BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/S./2022-23/17293-17295]

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

In respect of:

Noticee No.	Name of Noticees	PAN
1.	G. C. A. MARKETING PRIVATE LIMITED	BIVPS7069D
2.	MR. AMARJEET SINGH CHEEMA	ADEPC5281C
3.	MR. GURDEEP SINGH	BIVPS7069D

In the matter of G.C.A. Marketing Private Limited.

FACTS OF THE CASE IN BRIEF:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination in relation to the mobilization of funds by G.C.A. Marketing Private Limited (hereinafter referred to as '**Noticee 1/the Company/GCA'**) pursuant to the order of Hon'ble Supreme Court of India dated January 03, 2014 which directed SEBI to determine whether certain companies including GCA were involved in mobilising funds from public through Collective Investment Schemes. Amarjeet Singh Cheema and Gurdeep Singh (Hereinafter

referred to as **'Noticee 2'** and '**Noticee 3**', respectively) were directors of GCA. (Noticees 1 to 3 are hereinafter collectively referred to as "Noticees").

2. Noticee 1 was incorporated on May 09, 2005 and has its registered office at F 0-77, Civil Lines, Bhatinda (Punjab). As per the Memorandum of Association, the main objects to be pursued by it are "*to operate a Multilevel Marketing of Ayurvedic, Desi Medicines, Herbs (Within India or Abroad) as non-store retail sale either through direct buying and selling or on agreement basis (to deal in any product/ commodity) to carry on the Business of Multilevel Marketing, Growers, Care Takers, Producers, Cultivators, Nurserymen, Seedmen Farmers, Contract Farmers, Sellers*…"

3. SEBI conducted the examination to ascertain whether the mobilization of funds by Noticee 1 under its schemes fall under the ambit of "Collective Investment Scheme" (herein after referred to as "**CIS**") as stipulated in Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**) read with Regulation 3 of SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "**CIS Regulations**"). During the course of investigation, SEBI observed in respect of the business of '*multilevel marketing of herbal products and tree saplings'*, that Noticee 1 appoints distributors /agents for herbal products and plant saplings and gives them initial starter kit. It was observed from the financial statements of Noticee 1 that its business of selling medicines and products is miniscule as compared to the revenues earned by its 'contract farming' business in which it was mobilizing funds. SEBI, therefore, alleged that Noticee 1 solicited money from farmers on promises of assured returns. It was also alleged that the purported business of leasing of plants and sale of herbal products was being used as deceptive devices to impart colour of genuineness to its scheme of mobilizing funds from public. On examination of the schemes of GCA, it was observed that the schemes run by the Noticee 1 fulfilled all the four conditions stipulated under Section

11AA of the SEBI Act and had necessary features of a CIS as defined under the aforesaid provision of the SEBI Act.

4. In view of the above, it was alleged that Noticees 1, 2 and 3, were engaged in illegal fund mobilizing activity by floating an unregistered CIS and have thus violated Regulation 3 of CIS Regulations read with Sections 11AA and 12(1B) of SEBI Act and Regulation 4(2)(t) of PFUTP Regulations.

5. It is pertinent to note that with regard to the aforesaid violations, proceedings under Sections 11(1), 11(4), and 11B of the SEBI Act read with the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 were initiated against the Noticees, and vide Interim Order dated December 30, 2014, the Hon'ble Whole Time Member ('**WTM**') of SEBI had restrained the Noticees from launching any new schemes and from collecting money under existing schemes. Thereafter, vide Final Order dated February 04, 2016, the Hon'ble WTM of SEBI had issued directions, *inter alia*, to the Noticees to wind up its existing schemes and refund all money collected under the schemes of GCA and also debarred the Noticees from accessing securities market.

APPOINTMENT OF ADJUDICATING OFFICER

6. Vide order dated December 04, 2020, SEBI appointed the undersigned as the Adjudicating Officer under Section 19 of the SEBI Act read with Section 15I(1) & (2) 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 the provisions of Sections 15D(a) and 15HA of SEBI Act, the alleged violation of provisions of Sections 11AA and 12(1b) SEBI Act, Regulation 3 of SEBI (Collective Investment Scheme) Regulation, 1999, (hereinafter referred to as '**CIS Regulations'**) and Regulation 4(2)(t) of SEBI (Prohibition of Fraudulent and Unfair

Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**') by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. A Show Cause Notice dated August 10, 2021 (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 them and penalty, if any, not be imposed upon them under the provisions of 15D(a) and 15HA of the SEBI Act, for the aforesaid violations alleged to have been committed by them.

8. The allegations levelled against Noticees 1 to 3 in the SCN are as under:

> "3. *During investigation, it was observed that Noticee 1 carries on following activities:*
>
> *i. Selling herbal, cosmetic and ayurvedic products through multilevel marketing.*
>
> *ii. Contract Farming agreements with farmers for sale of plant saplings or lease of farms etc.*
>
> *4. SEBI observed in respect of the business of 'multilevel marketing of herbal products and tree saplings', that Noticee 1 appoints distributors /agents for herbal products and plant saplings and gives them initial starter kit. These distributors/ agents further introduce new agents. SEBI observed that Noticee 1 has evolved a commission structure for various levels of distributors incentivising the sale of herbal products and tree saplings. It was observed from the financial statements of Noticee 1 that the business of selling medicines and products is miniscule as compared to the revenues earned by 'contract farming' business of Noticee 1.*

5. In respect of 'Contract Farming' business of Noticee 1, it was observed that it enters into contract farming agreements with farmers/investors to raise bio-diesel plants like 'Jatropha,' 'Kranj 'and 'Ratanjot'. The farmers/ investors can either get allotment of the plants/trees themselves and be entitled to entire sale proceeds or seek the caretaker from the Noticee 1 under an agreement to share profits.The farmer can also enter into a 'Buy Back Agreement' with Noticee 1 under which the company buys the seeds/harvest from the farmers and sells it on behalf of farmers. Noticee 1 also offers 'Assured Harvest' scheme to the farmers/ investors. The said scheme provides an option to the farmers/investors to invest and receive an assured buyback price ('Assured Harvest') @ ₹7/- per Kg. The farmers/ investors make a onetime payment or deferred payment for the allotment of plants to Noticee 1 and in return assures buyback price of the crop /plantation for an investment period of 6 years, 15 years or 19 years. Under this plan, the farmers/investors have no claim whatsoever except for the 'Assured Harvest' amount at the end of the agreement period.

5.1. SEBI observed from the reply of Noticee 1, submitted vide letter dated October 14, 2013, that it has executed 2,81,271 lease greements under its 'contract farming' business and mobilised Rs. 150,32,29,442/- (Rupees One Hundred and Fifty Crore Thirty Two Lakh Twenty Nine Thousand Four Hundred and Forty Two Only). The monies received from public are shown as 'lease rental' against allotment of plants.

