1992 read with regulation 3 of the SEBI CIS Regulations. In order to adjudge the charges levelled in the SCN against the *Noticees*, it would be apt to refer to the above-stated relevant provisions of the SEBI Act, 1992 and SEBI CIS Regulations, which are reproduced hereunder for facility of reference:

SEBI Act, 1992

Collective investment scheme.

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

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

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

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

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

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

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

12. Registration of stock brokers, sub-brokers, share transfer agents, etc.

(1B) No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations: Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30.

SEBI CIS Regulations, 1999

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

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

6. I have carefully perused the contents of the SCN, the regulatory provisions as quoted above and the replies filed on behalf of the *Noticees*. It is noted at the outset that the *Noticees* have prayed for dropping of charges alleged in the SCN on the ground that the same has been issued after 20 years of the notification of the SEBI CIS Regulations. In order to deal with the said argument, I deem it fit to elaborate upon the evolution of the regulatory framework pertaining to collective investment schemes.

7. In this connection, it is noted that Section 11(2) (c) of SEBI Act, 1992 as existed in the originally introduced SEBI Act, 1992, *inter alia* empowers SEBI to take measures for registering and regulating the working of collective investment schemes. Further, Section 12 (1B) was inserted in the SEBI Act, 1992 by the Securities Laws (Amendment) Act, 1995, w.e.f January 25, 1995, which stipulated that no person shall carry out collective investment scheme, without obtaining registration from SEBI. Further, vide Press Release dated November 18, 1997, the Government of India communicated its decision that schemes through which instruments such as agro bonds, plantation bonds, etc., issued by the entities, would be treated as schemes under the SEBI Act, 1992 and SEBI would frame regulations in order to regulate these Schemes. Subsequently, a press release dated November 26, 1997 was issued by SEBI, wherein it was stated that the process of framing of regulations is in process and till the time the said regulations are framed, no person can sponsor or cause to be sponsored, carry on or cause to be carried on any new CIS. It was further notified that persons desirous of availing the benefits of the proviso to Section 12 (1B) of SEBI Act, 1992 may send the information within 21 days. Another public notice dated December 18, 1997 was issued by SEBI*, inter alia* directing the existing schemes to comply with Section 12 (1B) of SEBI Act, 1992 and to send the desired information to SEBI.

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

8. As noted above, by various press release by the Government of India as well as by SEBI, the persons who were running collective investment scheme were notified about the prohibitions imposed on such activities and the companies engaged in such schemes were directed to file the relevant information with SEBI. Admittedly, the *Noticee nos. 1* to *3*, have never filed any information with respect to the schemes of Teak Trees that they were running at that particular point of time. It is noted from the records that during the year 2016, certain investors, who had invested in the Schemes of the *Noticee nos. 1* to *3*, have made complaints with SEBI and based on such complaints, SEBI swung into action and exchanged various communication with the *Noticee nos. 1, 2* and *3*. Based on the information so furnished by the *Noticees* and other materials available on record, the SCN has been issued in the present matter. Therefore, when the facts of the case indicate that the *Noticee nos. 1* to *3* did not furnish the requisite information during the period 1997-1998 and the fact that these three *Noticees* continued to remain engaged in running a collective investment scheme which came to the knowledge of SEBI only in the year 2016 pursuant to the complaints received by SEBI, the *Noticees* are not entitled to raise any objection now to the SCN taking a plea of delay of 20 years in issuance of the SCN.

