BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/S./2022-23/21263-21266]

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

In respect of

Noticee No.	Name of Noticees	PAN/DIN
1.	Paramount Biotech Industries Limited	AACCP1163C
2.	Mr. Girish Chandra Gupta	AIMPG6205H
3.	Ms. Pushpa Gupta	02698562
4.	Ms. Bhawani Srivastava	BMHPS8135C

(*"hereinafter collectively referred to as Noticees*")

In the matter of Paramount Biotech Industries Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') vide Order dated January 28, 2005 (hereinafter referred to as "**Order 1**"), passed by Hon'ble Chairman of SEBI under Sections 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with regulation 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "**CIS Regulations**"), issued directions against Paramount Biotech Industries Limited ("hereinafter referred to as "**the Company/Paramount/Noticee 1**"), to refund the money collected under the schemes of the Company along with returns due to the investors as per the terms of the offer, within a period of one month from the date of the Order 1. The aforesaid Order further restrained the Company from collecting any money

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from investors as well as from launching any new schemes. Paramount is a public company incorporated on October 29, 1996 and is registered at Registrar of Companies, Delhi (**"RoC-Delhi"**). Noticees 2 to 4 were Directors of the Company at the relevant time and Noticee 3 continues to be a Director in the Company till date (Noticees 1 to 4 are hereinafter collectively referred to as "**Noticees**").

2. SEBI observed that Paramount had failed to comply with the directions contained in the aforesaid Order 1. Thus, a Final Order dated May 25, 2018 was passed by Hon'ble Whole Time Member ("**WTM**") (hereinafter referred to as "**Final Order/SEBI Order**") vide which, *inter alia,* Company was directed to repay the entire amount collected from the investors and submit a peer reviewed Chartered Accountant certificate in support of the same. However, it was observed by SEBI that the Company continued its non-compliance of the Final Order. Therefore, SEBI initiated adjudication proceedings against Noticees under Section 15HB of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide order dated August 30, 2021, SEBI appointed the undersigned as the Adjudicating Officer under Section 15-I read with Section 19 of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under Section 15HB of SEBI Act, the alleged non-compliance of SEBI's Final Order dated May 25, 2018, by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A common Show Cause Notice dated July 05, 2022 (hereinafter referred to as '**SCN**') was issued to Noticees under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticees and penalty, if any, not be imposed upon them for the alleged non-compliance of SEBI's Final Order dated May 25, 2018, by the Noticees.

5. The relevant extracts of the allegations levelled against Noticees 1 to 4 in the SCN are as under:

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"4. Vide Order 1, the schemes operated by Paramount were held to be Collective Investment Schemes in terms of Section 11AA(2) of SEBI Act which were being carried out without obtaining a certificate of registration under Regulation 3 of CIS Regulations. Thus, vide Order 1, Paramount was directed to, inter alia, refund the money collected under its schemes with returns which were due to the investors as per the terms of the offer, within a period of one month from the date of the order. It was further noted in Order 1, that in case of failure of the Company to comply with the aforesaid directions, SEBI may initiate actions in accordance with law. The relevant extracts of the aforesaid order are reproduced as follows:

> *"Therefore, I am of the view that the present schemes have all the features of CIS as defined in Section 11 AA of the SEBI Act, 1992 and Paramount was under an obligation to comply with the provisions of SEBI Act, 1992 and the SEBI (CIS) Regulations, 1999. By non-compliance, Paramount has made itself liable for appropriate action under SEBI Act read with the Regulations.*
>
> *...*
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> *Having considered the facts and circumstances of the case, submissions made by Paramount and non-compliance of the Regulations, I, in exercise of the powers conferred upon me under Section 11B and 11 (4) of the SEBI Act,1992, r/w Regulation 65 of the said Regulations, hereby direct Paramount neither to collect any money from investors nor to launch any new schemes and further direct Paramount to refund the money collected under the scheme(s) with returns which is due to the investors as per the terms of the offer within a period of one month from the date of this order."*