5.2. It is observed that the Application Form and model agreement entered between Noticee 1 and the farmers/investors have clauses that mainly require the farmers/ investors to give their consent about buy-back *arrangement at pre-determined rates and profit sharing in case the farmer opts for caretaker from Noticee 1. The agreement is irrevocable and Noticee 1 undertakes to hand over the possession of plants within 18 months of execution of agreement after receipt of 50% of the agreed payment.*

5.3. SEBI further observed that Noticee 1 assures higher investment amounts in the form of 'lease rentals' for longer maturity periods. For instance, Rs. 1,00,000/- is charged for 1000 Ratanjot or 200 Kranj plants for period upto 6 years. Similarly the farmer / investor pays Rs. 2,00,000/- as initial amount for a period of 19 years in single payment plan.

5.4. Further, the amount paid by customers in deferred/instalment plan is higher than the amount paid for single payment plan. For instance, a customer opting for investment in the single payment plan for 6 years pays Rs. 1,00,000/- while in deferred/ instalment payment option the customer pays Rs. 1,20,000/- in three yearly instalments and Rs. 1,44,000/- in 72 monthly instalments.

5.5. The schemes offered by Noticee 1 in the marketing brochure is illustrated as under:

'Lease rentals 'for 1000 saplings of 'Ratnajot' or 200 saplings of 'Kranj' for 6 years.

'Lease Rental'	Part Payment (option 1) yearly (₹)					Part Payment (Option-2) Monthly (₹)		
Single Payment (in ₹)	1st Year 40%	2nd Year 30%	3rd Year 30%	Total (in ₹)		Instalment per month (in ₹)	Total Months	Amount (in ₹)
100000	48000	36000	36000	120000		2000	72	144000

'Assured harvest' buyback price for crop/ plantation of 1000 plants of Ratnajot or 200 plants of Kranj.

	Duration	C-1	C-2	C-3

S. No.		***Assured harvest*** ***(in quintals)***	***Assured harvest*** ***(in quintals)***	***Assured harvest*** ***(in quintals)***
1	*After 1 year*	*16.5*	*--*	*--*
2	*After 2 years*	*16.5*	*--*	*--*
3	*After 3 years*	*16.5*	*--*	*--*
4	*After 4 years*	*16.5*	*75*	*--*
5	*After 5 years*	*16.5*	*--*	*--*
6	*After 6 years*	*16.5 +150*	*200*	*300*

a. ***Option C-1****: In this option, the farmer / investor is given an 'assured harvest' (in quintals) return yearly. In case the farmer / investor chooses monthly returns, Noticee 1 offers 1.35 quintals of crop each month. On the amounts invested by farmers/ investors as single payment or yearly part payment or monthly part payment as illustrated in para 5.4 above, the assured buyback price is at Rs. 7/- per Kg. Hence, the farmers/investors are entitled to an annual return of Rs. 11,550/- upto 6 years. Further, the redemption amount after 6 years works out as Rs. 1,74,300/-.*

b. ***Option C-2:*** *In this option, the farmer / investor is given 'assured harvest' return of 75 quintals (@ Rs. 7/- per Kg) after 4 years and on completion of 6 years, the farmer/ investor is given another 200 quintals (@ Rs. 7/- per Kg). Thus, on the amounts invested by farmers/ investors as single payment or yearly part payment or monthly part payment as mentioned in para 5.4 above, the returns offered by Noticee 1 after completion of 4 years and 6 years is Rs. 52,500/- and Rs. 1,40,000/- respectively.*

c. ***Option C-3:*** *In this option, the farmer / investor receives 'assured harvest' return of 300 quintals (@Rs. 7/- per Kg) after completion of 6 years. Therefore, on the amounts invested by farmers/investors as illustrated in para 4.4 above, the redemption amount is Rs. 2,10,000/-.*

d. *SEBI observed that similar payment plans are mentioned for 15 years and 19 years also.*

5.6. SEBI observed that the 'Certificate' issued to farmers/investors by Noticee 1 contains the details about the period of investment and the price at which the 'assured harvest' amounts will be calculated on maturity. It is termed as 'brief of the crop' as per consent given by the customer. The brief of crop given as per Consent I (option for the duration and rates per quintal) mentioned in the certificates issued to the farmers/investors are as under:

S. No.	***Duration***	***Rate of Crop per quintal (in ₹)***
1	*1st to 6th year*	*700/-*
2	*7th to 11th year*	*1,000/-*
3	*12th to 18th year*	*1,200/-*
4	*After 19 years*	*1,500/-*

5.7. Brief of crop as per consent letter –II (option for the duration and crop share) for Ratanjot 50 plants mentioned in the certificates issued to the customers is as under:

S. No.	***Duration***	***Crop Share in quantity***
1	*After 7 Years*	*14 quintal*
2	*After 11 years*	*10 quintal*
3	*After 15 Years*	*10 quintal*
4	*At the end of lease term 19 years*	*17 quintal*

5.8. Summary of the crop as per the consent letter –I & II (Option for the duration/ maturity period, quantity, rate and amount) mentioned in the certificates issued to the customers is as follows:

S. No.	***Term***	***Qty***	***Date of Crop***	***Rate (in ₹)***	***Amount (in ₹)***
1	*After 7 Years*	*14 quintal*	*26-Feb-2018*	*1,000.00*	*14,000.00*
2	*After 11 years*	*10 quintal*	*26-Feb-2022*	*1,000.00*	*10,000.00*
3	*After 15 Years*	*10 quintal*	*26-Feb-2026*	*1,200.00*	*12,000.00*
4	*After 19 years*	*17 quintal*	*26-Feb-2030*	*1,500.00*	*25,500.00*

5.9. In the certificate issued to the farmers/investors, Noticee 1 undertakes to pay 'assured harvest' amounts to the farmers/investors as return on investment. Noticee 1 calculates 'assured harvest' amount by giving applicable quantity and rate at which 'assured harvest' is calculated at the end of different maturity periods.

5.10. SEBI observed from the financial statements submitted by Noticee 1, the current liabilities of Noticee 1 are shown as ₹ 209.95 Crores as on March 31, 2012. This increased from the previous year, wherein the current liabilities are shown as ₹ 170.44 crores. Noticee 1 had taken advance from its customers under its scheme of lease rentals of plant/ saplings to the tune of ₹ 57.06 crores which is shown as an item under the head "other current liabilities". It is observed that the amounts invested by farmers/ investors is stated as income from lease rentals in the financial statements and the lease money received by the Noticee 1 for the period 2008-09 to 2011-12 is stated to be approximately ₹ 254 crores.