9. Additionally, I note that provisions of the the SEBI Act, 1992 do not prescribe for any limitation for initiation of proceedings, issuance of show cause notice or for completion of the quasi-judicial proceedings. In this respect, reference may be made to the order passed by Hon'ble SAT in the matter of *Metex Marketing Pvt. Ltd. vs. SEBI* (DoD: June 04, 2019) wherein Hon'ble SAT held that:

> *"This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation".*

10. Further, in order to ascertain as to whether there has been actually any delay in the matter, it is the date when the violation came to the notice of the SEBI should be the relevant point and not the date when the alleged violation was committed. Also the fact as to whether there is a delay in initiating proceedings in a particular case and such delay, if any is justified or not, depends on the specific facts and circumstances of that particular case. In the instant matter, as stated above in this Order, the issue got triggered only upon receiving certain complaints in the year 2016. After the completion of examination of these complaints which involved several exchanges of information with the *Companies* and collection of materials, and only after making an objective evaluation of various facts/materials gathered during the course of examination, the present

proceedings in respect of *Noticees* could be initiated by issuance of the SCN. Hence, the argument taken by the *Noticees* that SEBI has unduly delayed in initiating the proceedings is factually incorrect, misleading and is not founded on the statute and the rules governing the aspect pertaining to delay in initiating action under the SEBI Act, 1992 and Regulations made thereunder.

11. I have also perused the judicial decisions relied upon by the *Noticees* in support of their contention against the so called delay committed by SEBI in initiating the proceedings. Having gone through the same, I find that the facts and attending circumstances of each of the cited cases have to be taken into consideration while deciding as to whether any delay has actually been made in initiating a particular proceeding dealt with in those cases. In the instant proceedings, as already mentioned above, examination in the matter was initiated pursuant to receipt of certain complaints in the year 2016 and SCN has been issued after completion of the said examination, hence, the observations made in the judicial decisions relied upon by the *Noticees* will not come to the help of the *Noticees*. Therefore, I am of the opinion that the present proceedings do not suffer from any infirmity on the ground of delay. I, therefore, hold that there is no protracted delay as contended by the *Noticees* and the contentions and claims of the *Noticees* the completely misplaced on facts as well as in law and deserve to be summarily rejected.

12. Moving forward, it is noted that the *Noticees* have challenged the jurisdiction of SEBI by claiming that the subject of 'agricultural land' falls within the purview of State in terms of the allocation of subjects provided under the Constitution of India. Insofar as the said argument is concerned, I observe that the issue of jurisdiction of SEBI over schemes involving agricultural land has already been settled in the matter of *PGF Limited and others Vs Union of India and others [2004 Indlaw PNH 159]*. In the said matter, while deciding on the constitutional validity of Section 11 AA, Hon'ble High Court of Punjab and Haryana have *inter alia* observed as: "*In drawing our conclusion, therefore, the relevant question to be examined would be, whether the pith and substance of the legislation under challenge is 'investor protection', and sale and purchase of agricultural land is an activity ancillary thereto; or whether the pith and substance of the legislation under challenge is sale and purchase of agricultural land and 'investor protection' is ancillary thereto. In answering the aforesaid query, the conclusion undoubtedly is in favour of the former, i.e., the pith and substance of the legislation in question is 'investor protection', whereas sale and purchase of agricultural land and/or development of agricultural land is incidental thereto…. In the aforesaid view of the matter, there can be no manner of doubt that the pith and substance of the subject-matter of the legislation in hand does not fall under Entry 18 of the State List.*"

13. The aforesaid decision of Hon'ble High Court of Punjab and Haryana was challenged by the petitioner therein before Hon'ble Supreme Court of India. Hon'ble Supreme Court, upheld the decision of the Hon'ble High Court and have *inter alia* observed that: "*A detailed analysis of sub-*

section (2) of Section 11 AA, which defines a collective investment scheme disclose that it is not restricted to any particular commercial activity such as in a shop or any other commercial establishment or even agricultural operation or transportation or shipping or entertainment industry etc. The definition only seeks to ascertain and identify any scheme or arrangement, irrespective of the nature of business, which attracts investors to invest their funds at the instance of someone else who comes forward to promote such scheme or arrangement in any field and such scheme or arrangement provides for the various consequences to result there from."

14. Thus, in view of the findings laid down in the aforesaid judgments, it cannot be contested upfront that merely because the scheme under reference involves agricultural land, the jurisdiction of SEBI is ousted. In view of the same, the said scheme of the *Noticee nos. 1, 2* and *3* has to be examined from the lens of the extant regulatory framework governing collective investment schemes, as stipulated under the SEBI Act, 1992 and SEBI CIS Regulations, from the point of view of protection of interest of the investors.