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5. In terms of the aforesaid order, the Noticees were, inter alia, restrained from collecting any money from investors and launching any new schemes. Noticees were also directed to refund the money collected under the existing scheme(s) with returns which were due to the investors as per the terms of the said scheme(s) within a period of one month from the date of aforesaid order. Subsequently, Paramount filed an Appeal before the Hon'ble Securities Appellate Tribunal ('Hon'ble SAT'), and an order dated February 23, 2006 was passed by the Hon'ble SAT, dismissing the aforesaid appeal and recording, inter alia, that Paramount had undertaken to repay what they claimed was the outstanding amount of Rs. 4 lakh to the investors with 10% interest and also to issue a public notice to that effect in a newspaper with wide circulation for the benefit of the concerned.

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7. It was observed that the Company failed to comply with the directions of Order 1, pursuant to which proceedings under section 11(4)(b) read with section 11B of the SEBI Act, and regulation 65 of the CIS Regulations were initiated against the Noticees.

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10. In the aforesaid Final Order, SEBI reiterated the findings of Order 1 and concluded that the Noticees had not complied with Order 1, as they had failed to provide complete information during the audit, pertaining to scheme-wise funds available with the Company and the amount of repayment due to the investors, and had failed to repay the entire money due to the Company's investors under its schemes. In view of the aforesaid non-compliance with Order 1, SEBI vide its Final Order, inter alia directed the Noticees to deposit the requisite amount for repayment to the investors of Paramount within a period of 100 days from receipt of the Final Order. The Noticees were also directed to submit repayment details supported by documentary evidence verified by an independent peer reviewed Chartered Accountant, in the panel of any public authority or public institution, within a period of 120 days from receipt of the aforesaid Order dated May 25, 2018.

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*11. It was observed that Order 1, dated January 28, 2005, passed by Hon'ble Chairman and Final Order dated May 25, 2018 passed by Hon'ble WTM were duly served upon the Noticees. As stated in Final Order, Noticees failed to comply with the directions contained in Order 1. As per records, the Noticees also failed to comply with directions contained in the Final Order, despite expiry of stipulated 120 days. It was observed that Noticees acknowledged the receipt of Final Order, vide their letter dated August 02, 2018, in which they also stated that they have not repaid the entire amount of money due for repayment to all the investors ("**Annexure – 5**"). In view of the non-compliance of Final Order by the Noticees, Notices of Attachment in terms of Recovery Certificate dated January 13, 2021 were issued against the Company ("**Annexure – 6**"). Therefore, it is alleged that Noticees had failed to comply with the Final Order dated May 25, 2018 passed against them by Hon'ble WTM.*

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12. In view of the above, it is alleged that the Noticees' non-compliance of the Final Order dated May 25, 2018 passed by the Hon'ble WTM, if established, makes Noticees liable for monetary penalty under the provisions of 15HB of SEBI Act."

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6. The SCN was despatched to the Noticees 1 to 4 by Speed Post Acknowledgement Due ('**SPAD**'), to the aforesaid Noticees. However, the SCN could not be served by SPAD upon Noticee 1, as the same had returned undelivered with the remark "Firm sealed". Similarly, the SCN could not be served upon Noticees 2-4 as the aforesaid Noticees had left their last known addresses. Therefore, SCN was served on Noticees by way of newspaper publication in the form of Show Cause Notice-cum-Hearing Notice in Hindustan Times (Delhi edition, October 07, 2022; Lucknow edition dated October 08, 2022), Dainik Jagran (Delhi edition dated October 07, 2022; Lucknow edition dated October 08, 2022), Satta Sudhar (Lalitpur edition, October 07, 2022), Times of India (Ahmedabad edition, dated October 07, 2022; Lucknow edition, October 07, 2022), Gujarat Samachar (Ahmedabad edition, dated October 07, 2022), Gujarat Vaibhav (Ahmedabad edition dated October 07, 2022). However, I observe that Noticees have neither filed any replies nor appeared for personal hearing. Thus, I note that the Noticees have been granted sufficient opportunities of hearing and making submissions in the instant adjudication proceeding and they have failed to avail the said opportunities.