6. On examination of the schemes run by Noticee 1, SEBI has therefore observed and alleged as under:

6.1. Noticee 1 solicits money from investors under its scheme of 'contract farming' to raise bio-diesel plants like 'Jatropha,' 'Kranj' and 'Ratanjot'. As per the said scheme, an investor who is desirous of contract farming in any of the said plants has to make an application cum agreement with Noticee 1 for a period of 6 years/9 years/15 years as per the plan. The investor has to give lease amount as per the opted payment plans viz., "single payment plan, monthly payment plan or yearly payment plan." As per the schemes of Noticee 1, the investors can either get allotted the plants and take care of the same by himself in the farms of Noticee 1 and receive the entire sale proceeds or opt for the caretaker appointed by Noticee 1 for the maintenance of the plants allotted to him under an agreement to share the profits. The farmer/investor can also opt for 'Assured buy back price option' under which the rate of proceeds are calculated in advance and the said amount is assured to the farmer/investor as buy back price. Under the said scheme, the farmer/investor has no claim whatsoever except for the 'assured harvest' amount at the end of the agreement period. As per Clause 3 of the agreement, Noticee 1 undertakes to allot plants only after more than 50% of the lease amounts are paid and allotment takes place after 18 months or 2 years. Clause 12 states "agreement cannot be revoked but can be transferred to another person on payment of Rs.300/- or of 5% of money paid as lease rental (whichever is higher)".

6.2. It is noted from the information submitted by Noticee 1 vide letter dated October 14, 2013 that it has executed 2,81,271 lease agreements under its 'contract farming' business and mobilised more than ₹ 150 crores. However, the lease money received by the Noticee 1 as per the financial statements for the period 2008-09 to 2011-12 is ₹254 crores. The amounts *are received from farmers/investors as single or deffered payment and are given the nomenclature of 'lease rentals and as per agreement , Noticee 1 undertakes to alot plants after 18 months or 2 years, only after more than 50% of the lease amounts are paid.*

6.3. Since the product sale business generates very small portion of its total revenues and also since Noticee 1 does not have sufficient inventory of plants to allot to farmers, SEBI alleged that leasing of plants and sale of herbal products is being used to as deceptive devices to impart colour of genuineness to its scheme of mobilizing funds from public. It is further alleged that Noticee is engaged in collecting funds from public by providing the farmer/investor/customer a scheme to make initial payments and receive "assured harvest" (in quintals) at a agreed buyback price from Noticee 1 and the farmer/harvest has no claim whatsoever except for the 'assured harvest' amount at the end of the agreement period.

6.4. The feature that the agreement cannot be revoked but can be transferred to another person on payment of higher of either Rs 300/- or 5% of money paid as lease rental was also showed that Noticee 1 was not interested in allotting plant saplings to farmers/investors/customers but was interested in only soliciting monies by entering agreements with farmers/investors/customers and promising them assured returns after 7 years/11 years/15 years /19 years.

6.5. Therefore, it is alleged that the aforesaid contributions collected from the farmers/investors under the 'schemes' of Noticee 1 are pooled for purpose of 'scheme' and the activity satisfies the condition stipulated in Section 11AA(2) (i) of the SEBI Act.

6.6. SEBI further observed that Noticee 1 offers farmers with three options, viz., take care of the plants themselves and be entitled for all the profits and losses, seek caretaker from Noticee1 in return for share in profits, or make investments and receive assured buyback price after completion of specified time periods. Under its scheme of 'contract farming', Noticee 1 offers an 'assured buyback price' to its investors. The farmers/investors are made to invest in single payment or yearly or monthly payment plans as mentioned in para 5.4 and the farmers/investors have the option of receiving returns in the form of 'assured harvest' (in quintals) at agreed buyback price annually or intermittently after completion of a few years or receive return only after completion of specified time period. For instance, as per the Option C-1 of the said scheme, the farmer/investor is offered an 'assured harvest' of 16.5 quintals as return annually. In case the farmer/investor chooses monthly returns, the Noticee 1 offers 1.35 quintals of crop each month. SEBI observed from the terms of the schemes mentioned in the marketing brochure, the assured buyback price offered by Noticee 1 is ₹7/- per Kg. Hence, if an investor invests ₹1,00,000/- lease rental in single payment, he/she is entitled to an annual return of ₹11,550/-. The redemption amount after 6 years works out as ₹1,74,300/-. Similarly, in Option C-2, the farmer/investor is offered 'assured harvest' return of 75 quintals (@ ₹7/- per Kg, after 4 years and on completion of 6 years, the farmer / investor is given another 200 quintals (@₹7/- per Kg. Hence, the returns offered by GCA to its farmers/investors on their investments is ₹ 52,500/- after completion of 4 years and ₹1,40,000/- after completion of 6 years. Furthermore, in Option C-3, the farmer/ investor is entitled to an 'assured harvest' return of 300 quintals (@₹7/-per Kg after completion of 6 years amounting to ₹2,10,000/-. Moreover, the certificates issued to the investors also indicate the amount of produce, rate at which the investors shall be repaid after completion of 7 years, 11 years, 15 years and 19 *years. The certificates issued to the investors also mention the 'assured harvest' amounts to be received by the farmers/ investors by investing in 'schemes' of Noticee 1.*

6.7. In view of the above, it is alleged that the contributions were made by the investors towards the 'schemes' offered by Noticee 1 with a view to receive profits, income, financial returns on maturity and satisfies the condition stipulated in Section 11AA(2) (ii) of the SEBI Act.

6.8. SEBI further, observed that one of the features of 'assured harvest' scheme mentioned in marketing brochure of Noticee 1 is that "care and maintenance of crop is done by GCA and farmer/investor has no claim whatsoever except for 'assured buy-back price' at the end of agreement period." The investor does not conduct any farming related activity and they are offered assured returns. This aspect highlights that Noticee 1 manages funds collected from the investors and they do not have day to day control over management and operation of the scheme or arrangement by Noticee 1.The certificate issued to the investors also indicates the assured harvest and the specified price that will be paid after completion of 7 years, 11 years, 15 years and 19 years. As per Clause 12 "agreement cannot be revoked but can be transferred to another person on payment of Rs.300/- or of 5% of money paid as lease rental (whichever is higher)". This clearly suggests that Noticee 1 is not interested in allotting plants/saplings to the farmers/investors but is only soliciting monies and is managing monies on behalf of investors.