15. From the materials available on record, the following crucial facts pertaining to the said scheme merit reiteration:-

i. All the three *Companies* viz., *PPPL*, *APPL* and *TCPL* were incorporated during the period of May-June, 1992 and all of them have common registered address.

ii. The main object of all the three *Companies* is also common: "T*o acquire by purchase or otherwise and to carry on the business of estate owners, cultivators, planters, growers and manufacturers or sellers and dealers in tea, coffee, cardamom, pepper, spices, rubber and gutta-percha, and gums of every description, corn, cocoa, rice, coconut tree, sugarcane plantation, teakwood, eucalyptus, cinchona, grains, paddy, cereals, cotton, vegetables*."

iii. The *Noticee nos. 4, 5, 6* and *7* are Directors on the Board of all the above stated three *Companies*.

iv. The Companies *PPPL*, *APPL* and *TCPL* had launched an identical scheme namely 'The Green Chip Scheme', under which the investor was given the option to invest INR 7,500 and multiples thereof for a unit of 5 Teak Trees or multiples thereof, in *PPPL* and *APPL*; whereas in *TCPL*, a minimum investment of INR 5,000 and multiple thereof was offered to the investors. Further, all the conditions governing the Schemes were identical for all the *Companies*, except for the small variations in minimum amount of investments that could be made by an investor and the period of maturity of such investments.

16. In order to come to a conclusion as to whether a particular scheme can be called a collective investment scheme, all the factors laid down under Section 11 AA (2) of the SEBI Act, 1992 are required to be present in such a scheme. In the present case, the SCN records a detailed narration of the Schemes and based on examination of facts narrated in the SCN, the schemes launched

by the three *Companies* have been alleged to be falling within the purview of collective investment scheme.

17. I note from the replies filed on behalf of the *Noticees* that their submissions mainly focus on the following pleadings viz:- (i) that the investments in the Schemes have been made by the family and friends of Directors and shareholders of the *Companies*; (ii) that majority of the investors have already been refunded; (iii) that they never sponsored an investment scheme and (iv) that the schemes under reference purely involved sale transactions of Teak Trees to the investors.

18. It has been submitted that the Scheme was never open to general public and subscription to the Schemes were received only from the family members and friends of Directors and shareholders, hence, the charges made in the SCN deserve to be dropped on the ground that the Scheme was not launched for commercial purpose. I find that the aforesaid submissions of the *Noticees* are statements of claims without support of any documents to substantiate the said claim that all the investments in the said Schemes were made by family and friends only. I further observe that the claim of the *Noticees* that the investments were raised only from the family and friends of the shareholders is clealy fallacious as it has also been asserted that many of the investors/certificate holders of the *Noticee Companies* are not traceable so as to make refunds. Notwithstanding the same, it is observed that the said claim is also grossly erroneous, since under the extant regulatory framework, the governing rules do not provide for any exception to a scheme from the ambit of CIS, wherein the funds have been raised from a limited number of connected/related persons. Further a perusal of the relevant provisions reveals that sub section (3) of Section 11AA of the SEBI Act, 1992 provides exemption to certain scheme or arrangement from being treated as a CIS, however, the aforesaid activities undertaken by the *Noticees* do not fall in those categories of exempted schemes or arrangements as provided under the said sub section. Under the circumstances, the aforesaid argument of defence seeking exoneration on the ground of a limited number of investors or investment made by relatives/connected persons of Directors etc. lacks merit and is therefore rejected.