7. In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal (**'Hon'ble SAT'**) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) has *inter-alia*, held that, *"...the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*". It is also pertinent to note that the Hon'ble SAT in the matter of Sanjay Kumar Tayal & Others vs. SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, observed that: *"...appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted the charges levelled against them in the show cause notices..."* Thus, in the facts and circumstances as noted above, I am of the view that the principles of natural justice have been complied with in the instant proceeding and the Noticees have nothing to submit in respect of the allegations made in the SCN. Thus, in terms of Rule 4(7) of the Adjudication Rules, the matter is being proceeded with ex-parte based on material available on record.

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CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

8. I have carefully perused the charges levelled against the Noticees and documents/evidence available on record. The issues that arise for consideration in the present case are:

   I) Whether Noticees have violated directions contained in SEBI Order dated May 25, 2018 passed by Hon'ble WTM?

   II) Do the violations, if any, attract a monetary penalty under Section 15HB of SEBI Act?

   III) If the answer to the aforesaid issues is in the affirmative, then what should be the quantum of monetary penalty?

9. Before proceeding to examine the matter, I find it pertinent to reproduce the aforesaid regulatory provisions, which are as under:

Relevant provisions of SEBI Act

Collective Investment Scheme
11AA. *(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) shall be a collective investment scheme.*
(2) Any scheme or arrangement made or offered by any company 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.

Relevant provisions of CIS Regulations:

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

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

Directions by the Board

65. The Board may, in the interests of the securities market and the investors and without prejudice to its right to initiate action under this Chapter, including initiation of criminal prosecution under section 24 of the Act, give such directions as it deems fit in order to ensure effective observance of these regulations, including directions:

(a) requiring the person concerned not to collect any money from investors or to launch any

collective investment scheme;

(b) prohibiting the person concerned from disposing of any of the properties of the collective investment scheme acquired in violation of these regulations;

(c) requiring the person concerned to dispose of the assets of the collective investment scheme in a manner as may be specified in the directions;

(d) requiring the person concerned to refund any money or the assets to the concerned investors along with the requisite interest or otherwise, collected under the collective investment scheme;

(e) prohibiting the person concerned from operating in the capital market or from accessing the capital market for a specified period.

Issue No. I - Whether Noticees 1-4 have violated directions contained in SEBI Order May 25, 2018 passed by Hon'ble WTM?

10. I note that vide Order 1, SEBI had directed Noticees to refund the money collected under the schemes of the Company along with returns due to the investors as per the terms of the offer, within a period of one month from the date of the order and restrained the Company from collecting any money from investors as well as from launching any new schemes, on the ground that the Company was operating Collective Investment Scheme without registration in terms CIS Regulations. The relevant extracts of Order 1 are reproduced as follows:

"*Therefore, I am of the view that the present schemes have all the features of CIS as defined in Section 11 AA of the SEBI Act, 1992 and Paramount was under an obligation to comply with the provisions of SEBI Act, 1992 and the SEBI (CIS) Regulations, 1999. By non-compliance, Paramount has made itself liable for appropriate action under SEBI Act read with the Regulations.*

...

Having considered the facts and circumstances of the case, submissions made by Paramount and non-compliance of the Regulations, I, in exercise of the powers conferred upon me under Section 11B and 11 (4) of the SEBI Act,1992, r/w Regulation 65 of the

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said Regulations, hereby direct Paramount neither to collect any money from investors nor to launch any new schemes and further direct Paramount to refund the money collected under the scheme(s) with returns which is due to the investors as per the terms of the offer within a period of one month from the date of this order."

11. I further note that in terms of Order 1, the Noticees were, *inter alia,* restrained from collecting any money from investors and launching any new schemes and they were also directed to refund the money collected under the existing scheme(s) with returns which were due to the investors as per the terms of the said scheme(s) within a period of one month from the date of aforesaid order. Subsequently, Paramount filed an Appeal before the Hon'ble Securities Appellate Tribunal ('**Hon'ble SAT**'), and an order dated February 23, 2006 was passed by the Hon'ble SAT, dismissing the aforesaid appeal and recording, *inter alia,* that Paramount had undertaken to repay what they claimed was the outstanding amount of Rs. 4 lakh to the investors with 10% interest and also directing Paramount to issue a public notice to that effect in a newspaper with wide circulation for the benefit of the concerned investors.