6.9. Therefore, it is alleged that Noticee 1 is only mobilising funds from the farmers/investors and the investors do not have day to day control over the 'scheme' or 'arrangement' of the company. Thus, it is alleged that the *scheme being operated by Noticee 1 satisfies the conditions stipulated in Sections 11AA(2)(iii) and (iv) of the SEBI Act.*

6.10. In view of the above, it alleged that the schemes run by the Noticee 1 fulfill all the four conditions stipulated under Section 11AA of the SEBI Act and have necessary features of a CIS as defined under the aforesaid provision of the SEBI Act.

6.11. From Annexures to the letter of Noticee dated October 14, 2013, SEBI observed that Noticee 1 has received lease money to the tune of Rs 47,83,01,071/- during the period April 1, 2014 to December 30, 2014.

7. In view of the foregoing, it is alleged that Noticee 1 has been running a CIS without obtaining certificate of registration from the SEBI and illegally mobilizing funds from such activity. Therefore, it is alleged that Noticee 1 and Noticees 2 & 3, who were the directors of the Noticee 1 at the relevant point of time, when the Noticee 1 was running the CIS, were engaged in illegal fund mobilizing activity by floating unregistered CIS and have thus violated Regulation 3 of CIS Regulations and Sections 11AA and 12(1B) of SEBI Act and Regulation 4(2)(t) of PFUTP Regulations."

9. I note that the SCN dated August 10, 2021 was sent to the Noticees 1 to 3, through Speed Post Acknowledgement Due (hereinafter referred to as '**SPAD**') and by Digitally Signed email dated August 11, 2021. However the SCN sent via SPAD had returned undelivered. Therefore, the SCN was sought to be serviced on Noticees 1 to 3 through Affixture. I note that the aforesaid SCN was duly served upon the Noticees 1 and 2 by Affixture. In view of the fact that no reply was received from the Noticees 1 and 2 within 15 days from service of the SCN, the aforesaid SCN was duly served by Affixture for the second time along with a Hearing Notice dated May 26, 2022 through which Noticees 1 and 2 were granted an opportunity of hearing

and submitting their reply on June 10, 2022. I also note that in the Hearing Notice dated May 26, 2022, Noticees 1 and 2 were informed that if they fail to submit their reply to the SCN on or before the scheduled date of hearing or fail to avail the opportunity of hearing, the proceedings shall be continued based on the material/facts available on record.

10. I further note that the SCN could not be duly served by Affixture upon Noticee 3. Therefore, an SCN-cum-Hearing Notice dated April 22, 2022 was issued to and served upon Noticee 3 by Newspaper publication in the Times of India (Chandigarh edition, pg. 7), the Punjab Tribune (Chandigarh edition, pg. 7) and Amar Ujala (Chandigarh edition, pg. 6), granting him an opportunity of hearing on May 13, 2022. It is pertinent to mention that in the SCN-cum-Hearing Notice dated April 22, 2022, Noticee 3 was informed that if he fails to submit its reply to the SCN on or before the scheduled date of hearing or fails to avail the opportunity of hearing, the proceedings shall be continued based on the material/facts available on record. However, I note that Noticees failed to submit their replies and also failed to appear for the personal hearing scheduled on May 13, 2022 and June 10, 2022.

11. Therefore, I find that the SCN and Hearing Notices have been duly served on Noticees and all material which form the basis for the charges and allegations in the SCN, had been provided to Noticees along with the SCN, as part of its annexures. However, the Noticees have neither filed any reply nor availed of the opportunity of personal hearing despite service of the SCN and Hearing Notices, as stated above. 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, held 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…"*

10. In the facts and circumstances of this case, I am, therefore, of the view that the principles of natural justice have been complied with in the instant proceeding and that the Noticees have nothing to submit. Thus, in terms of Rule 4(7) of the Adjudication Rules, the matter is being proceeded with ex-parte on the basis of material available on record.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

11. I have carefully examined the allegations in the SCN, material available on record and the submissions made by the Noticees. The issues that arise for consideration in the present case are:

    I. Whether the Noticees 1 to 3 have violated the provisions of Regulation 3 of CIS Regulations and Sections 11AA and 12(1B) of SEBI Act and Regulation 4(2)(t) of PFUTP Regulations?

    II. Whether the violations, if established, attract monetary penalty under 15D(a) and 15HA of SEBI Act?

    III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act?

12. Before proceeding further, I find it relevant to refer to the relevant provisions of the SEBI Act, PFUTP Regulations and CIS Regulations alleged to have been violated by the Noticees, as below:

SEBI Act

"Penalty for certain defaults in case of mutual funds.-

15D. *If any person, who is –*

(a) required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty of one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds, or one crore rupees, whichever is less."

Penalty for fraudulent and unfair trade practices.-

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."*

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.

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

12. (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.]

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.*

PFUTP Regulations

Prohibition of manipulative, fraudulent and unfair trade practices

***4.** (2) Dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves any of the following:-*

(t) illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any collective investment scheme by any person.

Issue No. 1: Whether Noticees 1 to 3 have violated the provisions of Regulation 3 of CIS Regulations and Sections 11AA and 12(1B) of SEBI Act and Regulation 4(2)(t) of PFUTP Regulations?

13. I note that the main allegation made against the Noticees in the SCN was that GCA has mobilized funds with promise of returns under its schemes/ plans, which are in the nature of CIS and that the Company was offering these plans/ schemes without obtaining the registration from SEBI, in contravention of the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations read with Section 11AA of the SEBI Act as well as Regulation 4(2)(t) of PFUTP Regulations.

14. I note from the plans/ schemes of the Company as detailed in the brochure that persons intending to purchase the farm land from the Company have to apply for the schemes by submitting an application form. In this regard, I note the following from the brochure and other scheme related documents of the Company:

a. As per the brochure the lessee farmer/ customer has three options i.e.:

Option i. – the customer takes care of the plants himself at his own cost,

Option ii. - the Company arranges for a caretaker for the plants for which it gets the lease rentals and the profits are shared with the customer,

Option iii. - the customer gets the assured buyback price. A sample of the plans offered by the Company, as also noted in the interim order are as under:

TABLE A

(*Lease amount for 1,000 plants of Ratnajot or 200 plants of Kranj for 6 years*)

Lease amount									
One time (₹)		**Part Payment - i (₹)**					**Part Payment – ii (₹)**		
		1st Year 40%	2nd Year 30%	3rd Year 30%	Total lease amount		Per month	Total months	Total lease amount
1,00,000		48,000	36,000	36,000	1,20,000		2,000	72	1,44,000

15. I note from above table, that the customer has to choose the payment option between one time, yearly and monthly. The assured harvest details under this plan are as under:

TABLE B

Assured harvest details

S.No.	**Duration**	**C-1**	**C-2**	**C-3**
		Assured harvest (in quintals)	**Assured harvest (in quintals)**	**Assured harvest (in quintals)**

1	After 1 year	16.50	…	…
2	After 2 years	16.50	…	…
3	After 3 years	16.50	…	…
4	After 4 years	16.50	75	…
5	After 5 years	16.50	…	…
6	After 6 years	16.50 +150	200	300

(the assured buy back price is ₹ 7 per Kg)

C-1: *In this option, the customer gets the return in the form of assured harvest (in quintals) yearly. In case the investor chooses monthly returns in place of yearly then he gets 1.35 quintal of crop. For monthly returns, the customer has to take lease of atleast 500 plants.*

C-2: *Under this, the investor gets the return after 4 years and on completion of 6 years.*

C-3: *In this option, the customer receives return in the form of assured harvest of 300 quintals on completion of 6 years*

As per the brochure, the Company has two more plans having tenure of 15 years and 19 years.