19. It has further been contended that the majority of the amounts so collected under the schemes were already refunded to the investors even before the communication from SEBI was received by the *Noticee nos. 1, 2* and *3*. In this connection, it is observed that Section 12 (1B) of the SEBI Act, 1992 casts an absolute prohibition on any person to sponsor or cause to be sponsored or carry on or caused to be carried on a collective investment scheme. In view of the explicit prohibition as envisaged in the said Section, a scheme in the nature of collective investment scheme could not have been even caused to be sponsored. I further observe that the regulation 3 of the SEBI CIS Regulations provides that only a company which has obtained a

certificate of registration as a 'Collective Investment Management Company' can carry on or sponsor or launch a collective investment scheme. There is nothing on record to indicate that the *Noticee nos. 1* to *3* were having a registration certificate as a Collective Investment Management Company. Therefore, any claim of having made refunds of the money so collected under the schemes would not have any bearing on the exact nature of the scheme, and the aspects of the scheme would only be a parameter to classify a scheme as a collective investment scheme.

20. After having made the aforesaid observations about the statutory provisions, I note that the next contention of the *Noticees* that requires consideration is the claim that the transactions involved in the said schemes are *simplicitor* sale of Teak Tree. I have carefully pondered on the said submission and have also evaluated various material available on record including the Teak Tree Certificates, communication exchanged by the *Noticee nos. 1, 2* and *3* with the investors and other material relevant for the present matter.

21. The following terms and conditions as culled out from the Sale Certificate appears to be relevant so as to assess the nature of the said schemes:-

Prime Plantations Private Limited/Adhunik Plantation Private Limited

1. *Under the Scheme, Prime Plantations Pvt. Ltd.) referred to as the Company) sells to and plants 5 (five) saplings of teak trees in the company's plantation for the holder of the Green chips sale Certificate (referred to as Certificate Holder) and nurture its growth till the maturity date.*

   ....

4. *The land, roots and stumps up to the height of 30 cm from the ground Level shall remain the property of the Company and the Certificate Holder shall have no right or interest or title there in.*

5. …

6. *The Certificate Holder shall be beneficiary of the concerned trees to the extent of the trees alone from 30 cm above the ground level. The entire control and management of the trees and the plantation shall be that of the Company.*

7. …

10. *At the end of the scheme period, the Certificate Holder shall present the Sale Certificate to the Company and exercise his/her choice of either the trees or its realisable sale proceeds. These options are exercisable by the Certificate Holder only upon the maturity of the duration of the Scheme.*

11. …

21. *The Company reserves all rights to control and manage teak trees and plantation site.*

Twentieth Century Plantations Pvt. Ltd.

B. Privileges of the Green Chip Investor

3. *TCPL has planted carefully selected premium grade CP Teak Saplings and will nurture them under rigid scrutiny, control and supervision of horticulturist.*

4. *TCPL will use the latest techniques of irrigation, periodic fertilisation, timely trimming and pruning of trees, application of the pesticides to protect the Teak, and secure proper security for the entire Teak Plantation. This will result in Projected yield of 25 to 35 cubic feet of Teak Wood per tree.*

5. *….*

6. *TCPL shall endeavour to take utmost care to protect the INVESTOR's interest at all times.*

7. *..*

C Duration of the Green Chip Scheme

3. *At the end of the duration of GREEN CHIP scheme the INVESTOR (by depositing GREEN CHIP with TCPL) is privileged to opt for:*

(i) The trees duly cut or

(ii) The realised sale proceeds of the trees.

These options are exercisable by the INVESTOR only upon maturity of the duration of the GREEN CHIP Scheme.

4. Under both options, TCPL shall cut the tree 30 cm above the ground level, and deliver the same to the INVESTOR, either as trees (explanation of TCPL) or its realised sales proceeds, subject to deduction of statutory levies as may be applicable then.