12. Thereafter, vide letter dated March 23, 2006, SEBI advised the Company to, *inter alia,* comply with Order 1 and file a Winding Up and Repayment Report (WRR) in that respect. Subsequently, SEBI appointed M/s. N.D. Kapur & Co. ('**Independent Auditor**') as an independent auditor on February 18, 2013 to verify the claims made in the WRR. In the meanwhile, Paramount filed a Review Petition bearing no. 1/74/2005 in respect of the order passed by the Hon'ble SAT on February 23, 2006 wherein the Company sought modification of the said order to the extent that the Company be allowed to deposit the amount of Rs. 4 lakh with SEBI such that the same may be disbursed by SEBI to the investors, as and when they become available. Hon'ble SAT, vide order dated April 28, 2006, dismissed the said review petition and directed the Company to deposit the total amount due to all depositors in a nationalized Bank within one month from the date of the order. Paramount was also directed to furnish a six monthly audit statement prepared by their auditors to SEBI for as long as the amount remained deposited with the Bank.

13. It was observed by SEBI that the Company had failed to comply with the directions of Order 1, pursuant to which another set of proceedings under Section 11(4)(b) read with Section 11B of the SEBI Act and Regulation 65 of the CIS Regulations were initiated against the Noticees.

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14. I note that the Independent Auditor submitted the Audit Report dated May 14, 2014 ('**Audit Report**') to SEBI observing, *inter alia*, as follows:

a) "Paramount has not provided sufficient information to establish repayments to identified investors/folios to the extent of Rs. 26.94 lakh (with respect to the Collective Hybrid Hi-Tech Agro Plantation schemes) and to the extent of Rs. 6.87 lakh (with respect to the Paramount Orchards & Farms scheme)."

b) "Paramount has made excess payments of Rs. 12.465 lakh to 129 investors and short payments to 1169 investors of Collective Hybrid Hi-Tech Agro Plantation Schemes. I note from the auditor report that, for the Paramount Orchards & Farms Scheme, the Company has failed to provide the detailed calculation of the promised returns. In view of the convenience of investors, I am of the view that if the Company is unable to provide the terms of calculation of the promised returns with respect to the Paramount Orchards & Farms scheme, the Company may calculate the promised return at the rate of 15 per cent per annum from the date of investment."

c) "Paramount has failed to provide the terms/policies for premature withdrawals and that it had reported only two cases of premature withdrawals, but failed to provide supporting documents. Further, I find from the auditor's submissions that although the Company had claimed a refund of Rs. 25,000 with respect to Shudha Aggarwal and a refund of Rs. 9800 with respect to Ajit Tiwari, the auditor could verify repayment of only Rs. 22,000 to Shudha and payment to Ajit could not be verified."

d) "In short, out of total repayment of Rs. 293.271 lakh made by Paramount, an amount of Rs. 26.94 lakh remain unidentified with respect to investors/folios, for the Collective Hybrid Hi-tech Agro Plantation scheme. Similarly for the Paramount Orchards and Farms Scheme, out of total repayment of Rs. 14.34 lakh, an amount of Rs. 6.87 lakh is unidentifiable."

e) "For Paramount Orchards & Farms scheme, the Company failed to provide the detailed calculation of promised returns. In view of this, keeping in mind the convenience of the investors, if the Company is not able to provide the same, the Company may calculate the promised return at the rate of 15 per cent per annum from the date of investment."

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f) "Excess and short payments have been made to 129 and 1169 investors, respectively.

g) Unverifiable refunds have been claimed for premature withdrawals of investments to the extent of Rs. 12,800 (Rs. 3000 for Shudha Aggarwal and Rs. 9800 for Ajit Tiwari)."