16. I note that another relevant document is the sample 'application form' which is a pre-printed document having blanks for the details of the applicant, address details, contact number, details of plants, details of lease period. From the sample of executed application form of the Company, I note that the space for the type and number of plants have been left blank.

17. I further note the following clauses as stated in the Company's 'agreement' for 'contract farming':

"…

Whereas the company is carry on the business of the Business of producer of Bio Diesel plants and related activities like developers of rattanjot, kranj, jojoba and other plants which can be used as raw material in the process of production of bio-diesel through direct farming of the same or through contract farming.

Whereas the company is having the ____ plants at the Farm measuring total area at Village____ Tehsil_____ District______ State ____ in India having sufficient irrigation facilities.

AND WHEREAS the farmer is interested in contract farming of ___ plant/ crops (hereinafter called The Subjected plants) for the period of __Years i.e. (Hereinafter called the tenure of the agreement) and at the request of The Farmer, The Company has agreed to hand over/ give possession of minimum of 12 Months developed subjected plants for care and maintain and to get/ enjoy the agriculture produce of the farm during the tenure of this agreement.

Clause 3:

The Company will hand over/ give possession of the Subject plants to The Farmer within 18 months from the date of execution of this agreement.

Clause 4:

During the tenure of the agreement the Farmer will be liable for take care and maintain the subjected plants with the time to time guidance/ instructions/ practices given by the company regarding Land preparation, fertilization, pest management, irrigation, harvesting etc., at his own cost and get/ enjoy the agricultural produce.

…

Clause 6:

In the event of The Farmer refuses/ fails to maintain/ care/ picking/ plucking/ cutting/ dispose off the Agriculture Produce of Subjected plants due to many reasons of his own, due to which damages may cause to the said plants. The Company is free to dispose off/ take action after giving due notice, the Agriculture produce in the any *manner and pay/ receive to/ from The Farmer the balance/deficient after deducing the expenses of disposal and the damages to the Farm.*

…

Clause 11:

The Farmer will have no rights whatsoever as to the title, ownership, possession of the land/property of the company nor will it in any way alienate the Company from the land property particularly nor mortgage, lease, sublease or transfer the land property of the Company in any way to any other person/institution during the continues of this agreement.

…

Clause 12:

The agreement is irrevocable but the Farmer can transfer/ endorse this agreement after 3 Years by paying the 5% of the total premium of the agreement or Rs. 300/- which ever is higher after taking No Objection Certificate from the company. The transfer fee shall be paid at the time first transfer by the Transferor and after that by the Transferee.

Clause 13:

The Agreement shall considered to be cancelled if the farmer fails to pay, as agreed in the agreement, the due after 12 months from the date of due date of payment and the Agreement will be treated as cancelled and The company is free to take possession and dispose of the entire subject plants any manner.

…

Clause 15:

The Farmer can build some temporary infrastructures, mode of irrigations, intercropping only after taking previous consent of the company.

…

Consent Letter II

… due to my personal and unavoidable circumstances/ reasons I am Unable to take care and maintain the said farm so I give my consent and request to the company to arrange the care taker of the Company itself in any way to take care and maintain the Farm for the period of _____ years i.e. from_________ to _____________ . I further agree and give my consent for signing if required any agreement with the company or with some other persons as the company may direct/ guide me from time to time for taking care and maintaining the farm for the said period. I will agree with all the terms & conditions of the Company for the said purposes and agree to receive Produce of the said farm as follows:

I hereby gave my consent for the captioned subject, subject to the fulfillment of the following terms and conditions.

1. *I will give/ hand over the possession of the _plants to The Care Taker and The Care Taker is to take care, maintenance and cultivation the said Plants/ Crops/ Farm for _ years as shown in the annexure to the agreement.*

2. *The company will take care and maintain in the farm/ plants/ crops at its own cost and the Company will not charge anything from me.*

3. *I shall not be responsible for the developments of the said Farm i.e. for Care/ Maintenance/ Inspection for any time during the tenure of this letter.*

4. *The final Agriculture produces shall be given as per the details given above.*

5. *I will have No right to interfere the process of development of Plants.*

6. *I agree that The Company is free to do intercropping, put inventions, pesticides or any other thing for getting maximum produce.*

7. *This will be my sole responsibility to carry my share of agricultural produce from the said farm within 30 days from the date of intimation given to me if I fail to do so. The Company has full right to dispose of my share in any manner and given to me the balance, if any, after deducting the expenses of disposal.*

Consent Letter III

… due to my personal and unavoidable circumstances/ reasons I am Unable to take care and maintain the said farm so I give my consent and request to the company to arrange The Care Taker or The Company itself in any way to take care and maintain the Farm for the period of __years i.e. from __ to _. I further agree and give my consent for signing if required any agreement with the company or with some other persons as the company may direct/ guide me from time to time for taking care and maintaining the farm for the said period. I will be agreed with all the terms & conditions of the Company for the said purpose and agree to receive of 50% of Agriculture Produce of the said plants. I hereby given my consent for the captioned subject, subject to fulfillment of the following terms and conditions:

1. *I will give/ hand over the possession of the___ plants to The Care Taker and The Care taker is to take care, maintenance and cultivation the said Plants/ Crops/ Farm for _ years as shown in the annexure to the agreement.*

2. *The Care Taker will take care and maintain the farm/ plants/ crops at its own cost and the Company will not charge anything from me.*

3. *I may inspect the developments of the said Farm at all level upto cutting and selling the agriculture produce of the said farm in reasonable time if any*

time I feel dissatisfied in the care and maintenance of the said plants I can revoke the care taker agreement after cutting of available agriculture produce and take care and maintain the farm myself.