5. …

7. TCPL retains all rights to control and manage the Teak Trees and the plantations. (underlines supplied)

D. ***Risk Factors, its precautions and insurance***

8. The land, roots and stumps up to the height of 30 cm from the ground Level shall remain the property of TCPL and the INVESTOR shall have no right or interest or title therein. (emphasis supplied)

22. Apart from above, I find it worthy to quote here the relevant portion of a letter dated June 23, 1998, copy of which has been filed by the *Noticees* in the present proceedings. The said letter *inter alia* reads as:

"…*We congratulate you for making right choice of* ***investment.*** *Your investment has already grown and will also continue to grow surely and safely.*

Yours and your family owned saplings will be ***6 years old in July 1998****. These saplings are now tall and fat* ***trees (20' to 25' tall and 10 to 15 inches girth).*** *We have reared them for you with pleasure. …"* (emphasis supplied)

23. Further, the copies of letters addressed while issuing refund to the investors have also been filed. The relevant text of one of such letter dated August 22, 2016, reads thus:

..2. Owing to several legal requirements and regulatory changes which are applicable to our Scheme, we had obtained a Legal Opinion and in connection with our ***investment schemes*** *and with regard to the requests received from several Unit Holders to start a new scheme.*

3. In view of the SEBI Collective Investment Scheme Regulations, 1999, every scheme which has a collective investment ought to get the same registered with SEBI as CIS. Although we believe that we do not fall under the requirements, we are advised to refund the payment received from the Unit Holders as we are unable to meet with the networth and capital requirements prescribed by SEBI for the registration as CIS. The networth required is more than Rs. 5 Crores and it was impossible for us to mobilize the said networth as required…." (emphasis supplied)

24. As noted earlier, the *Noticees* have taken a stand that the payments made by the applicants in the Green Chip scheme were not an 'investment' and were only sale transactions of teak wood trees. In this connection, it is relevant to observe that under the said scheme, for a set of 5 Teak Saplings/Trees, each investor was required to pay a certain amount of money to the three *Noticee Companies*. The concerned *Noticee Company* had undertaken under the said Scheme, to nurture the growth of such 5 teak saplings till the maturity date of its Scheme. The applicant/investor may, at the time of maturity of the scheme, either opt for delivery of the actual tree or the realised sale proceeds of such tree, from the concerned *Company*. Further, the benefit of the investor is limited to the extent of the body of the tree from 30 cm above the ground level and the rest of portion of such teak trees i.e. upto the height of 30 cm from the ground level remained vested with the concerned *Noticee Company*. Lastly, all the rights to control and manage the teak trees as well as the plantation site stood retained with the respective *Noticee Company* only.

25. Apart from above, is also noted that at the time of the contract being executed between the two parties, viz. *Company* on the one hand and the investors on the other, the underlying product was only a 'sapling', which was projected and promised to be grown into full-fledged tree at the time of maturity of the scheme, owing to the nurturing of the sapplings promised to be done by the *Noticee Companies*.

26. From the aforesaid discussions, it does not appear that the *Noticee Companies* were actually entering into a 'sale transaction' of teak trees while mobilizing investments from the respective investors. The only aspect that emerges out of the aforesaid discussion is that under the said

Green Chip Scheme, the *Companies* viz., *PPPL, APPL* and *TCPL*, had raised money from the investors by making them subscribe to the said Scheme and not by selling any Teak Trees as has been propounded by the *Noticees*. As the funds have been raised against only Teak saplings, it is clear that the funds so raised from the investors were pooled by the *Noticee Companies* and were utilised for the purpose of the Scheme itself, i.e., planting, nurturing and growing the teak wood saplings. The said observations are sufficient to arrive at a finding that the first ingredient of Section 11AA (2) of SEBI Act, 1992, i.e., pooling and utilising the contributions made by the investor for the purposes of the scheme, is very much present in the Green Chip scheme launched by the *Companies*.

27. Admittedly, the Scheme documents have projected that at the time of the maturity of the Scheme, the trees would have been grown up sufficiently, providing the investors a right to the portion of the trees above 30 cm from the ground in case of *PPPL* and *APPL*. Further, in the case of *TCPL*, the terms and conditions categorically assured that by the efforts of the said *Company*, the projected yield of the trees would be 25 to 35 cubic feet of teak wood per tree. Under the circumstances, it is clear that the payments were made by the investors in the scheme with a view to receive the profits or produce at a future date, out of such scheme. Admittedly, the Scheme of the *Companies* provided by the investors/contributors an option to choose between the physical delivery of the tree or the realised sale proceed, hence, it is evident that the investment has been made with an objective to receive profit or produce. Therefore, the second condition laid down under Section 11 AA (2) also stands satisfied under the Scheme.