15. I note that in view of the Audit Report submitted by the Independent Auditor, SEBI held as follows in its Final Order dated May 25, 2018 passed by the Hon'ble WTM:

"*45. Therefore, I find that the Company had failed to conclude the process of repayment even after the SEBI Order dated January 28, 2005, and therefore, I find that the collective investment schemes of the Company cannot be stated to have been wound up. In view of the same, I find that the Company has failed to comply with the directions issued by the Chairman, SEBI vide order dated January 28, 2005.*

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47. In this regard, I note that the present cause of action is the non-compliance with the Order of SEBI passed on January 28, 2005, wherein the Company was directed to wind up the collective investment schemes and to refund all the investors along with the promised returns. On perusal of the Orders of Hon'ble SAT dated February 23, 2006 and April 28, 2006, I note that the there was no finding on the genuineness of all the claimed payments by the Company and the said Orders merely recorded the statement of the Counsel for the Company, inter alia, that an amount of Rs. 4 lakh was outstanding for repayment and the said amount was directed to be kept in a nationalized bank account, with periodic audit reports being submitted to SEBI in this regard. The present proceedings for non-compliance of directions is arising out of, inter alia, irregularities in payments to investors. Therefore, I am of the opinion that compliance with the aforesaid directions of the Hon'ble SAT, as has been submitted by the Company, in no way absolves the legal duty of the Company to comply with the directions passed by SEBI vide its order dated January 28, 2005.

...

56. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the SEBI Act, read with sections 11 and 11B of the SEBI Act read with reg. 65 of CIS Regulations, hereby issue the following directions:

a. Paramount Biotech Industries Limited is directed to repay the balance amount to the investors as mentioned in sub clause (v) of this direction and provide a peer

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reviewed Chartered Accountant certificate containing the following details and incorporating clarifications for the discrepancies brought out in the Audit Report submitted by N.D. Kapur & Co. dated May 14, 2014.

i. The amount of money collected scheme wise.

ii. The details of promised return.

iii. Calculation of total amount to be paid scheme wise adding the promised return or 15% interest from the date of investment in case scheme details are not available

iv. The amounts accepted as verified to have been paid, by the Auditor, N.D. Kapur & Co.

v. The remaining amount to be paid and

vi. Verification of payment of the remaining amounts to be paid to the respective investors.

*The said repayment details must be supported by documentary evidence verified by another independent peer reviewed Chartered Accountants who is in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India **("ICAI")** holding such certificate. The Company is directed to provide the aforesaid within 120 days from the date of receipt of this Order. However, in order to meet the requirements in Paragraph 56(c), the Company is directed to calculate the amount at Paragraph 56(a)(v) within 90 days.*

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c. Paramount Biotech Industries Limited is directed to deposit the amount as mentioned in Paragraph 56(a)(v) in an Escrow Account opened with a nationalized Bank within 100 days from the date of receipt of this Order. Paramount Biotech Industries Limited is prevented from selling its properties except for the sole purpose of putting the money in the Escrow Account and refunds are to be made to the respective investors from the said Escrow Account.

d. Mr. Girish Chandra Gupta, Ms. Pushpa Gupta, and Ms. Bhawani Srivastava are directed to ensure that the directions under Paragraphs 56(a), 56(b) and 56(c) of this Order, are complied with by the Company within the timelines specified, failing which SEBI may initiate adjudication proceedings against Paramount Biotech Industries Limited and Mr. Girish Chandra Gupta, Ms. Pushpa Gupta, and Ms. Bhawani Srivastava"

16. I further note that in the aforesaid Final Order, SEBI reiterated the findings of Order 1 and concluded that the Noticees had not complied with Order 1, as they had failed to provide complete information pertaining to scheme-wise funds available with the Company and

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the amount of repayment due to the investors during the audit, and had failed to repay the entire money due to the Company's investors under its schemes. In view of the aforesaid non-compliance with Order 1, SEBI vide its Final Order, *inter alia* directed the Noticees to repay the balance amount to the investors and to deposit the requisite unpaid amount in an escrow account opened with a nationalized bank within a period of 100 days from date of receipt of the Final Order. The Noticees were also directed to submit repayment details supported by documentary evidence verified by an independent peer reviewed Chartered Accountant, in the panel of any public authority or public institution, within a period of 120 days from receipt of the aforesaid Order dated May 25, 2018.