4. *I agree that The Care Taker is free to do intercropping without damaging the plants I will not claim the profits from the said intercropping.*

5. *This will be my sole responsibility to carry my share of agricultural produce from the said farm within 30 days from the date of intimation given to me if I fail to do so The Company has full right to dispose off my share in any manner and given to me the balance, if any, after deducting the expenses of disposal."*

18. I further note from 'Brief of consent Letter I & II' pertaining to the schemes of the Company that it contains different options relating to the rate & duration as well as buyback amount of the crops, as described hereunder:

"*Brief of the crop as per consent letter – I (option for the duration and rates per quintal):*

S.No.	*Duration*	*Rate of Crop per Quintal*
1.	*1st to 6th Years*	*Rs.700*
2	*7th to 11th Years*	*Rs. 1000*
3.	*12th to 18th Years*	*Rs. 1200*
4	*After 19 Years*	*Rs. 1500*

Brief of the crop as per consent letter – II (option for the duration and rates per quintal):

S.No.	*Duration*	*Crop Share*
1.	*After 7 Years*	*28 Quintal*
2	*After 11 Years*	*20 Quintal*
3.	*After 15 Years*	*20 Quintal*
4	*At the end of lease term 19 years*	*34 Qunital*

Summary of the crop as per the consent letter I and II (option for the duration, quantity, rate and amount):

S.No.	Term	Quantity	Date of Crop	Rate (In Rs.)	Amount (In Rs.)
1.	After 7 Years	28.00 Q.	11/11/2016	1,000	28,000.00
2	After 11 Years	20.00 Q.	11/11/2020	1,000	20,000.00
3.	After 15 Years	20.00 Q.	11/11/2024	1,200	24,000.00
4	After 19 years	34.00 Q.	11/11/2028	1,500	51,000.00

19. On perusal of the aforesaid documents, I find that the Company has the schemes of various tenures like 6 years, 15 years and 19 years. I also find that under Option 3, GCA assures certain value in the form of 'assured buy back price of ₹ 7 per Kg' on making payment for the scheme of taking plants on lease from the Company. The assured harvest from the plants also varies as per the plan.

20. I find that the customer while applying for the scheme of the Company gives his consent and makes a request to the Company for maintaining the farm. No clause in the 'agreement' expressly discusses about the consent letters. I also note that the Consent Letter - I is for selling agriculture produce at pre-determined rates to/ through GCA and the Consent Letter - II and III mentioned about handing over of the farm/ plants to the caretaker provided by GCA.

21. Further, 'agreement' pertaining to the schemes of the Company is designed to confuse the investors about the real nature of the scheme. For instance, clause 11 of the agreement discusses about the lease of land by GCA to farmers/ investors and clause 7 hints at leasing of plants.

22. In the letter dated April 01, 2015, which was submitted by the Company in the proceedings under Sections 11(1), 11(4), and 11B of the SEBI Act before the Hon'ble Whole Time Member, as recorded in the Final Order dated February 04, 2016, the company had informed that it has customers in various states like Bihar, Haryana, Punjab, Maharashtra, Assam, Orissa, etc. and the Company has farm lands mainly at Uttar Pradesh, Rajasthan and Andhra Pradesh. However, in the aforesaid letter dated September 30, 2013, it had failed to explain as to how its

customers from Assam or other places will take care of plants located in Uttar Pradesh/ Rajasthan/ Andhra Pradesh.

23. I also find that as noted in the interim order dated December 30, 2014 passed by the Whole Time Member against the Noticees, CBI in its report on the affairs of GCA had remarked that *"… investors were under the impression that it was an investment policy with good return against the investment and that at end of the agreement period, they will get the agreed upon amount as shown against the investment plan opted by them."*

24. Having discussed the above, now I proceed to deal with the characteristics of the impugned plans/schemes floated and carried on by the Company. At this juncture, it is pertinent to examine the characteristics of Collective Investment Scheme (hereinafter referred to as "CIS"). In this regard, I note that there are four conditions under Section 11AA(2) of the SEBI Act, which should be satisfied for concluding whether a scheme is a CIS or not. The same are as follows:

"(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."

25. I note that the first condition is that *the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the*

scheme or arrangement. In this regard, firstly, I find that the Company accepted money from customers for subscribing to its plans/schemes in the name of 'contract farming'. Secondly, I find that any customer interested in the schemes of the Company was supposed to make an application and an agreement in this regard was executed. For the payment of the lease amount, the Company offered three options i.e., single payment plan, monthly payment plan and yearly payment plan. The aforesaid options make it clear that the Company solicited money from the public. Thirdly, I find that the Company had proposed to make allotment of plants after payment of 50% of the lease amounts, which was done after 18 months to two years. I find that the Company, after pooling the funds from its customers, had utilized it for the purposes of the scheme by purchasing land for farming. Thus, It is clear that the Company after pooling the funds from its customers, had utilized it for the purposes of the scheme. In this regard I find that under the 'assured buyback price' option, the customer was supposed to give consent to receive the assured harvest (in quintals) at an agreed buyback price (calculated in advance) (₹7 per kg.). In this option, the customer had no other claim except for the assured amount at the end of the agreement period. I also find that as per the documents pertaining to the schemes of the Company, the Company was soliciting investments from customers in its scheme of lease of plants and accordingly, the Company had 3,54,398 agreement holders out of which 53,434 agreement holders had cancelled their agreements, 98,503 had paid the full lease money and the rest 2,02,461 are yet to pay the full lease money. Therefore I find that the plans/schemes of the Company satisfies the first condition under Section 11AA (2) of the SEBI Act.

26. I further note that second condition for considering a scheme as a CIS is that the *contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement*. As discussed above, the Company collected funds from its customers though single payment plan, monthly

payment plan and yearly payment plan for the plants on lease. I further note that the brochure of the Company provides for the ‘assured buyback price’ option in which the assured harvest (in quintals) is given to the customers at a pre-calculated buyback price (i.e. ₹7 per kg.). I also note that the customer is given the option to get the agreed buyback price either annually or intermittently on completion of the lease. I further note that as per the ‘brief of consent letter I and II’ the amounts were payable to the customers after 7, 11, 15 and 19 years. I also note that in the said consent letter, the customer who opts for longer lease periods is offered a higher rate for the crop. From the above, it is clear that the customers/investors had made the contribution/payment to the Company with a view to earn profits or returns on the initial investments that may accrue to them as applicable, thus satisfying the second condition as stipulated in Section 11AA(2)(ii) of the SEBI Act.