28. I further observe that the terms and conditions of the schemes clearly empower the *Companies* to use all the techniques of irrigation so as to nurture the Teak Saplings, in order to enable them to grow over a period of time. The investor had the right to take delivery of the Teak Tree or the sale proceeds only at the maturity of the Scheme and till such time, all the actions with respect to the maintenance, nurturing, caring and other issues relating to the plantation site as well of the Teak Saplings/Trees were to be taken by the *Noticee Companies* only. In the communication addressed in the year 1998 by the *Noticee Companies* to the investors, the *Companies* have claimed that the trees reared by them under the Scheme have grown tall and fat. The aforesaid communication leaves no dispute with respect to the fact that the maintainance and management of the property forming part of the scheme (teak saplings/trees) remained under the responsibility and control of the *Noticee Companies* only, and investors/contributors had no control over the day to day the management and operation of the Scheme. Thus, the investors/contributors to the Scheme were not enjoying any control over the management and supervision as far as the operation of the Scheme was concerned. They had no say in any manner whatsoever and the rights to manage, control and supervise the scheme exclusively rested with the *Noticee Companies* only. The aforesaid observations and factual revelation with respect to the

management and control over day to day operations of the scheme leaves no room for any doubt about the fact that the third and the fourth conditions of the Section 11 AA (2) of the SEBI Act, 1992 are also found to be strongly present in the said Schemes run by the *Noticee nos. 1, 2* and *3*. It is further noted from the SCN that the *Noticee nos. 1, 2* and *3*, under their collective investment scheme viz., The Green Chip, had respectively raised INR 11,57,500; INR 3,42,500; and INR 12,06,000.

29. Before concluding my discussions, I find it worthwhile to add here that the *Noticees* have also submitted that due to various factors like drought, dropping level of ground water, insufficient power supply etc., the Teak Trees could not yield the expected/desired result. After carefully considering the said submissions, I am bound to observe that such factors cannot be claimed to have any kind of bearing nor can they dilute the nature and structure of the alleged Collective Investment scheme when seen from the lens of the regulatory framework governing collective investment schemes.

30. Having found that the Scheme under reference is satisfying all the ingredients as envisaged under Section 11AA (2) of SEBI Act, 1992 to be called a Collective Investment Scheme, I note that the *Noticees* have vehemently argued that majority of the investors have already been paid by them and therefore, violation if any on their part, is only of technical in nature. So far as the claim of the refund is concerned, the *Noticees* by their own admission have stated that the first refund was made in the year 2004 for *PPCL* and *APCL*, and in the year 2005 for *TCPL*. However, the decision to wind up the schemes was taken in the Board Meeting held on August 22, 2012.

31. As noted earlier, the SEBI CIS Regulations were notified w.e.f October 15, 1999. Pursuant to the said notification, the collective investment schemes which were as existing as on the said date, were required to obtain provisional registration from SEBI. Further, in terms of regulation 74, the existing collective investment schemes which were not desirous of obtaining the provisional registration, were required to formulate a scheme of repayment and make such repayment to the investors of those schemes. Admittedly, the *Noticee nos. 1, 2,* and *3* did not apply for obtaining the provisional registration however, refunds were not made to the investors within the timeline specified under the SEBI CIS Regulations. It is thus seen that the *Noticee nos. 1, 2* and *3,* did not comply with the extant provisions of the SEBI CIS Regulations both by omitting to obtain provisional registration as well as by failing to make refunds in terms of the applicable regulation. Had the *Noticees* complied with the regulations, the refunds due to the investors would have bene made by the year 2000 itself, since this would have been the only consequence as per the applicable regulations. However, the refunds to the investors of the scheme have been made till as late as in the year 2016. Therefore, the plea taken by the *Noticees* that the majority of the investors of the Scheme have been refunded back the money is not found to be mitigating

enough so as to convert the inactions and omissions on the part of the *Noticees* to be a 'mere technical default'.