17. I observe from available records that Final Order was duly served upon the Noticees. I also observe that vide letter to SEBI dated August 02, 2018, Paramount acknowledged the receipt of Final Order, wherein it stated that it had not repaid the entire amount of money due for repayment to all the investors. I further observe from available records that the Noticees had failed to comply with directions contained in the Final Order, despite expiry of the stipulated 120 days from the date of Final Order. In this regard, I observe from material placed on record that Notices of Attachment, in the form of Recovery Certificate dated January 13, 2021, were issued against the Company by SEBI on expiry of the aforementioned 120 days from the date of Final Order. The said Notices of Attachment state as under:

"*Whereas a Recovery Certificate No.3222 dated January 13, 2021 has been drawn up by the Recovery Officer in the above proceedings for recovery of a sum of Rs.33,93,800/- (Rupees Thirty Three Lakh Ninety Three Thousand Eight Hundred) along with returns due to investors, further interest as per SEBI Order no. WTM/MPB/EFD-1DRA-111/11/2018 dated May 25, 2018, all costs, charges and expenses incurred in respect of all the proceedings taken for recovery of the said sum as detailed below, against Paramount Biotech Industries Limited [Defaulter] PAN: AACCP1163C. A Notice of Demand dated January 13, 2021 has been issued to the above named.*

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The defaulter has already been given sufficient time to disgorge the money in terms of SEBI order No. WTM/MPB/EFD-1DRA-111/11 /2018 dated May 25, 2018. However, the defaulter has not shown any willingness to comply with the said directions."

18. Based on the aforesaid observations, I find that Noticee 1 has failed to comply with the directions contained in SEBI's Final Order dated May 25, 2018, which has necessitated initiation of recovery proceedings against Paramount.

19. Therefore, in view of the foregoing findings, I find that the allegation that Noticee 1 has violated the directions contained in SEBI's Final Order dated May 25, 2018, stands established and therefore, the aforesaid allegation against Noticees 2-4 who were Directors of Noticee 1 at the relevant time, also stands established.

Issue No. II- Do the violations, if any, attract a monetary penalty under Section 15HB of SEBI Act?

20. It has been established in the foregoing paragraphs that the Noticees have violated directions contained in SEBI's Final Order dated May 25, 2018. In the context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had held that: "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established.......*"

21. Therefore, in view of the foregoing findings and placing reliance on the above judgment of Hon'ble Supreme Court, I find that the aforesaid violation of directions contained in SEBI's Final Order dated May 25, 2018, will attract monetary penalty under Section 15HB of SEBI Act. The respective provisions as applicable at the time of the violations are reproduced as under:

Penalty for contravention where no separate penalty has been provided

***15HB**. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Issue No. III - What should be the quantum of monetary penalty?

22. While determining the quantum of penalty under Section 15HB of SEBI Act, it is important to consider the factors as stipulated in Section 15J of SEBI Act, which reads as under:-

SEBI Act

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Factors to be taken into account by the adjudicating officer.

Section 15J - *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

23. As observed from Order 1, the Company was operating schemes in the nature of CIS and mobilising funds illegally from the public, under the cover of agriculture, floriculture and plantation activities by executing documents like sale deed and agreement to sell with depositors, without obtaining the requisite registration as required under Regulation 3 of CIS Regulations. At this juncture, I find it relevant to refer to the judgment of Hon'ble Supreme Court of India in the matter of P.G.F. Limited & Ors. v. Union of India & Ors. (Civil Appeal No. 6572 of 2004 dated March 12, 2013) wherein, it was held that, "*It has to be borne in mind that by seeking to cover any scheme or arrangement by way of collective investment scheme either in the field of agricultural or any other commercial activity, the purport is only to ensure that the scheme providing for investment in the form of rupee, anna or paise gets registered with the authority concerned and the provision would further seek to regulate such schemes in order to ensure that any such investment based on any promise under the scheme or arrangement is truly operated upon in a lawful manner and that by operating such scheme or arrangement the person who makes the investment is able to really reap the benefit and that he is not defrauded.*" It was also held in the aforesaid order that, "*we can also take judicial notice of the fact that those schemes, which would fall under Sub-section (2) of Section 11AA would consist of a marketing strategy adopted by those promoters, by reason of which, the common man who is eager to make an investment falls an easy prey by the sweet coated words and attractive persuasions of such marketing experts who ensure that those who succumb to such persuasions never care to examine the hidden pitfalls under the scheme, which are totally against the interests of the investors, apart from various other stipulations, which would ultimately deprive the investors of their entire entitlement, including their investments.*