27. I further note that the third and fourth conditions for a scheme to be considered a CIS are that *the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors and the investors do not have day to day control over the management and operation of the scheme or arrangement*. In relation to the same, it is evident from the clauses of the Consent Letters i.e. ‘*the company will take care and maintain the farm/ plants/ crops at its own cost’, the investors shall not be responsible for the development of farm, final agricultural produce shall be given as per chosen option, investor will have no right to interfere in the process of development of plants*’ that the customers do not have day to day control over the management of the plants. The condition in the Consent Letters - II and III pertaining to the schemes of the Company states that a customer “*... further agree and given my consent for signing if required any agreement with the company or with some other persons as the company may direct/ guide me from time to time for taking care and maintaining the farm for the said period. I will agree with all terms and conditions of the company for the said purposes and agree to receive produce of the said farm….*” Therefore, I find this

condition imposes limitation on the investors in participating in the day to day affairs of the companies. I also find that a customer investing with the Company in the 'assure buyback' plan is mandatorily required to give authority for maintenance and cultivation to the Company. Under this arrangement, the plants are managed by GCA on behalf of its customers and the customers do not have any role in the maintenance. Therefore, it is clear that the customers do not have day to day control over the management of the plants. Therefore I find that that the contribution or investment made as part of the scheme is managed on behalf of the investors and the investors do not have day-to-day control over the management and operation of the scheme or arrangement. Thus, the plans/schemes of the Company also satisfy the third and fourth conditions under Section 11AA(2) of the SEBI Act.

28. I also note that as per the Company's letter dated April 01, 2015, submitted before the Hon'ble WTM in the proceedings under Sections 11(1), 11(4), and 11B of the SEBI Act as recorded in the Final Order dated February 04, 2016, it had received ₹428,07,11,396, since the date of incorporation of the Company i.e. May 09, 2005 up to March 31, 2014 from its customers who had opted for assured crop income clause. Thus, I find that impugned plans of the Company were in the nature of CIS, and not that of genuine 'contract farming' business. As discussed, the Company accepts money from its customers and the same is paid back with the pre-calculated returns. As all the four conditions specified under section 11AA(2) of the SEBI Act are satisfied in this case, it is clear that the schemes/plans promoted, launched, carried on and operated by the Company are in the nature of CIS in terms of section 11AA(1). In this regard, I place reliance on the judgement of the Hon'ble Supreme Court, made in the matter of *PGF Limited & Ors.* Vs. *Union of India & Anrs.* (Civil Appeal No. 6572 of 2004) in which it was held as follows:

"…..*the Parliament thought it fit to introduce Section 11AA in the Act in order to ensure that any such scheme put to public notice is not intended to defraud such gullible investors and also to monitor the operation of such schemes and arrangements based* *on the regulations framed under Section 11AA of the Act… Inasmuch as the said Section 11AA seeks to cover, in general, any scheme or arrangement providing for certain consequences specified therein vis- a-vis the investors and the promoters…*"

In view of the above observations and placing reliance on the aforesaid judgement I conclude that the schemes/plans promoted, launched, carried on and operated by the Company are in the nature of CIS in terms of section 11AA(1) of the SEBI Act.

29. I note that in order to carry out the activity of CIS and mobilize public funds from such schemes, in terms of Section 12(1B) of the SEBI Act, it is mandatory for the entity carrying out such CIS activity to obtain a certificate of registration from SEBI in accordance with the CIS Regulations. I also note that in terms of Regulation 3 of the CIS Regulations, no person other than a Collective Investment Management Company, which has obtained a certificate under the said regulations, shall carry on or sponsor or launch a CIS. Thus, I note that a person can launch or sponsor or cause to sponsor a CIS only if it is registered with SEBI as a Collective Investment Management Company. In this regard, I note from the letter dated April 01, 2015 submitted by the Noticees in the proceedings under Sections 11(1), 11(4), and 11B of the SEBI Act before the Hon'ble Whole Time Member, as recorded in the Final Order dated February 04, 2016, that the Noticees did not possess or submit any certificate of registration from SEBI as required in terms of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. Therefore, I find that the Noticees, by floating and causing to sponsor a 'collective investment scheme' without obtaining the requisite certificate of registration in terms of the provisions of the CIS Regulations, had violated Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations.

30. I further note that in terms of Regulation 4(2)(t) of the PFUTP Regulations, dealing in securities shall be deemed to be a fraudulent or an unfair trade practice, if it involves fraud and includes illegal mobilization of funds by sponsoring or causing to

be sponsored or carrying on or causing to be carried on any CIS by any person. It is already been established that the company had been operating a CIS without obtaining the requisite registration as required under Regulation 3 of CIS Regulations. In this regard, I note that as per the Company's letter dated April 01, 2015, submitted before the Hon'ble WTM in the proceedings under Sections 11(1), 11(4), and 11B of the SEBI Act as recorded in the Final Order dated February 04, 2016, the company had received ₹428,07,11,396 since the date of incorporation of the Company i.e. May 09, 2005 up to March 31, 2014 from its customers who had opted for assured crop income clause. I note that as per the aforesaid letter dated April 01, 2015, the Company had received a total of ₹ 93,08,38,927, under the CIS operated by it since 2013, i.e. ₹ 45,25,37,856 in Financial Year ('**FY**') 2013-2014 and ₹ 47,83,01,071 in FY 2014-2015. From the aforesaid I find that the Company continued to collect money from investors even after the Interim Order dated December 30, 2014 had been passed by the Hon'ble WTM, by which SEBI had *inter alia* directed the Noticees not to collect any fresh money from investors under existing CIS operated by the Company. Thus, I find that the Noticees have admitted that GCA was mobilising funds illegally from the public without obtaining the requisite registration as required under Regulation 3 of CIS Regulations. Accordingly, I find that by mobilizing public funds through CIS without obtaining registration from SEBI as required under Section 12(1B) of the SEBI Act read with Regulation 3 of the CIS Regulations, the Company has violated Regulation 4(2)(t) of the PFUTP Regulations.

31. I also find from the available records that, Mr. Amarjeet Singh Cheema and Mr. Gurdeep Singh are directors of GCA. I find that Mr. Amarjeet Singh Cheema and Mr. Gurdeep Singh are the original signatories to the Memorandum and Articles of Association of the Company and continue to be the directors of the Company. The same shows that they managed the affairs of the Company since its inception and had a key role in mobilization of funds from the investors.

32. I find that that the Company had floated an unregistered CIS and had illegally mobilized funds from the investors. I note that the Company acts through the directors and in view of the same Mr. Amarjeet Singh Cheema and Mr. Gurdeep Singh are responsible for the affairs of the Company. I note that the role of directors in prevention of financial fraud is of utmost importance and they are required to take diligent steps for preventing the same. In this regard, I place reliance on the order of Hon'ble High Court of Madras in the matter of *Madhavan Nambiar* Vs. *Registrar of Companies* [2002 108 Comp Cas 1 Mad] wherein it was observed that "*In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal.* "

33. I also find that the public interest requires that directors who are involved in illegally mobilising funds from the public need to be penalised severely so as to serve as a deterrent example against such violations. Therefore, in view of the above findings and placing reliance on the aforesaid judgement I find that directors of GCA, i.e., Noticees 2 and 3 would be also be liable for the violations by the company. Therefore, I find that the Company and its directors namely Mr. Amarjeet Singh Cheema and Mr. Gurdeep Singh, i.e., Noticees 1 to 3, were engaged in the illegal fund mobilising activity by floating, sponsoring and launching an unregistered CIS, as defined in the Section 11AA of the SEBI Act.