32. The Section 12(1B) of SEBI Act, 1992 and the regulation 3 of the SEBI CIS Regulations have explicitly placed a prohibition on carrying on any collective investment scheme without obtaining requisite registration. These provisions thus permit a Collective Investment Management Company to operate a Collective Investment Scheme, who has obtained a certificate of registration to carry on a collective investment scheme. As recorded in detail in the foregoing discussion, the Scheme launched by the *Noticee nos. 1, 2* and *3* has been found to be a collective investment scheme, for which, admittedly no registration was ever obtained by the *Noticees* from SEBI. Therefore, the *Noticees* have not been able to make out a case in their favour so as to answer the charges levelled against them in the SCN. Under the circumstances, I am constrained to observe that the SCN has been successful in establishing the charge that the *Noticee nos. 1, 2* and *3,* by running a collective investment scheme without obtaining registration from SEBI, have acted in violation of Section 12 (1B) of SEBI Act, 1992 read with regulation 3 of the SEBI CIS Regulations.

33. As far as the other *Noticees* are concerned, it is noted that the *Noticee nos. 4, 5, 6* and *7* are the Directors of the *Noticee nos. 1, 2* and *3*. Further, the *Noticee no. 1* had the *Noticee nos. 8, 11* and *12* as its past –Directors; *Noticee no. 2* had the *Noticee nos. 8, 9* and *10* as its past Directors; and *Noticee no. 3* had *Noticee nos. 8, 12*, and *13* as its past Directors. The aforesaid ex-Directors were appointed on the Boards of the respective *Noticee Companies* from the date of incorporation itself and coincidentally, all of them have resigned on November 16, 2011. The said period of directorship of the ex-Directors is sufficient enough to indicate that the ex-Directors were at the helm of the affairs and in-charge of activities of *Noticee nos. 1, 2* and *3* (as the case may be) and were thus directly/indirectly involved and instrumental in sponsoring or causing to be sponsored, carrying out or causing to be carried out the aforesaid CIS without obtaining requisite registration from SEBI. The *Noticee nos. 1, 2* and *3* being incorporated entities, have to act through the natural persons, i.e., the Directors. Therefore, the Directors who were controlling the operations and affairs of the *Noticee nos. 1, 2* and *3*, at the time of violation, are all to be held equally liable for the violation of Section 12 (1B) of SEBI Act, 1992 and regulation 3 of the SEBI CIS Regulations.

34. I have already recorded in detail my findings that the Scheme 'Green Chip Scheme' of the three *Companies* satisfies all the four ingredients as laid down under Section 11 AA(2) of SEBI Act so as to be held a collective investment scheme for which no registration was obtained by the *Noticee Companies*. By carrying out the said Scheme, the *Noticees* have grossly violated the provisions of SEBI Act, 1992 as well as the SEBI CIS Regulations. Further, pursuant to the notification of SEBI CIS Regulations, the *Noticee nos. 1, 2* and *3* also did not adhere to the

regulatory framework prescribed in the regulation for the pre-existing collective investment schemes. Such non-compliance and acts of continuing with activities of running a scheme in the nature of CIS, the refunds of which ought to have been made to the investors in the year 2000 itself but were made till the year 2016 suggest that the *Noticees* have not cared to comply with the provisions of SEBI Act, 1992 or the relevant regulationss however at the same time I take into, cognizance of the fact that the majority of the investors already stand refunded in terms of the Winding up and Repayment Report filed on behalf of the *Noticees* and as per the Auditor's Certificate, an amount of INR 3.80 Lakh are left for refund to 19 investors.