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The investors virtually by signing on the dotted lines of those stereotyped blank documents would never be aware of the nature of constraints created in the documents, which would virtually wipe out whatever investment made by them in course of time and ultimately having regard to the legal entangles in which such investors would have to undergo by spending further monies on litigations, ultimately prefer to ignore their investments cursing themselves of their fate. More than 90 per cent of such investors would rather prefer to forget such investments than making any attempt to secure their money back. Thereby, the promoters put to unlawful gain who always thrive on other peoples money."

24. In this regard, I note from available records that the Company had collected Rs 2.36 crores from depositors under its various unregistered CIS, as on date of passing of Order 1. I further note from the Final Order and the Audit Report that the Company had admitted that it had mobilised Rs. 2.52 crores from 1,928 investors through such schemes as on August 11, 2006. I also note from the Final Order that the Audit Report had found serious discrepancies in the records provided by the Company which negated the Company's claim that it had repaid all amounts collected from depositors. In this regard, the Audit Report found that out of Rs. 3.08 crores claimed to have been refunded by the Company, no evidence was found with respect to repayment of Rs. 33,81,000 of depositors' money. Thus, I note that the aforesaid Audit Report found that the Company had not repaid the entire amount collected by it along with 15% interest or at rate of return promised to depositors in its schemes, as calculated from the date of deposit. Therefore, I find that the Company had not only failed to comply with the directions pertaining to repayment of money collected from depositors, but also made unreliable claims about repayment in order to conceal the aforementioned violation of the SEBI orders.

25. It has already been noted above that the Company had violated the directions contained in the Final Order by failing to completely repay the aforesaid amount along with 15% interest or at rate of return promised to depositors in its schemes, as calculated from the date of deposit. I also note that as per Notices of Attachment in terms of Recovery Certificate dated January 13, 2021, a sum of Rs.33,93,800/- (Rupees Thirty Three Lakh Ninety Three Thousand Eight Hundred) along with returns due to investors, remained unpaid as on date, which impacts a large number of depositors. I find that the entire money collected under the CIS operated by the company, in violation of Regulation 3 of CIS Regulations, amounted to illegal mobilisation of funds and that not refunding the

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balance amount due to investors out of such illegal fund mobilisation was tantamount to unlawful gains accumulated by the Company at the cost of investors. Therefore, I am of the view that such brazen non-compliance of directions contained in SEBI's Final Order warrants the imposition of stiff penalty on the Noticees, under Section 15HB of SEBI Act. This would serve as a deterrent against such non-compliances, keeping the overwhelming public interest in mind.

ORDER

26. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticees and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in the exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose the maximum penalty of Rs. 50,00,000 (Rupees Fifty Lakhs Only), jointly and severally, on Noticees under Section 15HB of SEBI Act for the aforementioned violation.

27. Noticees shall remit/pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, said Noticees may contact the support at portalhelp@sebi.gov.in.

28. The Noticees shall forward said Demand Draft or the said confirmation of e-payment made in the format as given in the table below which should be sent to "The Division Chief, EFD – DRA - 6, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	

Sam

7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

29. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of SEBI Act for the realisation of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticees.

30. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticees and also to SEBI.

S Majumder

Place: Mumbai **SOMA MAJUMDER**

Date: November 16, 2022 **ADJUDICATING OFFICER**