34. In view of the foregoing, I find that the allegation against the Noticees that they have violated Regulation 3 of CIS Regulations and Sections 11AA and 12(1B) of SEBI Act and Regulation 4(2)(t) of PFUTP Regulations stands established.

<u>Issue No. 2: Whether the violations, if established, attract monetary penalty under 15D(a) and 15HA of SEBI Act?</u>

35. I note that the Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC) 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...…".* It has been established that the Noticees have sponsored and/or carried on collective investment schemes in violation of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. It has also been established that the Noticees have illegally mobilized funds from the public in violation of Regulation 4(2)(t) of PFUTP Regulations. Therefore, in view of the foregoing and placing reliance on the aforesaid judgement, I am of the view that a monetary penalty needs to be imposed upon the Noticees under Section 15HA and Section 15D(a) of the SEBI Act, text of which is reproduced as under:

<u>SEBI Act</u>

<u>Penalty for fraudulent and unfair trade practices.</u>

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty - five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

<u>Penalty for certain defaults in case of mutual funds</u>.-

15D. If any person, who is –

(a) required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty of one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds, or one crore rupees, whichever is less."

<u>Issue No. 3: If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act?</u>

36. While determining the quantum of penalty under sections 15D(a) and 15HA of the SEBI Act, it is important to consider the factors as stipulated in Section 15J which reads as under:-

    "***Factors to be taken into account while adjudging quantum of penalty.***

    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.

    Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

37. It has been noted in the earlier part of the order that the company had received ₹428,07,11,396 since the date of incorporation of the Company i.e. May 09, 2005 up to March 31, 2014 from its customers who had opted for assured crop income clause. It has also been established that the Company had received ₹ 93,08,38,927, i.e. ₹ 45,25,37,856 in Financial Year ('**FY**') 2013-2014 and ₹ 47,83,01,071 in FY 2014-2015 under the CIS operated by it since 2013. It has been observed that the Company continued to mobilise fresh funds from public even after such raising of

fresh funds was restrained by the SEBI's Interim Order dated December 30, 2014. Such conduct on the part of Noticees demonstrates a complete disregard for the directions of the regulator which is very harmful for the integrity of securities market.

38. 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 : MANU/SC/0247/2013) 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 further observed 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. 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."

39. Thus, in view of the aforesaid findings and placing reliance on the aforesaid judgement, I am of the view that the Noticees' act of carrying on an unregistered collective investment scheme was a serious violation of Section 12(1B) of SEBI Act and Regulation 3 of the CIS Regulations, which puts the investments of lakhs of investors in jeopardy.

40. I further note the judgement of the Hon'ble SAT in the matter of Subrata Bhattacharya vs. SEBI ([PACL matter] Appeal No. 47 of 2018; Decided on January 14, 2020) in which the Hon'ble SAT had held as follows:

"*We also find that that factors contemplated under Section 15J of the SEBI Act was duly considered. The AO found that the whole amount was illegally raised under the collective investment scheme without obtaining registration from SEBI after coming into force of Regulation 4(2)(t) of the PFUTP Regulations, 2003 during the period of 06.09.2013 to 15.06.2014 the AO found that the amount so realised was a profit for the purpose of Section 15HA. The AO further found that the profit made by the appellants was at the cost of the investors. We are of the opinion that the factors contemplated under Section 15J of the SEBI Act was duly considered and we do not find any infirmity (sic) in the reasoning adopted by the AO. On the question whether the appellants have violated Regulation 4(2)(t) of the PFUTP Regulations and or on the question whether the appellants were required to get the scheme registered under SEBI Act, we are of the opinion that it is no longer open to the appellants to agitate the matter as the same has been decided by SEBI which order has been affirmed by this Tribunal*"

41. Therefore, in view of the foregoing findings and placing reliance upon the aforesaid judgement of Hon'ble SAT, I find that the entire amount of money collected under the CIS operated by the company since 2013, in violation of Regulation 3 of CIS Regulations and Section 12(1B) of SEBI Act, amounts to illegal mobilsation of funds in terms of Regulation 4(2)(t) of PFUTP Regulations. In view of the foregoing, I find that the aforesaid amount of ₹ 93,08,38,927 was an unlawful gain accumulated by the Company at the cost of investors. Therefore, I conclude that an amount of penalty equivalent to ₹ 93,08,38,927, which was illegally mobilized by the Company since 2013, ought to be imposed under Section 15HA of SEBI Act, on the Noticees so as to serve as a deterrent against the aforesaid violation, keeping the overwhelming public interest in mind.

42. I further note that as per Section 15D(a) of the SEBI Act, an entity is liable for a penalty of Rupees One Lakh for each day during which the CIS is carried out without a Certificate of Registration in accordance with Regulation 3 of CIS Regulations or Rupees One Crore, whichever is lesser. In this regard I note that, as per records, the Company had collected ₹ 428,07,11,396 since the date of incorporation of the Company i.e. May 09, 2005 up to March 31, 2014 and a further amount of ₹ 47,83,01,071 from the public by operating a CIS without obtaining a Certificate of Registration under Regulation 3 of CIS Regulations. Thus, the Company was illegally mobilising funds for 9 years without the requisite certificate of registration and accordingly, I conclude that the maximum penalty of 1 crore rupees under Section 15D(a) ought to be imposed on the Noticees so as to serve as a deterrent against the aforesaid violation, keeping the overwhelming public interest in mind.

ORDER

43. Having considered all the facts and circumstances of the case, the material available on record, and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in 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 a penalty of ₹ 93,08,38,927 (Rupees Ninety Three Crore Eight Lakhs Thirty Eight Thousand Nine Hundred and Twenty Seven Only) under the provisions of Section 15HA of SEBI Act and ₹ 1,00,00,000 (Rupees One Crore only) under the provisions of Section 15D(a) of SEBI Act, jointly and severally, on the Noticees 1 to 3.

44. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

45. 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, Noticee may contact the support at portalhelp@sebi.gov.in.

46. Noticees shall forward said Demand Draft or the said confirmation of e-payment made in the format as given in table below which should be sent to "The Division Chief, EFD – DRA - 4, 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:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

47. 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 the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticees.

48. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai **SOMA MAJUMDER**

Date: June 24, 2022 **ADJUDICATING OFFICER**