35. In view of the foregoing discussions after taking a comprehensive view of the matter, in exercise of powers conferred upon me under Sections 11(1), 11(4), and 11B (1) read with Section 19 of the Securities and Exchange Board of India Act, 1992 and regulation 65 of CIS Regulations, in order to protect the interest of investors and the integrity of the securities market and considering the facts of the case and to meet the ends of justice, I hereby issue the following directions:

I. The *Noticee nos. 1, 2* and *3* shall within a month from the date of issue of this order, cause to effect a newspaper publication in one national daily in English and in Hindi each, and in a local daily with wide circulation in each of the States wherein the investors reside, mentioning in bold letters the name of the Scheme i.e., 'Green Chip Scheme' in the said News Papers and inviting complaints/claims from any investor in respect of the said Green Chip Scheme. The newspaper publications shall also contain an advisory, informing the investors to forward a copy of their complaints/claims, with the superscription "Complaints/Claims in the Matter of Prime Plantations Private Limited/Adhunik Plantations Private Limited/ Twentieth Century Plantation Private Limited", to SEBI at the following address:

The Division Chief, IMD-CIS Division
SEBI, SEBI Bhawan, Plot no. C-4A, G Block
Bandra Kurla Complex,
Bandra EastMumbai-400051
E-mail : cis@sebi.gov.in

II. A period of 30 days from the date of the advertisement shall be provided to contributors/investors for submitting any claim/complaint as stated aforesaid.

III. An interest bearing escrow account shall be opened by the *Noticee Companies* in a nationalised public sector bank and the entire outstanding amount payable to the investors under the above stated Scheme shall be transferred/deposited to this escrow account within 30 days from the date of this order.

IV. The *Noticee nos. 1, 2* and *3* shall wind-up their Green Chip Scheme and refund the money collected by them under the Scheme to the contributors/investors which are due to them strictly as per the terms of offer of the Scheme.

V. All the monetary refunds to the contributors/investors shall be made through 'Bank Demand Draft' or 'Pay Order' (both of which shall be crossed as "Non-Transferable") or through any other appropriate banking channels such as NEFT or RTGS with appropriate audit trail.

VI. The present incumbent Directors (*Noticees nos. 4* to *7)* shall ensure that the aforesaid directions are complied with.

VII. The *Noticee nos. 1, 2* and *3* and the present incumbent Directors (*Noticees nos. 4* to *7*) shall submit to SEBI a final Winding Up and Repayment Report (WRR) in the prescribed format for the purpose along with information on the claims so received, the details of the contributors/ investors who have been so refunded and statement of escrow account duly supported by list of all contributors/investors, their contact details, details of investments and corresponding refunds made to such investors, the supporting bank account statements of all the three *Noticee Companies*, indicating refunds so made to the investors and the receipts taken from the investors acknowledging such refunds, along with a consolidated statement of such repayments having been made, duly certified by two Independent Chartered Accountants, within a period of six (06) months from the date of this Order.

VIII. The *Noticees 1* to *7* are restrained from accessing the securities market including by issuing prospectus, offer document or advertisement soliciting money from the public and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, from the date of this order, till the expiry of 04 years from the date of completion of the refunds to the investors, as directed above.

IX. The *Noticee nos. 1* to *7* (*Companies* and the present Directors) shall not divert any funds raised from public at large and shall not alienate or dispose of or sell any of the assets of the *Noticee nos. 1, 2* and *3*, except for the purpose of making refund to its investors as directed above.

X. The *Noticees 8* to *13* are restrained from accessing the securities market including by issuing prospectus, offer document or advertisement soliciting money from the public and are further prohibit them from buying, selling or otherwise dealing in securities,

directly or indirectly, or being associated with the securities market in any manner, for a period of two years from the date of this order.

36. It is further clarified that during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the *Noticees* shall remain frozen.

37. The obligation of the aforesaid debarred *Noticees*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order only, in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the *Noticees* debarred in the present Order, in the F&O segment of the stock exchanges, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

38. The Order shall come into force with the immediate effect.

39. A copy of this order shall be forwarded to all the *Noticees*, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

DATE: MARCH 19TH, 2021 **S. K. MOHANTY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA