

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER: Order/VV/NK/2021-22/15204-15209]**

**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 Noticee	PAN of Noticee
1.	Pragya Diaries and Agro Limited Address: 201, Mayank Villa, 123, Chikitsak Nagar, Indore MP 452001 IN	AAFCEP3908E
2.	Punam Chand Patidar Address: 201, Mayank Villa, 123, Chikitsak Nagar, Indore MP 452001 IN	BTUPP0108C
3.	Nana Lal Patidar Address: village: Bani, Tehsil : Pellawad, District: Jhabua, Madhya Pradesh, 457775	AJWPP3490J
4.	Pooja Patidar Address: 201, Mayank Villa, 123, Chikitsak Nagar, Indore MP 452001 IN	AVBPP1293Q
5.	Durga Patidar Address: 201, Mayank Villa, 123, Chikitsak Nagar, Indore MP 452001 IN	APJPP6921M
6.	Ansar Ahmed Address: Bercha Mandi, Shajapur, Madhya Pradesh, 465110	AFFPA4197L

In the matter of Pragya Dairies & Agro Limited.

BACKGROUND OF THE CASE

Adjudication Order in respect of 6 entities in the matter of Pragya Dairies and Agro Limited



1. Pragya Dairies & Agro Limited (hereinafter referred to as "**PDAL/Company**") is a company incorporated under the Companies Act, 1956 on March 18, 2010. The registered office address of PDAL is at '201, Mayank Villa, 123, Chikitsak Nagar, Indore, MP, 452001'.
2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had received complaint dated June 07, 2016 against PDAL on July 15, 2016. From the complaint it was known that PDAL has collected money from around 200 investors and invested in the schemes of the company. On November 30, 2016, complainants further provided the copies of certificates and scheme plans of PDAL.
3. As a matter of preliminary inquiry, SEBI, vide its letter dated October 03, 2016 and November 10, 2016 to PDAL and its directors viz. Pooja Patidar, Punam Chand Patidar, Nana Lal patidar, Durga Patidar, Ansar Ahmed (hereinafter referred collectively referred to as "**Noticees**") and Rajesh Jain, sought following information about fund mobilization schemes:
 - i. Memorandum and Articles of Association of the company.
 - ii. Audited annual reports of the company since inception.
 - iii. Income Tax returns of the company since inception.
 - iv. Name, addresses and occupation of all the promoters/directors of the company including PAN details, Voter ID , Aadhar Card , contact details and addresses.
 - v. Names and details of the Key Managerial Personnel of the company.
 - vi. Following Information in respect of schemes launched for raising funds:
 - a) A statement of mobilization and deployment of funds under various schemes duly certified by the Statutory Auditors of the company(s);
 - b) Terms and conditions of the schemes launched by company;
 - c) Structure of the Plans/Schemes ;
 - d) Details of the scheme(s) wise amount mobilized by company, along with the number of investors under the schemes;



- e) Assured/indicative/expected returns made in the scheme(s);
 - f) Copies of offer documents, application form, pamphlets, brochures of the scheme(s) launched;
 - g) Sample copies of the registration letter and allotment letter issued to the investors who subscribed to the scheme(s);
 - h) Sample copies of the agreement letter / contract required to be entered into by investor / applicant under the scheme (s)
 - i) Options available with the investor if he does not want to hold his investment till maturity;
 - j) Whether any instrument is issued to the investors after receipt of fund;
 - k) If such instruments are issued whether they are transferable;
 - l) In case the 'Scheme(s)' pertain to booking / purchase of goods / properties / assets/ live stock / plantations / land/dairy / etc , please specify the options available with investor if he does not want to possess the good/property after payment of initial amount;
 - m) Details of any other similar scheme(s), if any , floated by the company or its group/ associates company ;
 - n) Confirm whether 'Scheme (s)' floated by the company falls under the SEBI (Collective Investment Schemes) Regulations,1999.
 - o) Address of all the branches operating in India.
 - p) Was any broker / agents employed for said issue ? If yes, please provide name and amount of brokerage/ commission paid.
 - q) Details of any action initiated/ taken by any other authority (including any court order) against the company in respect of money raised from public.
4. Letters to the company and its directors returned undelivered except one letter sent to Shri Ansar Ahmed, past director which was delivered to him as per India Postal tracking system. However, no reply in this regard has been received by SEBI.



5. Further, letter dated November 25, 2016 was sent to the auditor of PDAL viz. K. Motwani & Co., to provide the following information/documents:
- Nature of business activities of the company.
 - Nature of funds received by company.
 - Documents/ explanations for "Trade Payables and Inventories" in the balance sheet as on March 31, 2012.
6. In response to above, the auditor vide letter dated December 20, 2016, *inter-alia* submitted as under:
- "The Company was engaged in trading of agriculture products, seeds, allied items, contract farming, seed production and consolidation of people in the form of joint venture so as to achieve its main object."*
 - " The Company had received normal sales Proceeds of agriculture produce and other Agri based activities during the period starting from 01/04/2011 and ended on 31/03/2012 "*
7. The auditor further stated that it had already resigned as an auditor of the company. The auditor also provided the balance sheet of the company for FY 2011-12 and the Income Tax return pertaining to the said year.
8. SEBI also conducted a physical verification of the registered office address of the company at '201, Mayank Villa, 123, Chikitsak Nagar, Indore, MP-452001' on August 23, 2017. However, it was found that the company was not operating at the said address.
9. SEBI examined the matter and on the basis of information available on record it *prima facie* appeared that the company has mobilized huge funds from public under its various schemes which is in the nature of a Collective Investment Scheme as defined in Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**,"



1992”) and mobilizing money from investors under the same without obtaining registrations from SEBI as required under the provisions of Section 12(1B) of the SEBI Act read with Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as “**CIS Regulations, 1999**”) and that the, fund mobilizing activity of the company through the ‘Schemes’ referred to as Business Plans and described as Joint Venture pertaining to Cattle/Ghee post September 2013 *prima facie* amounts to a fraudulent practice in terms of Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (“**PFUTP Regulations, 2003**”). Therefore, SEBI, vide an interim *ex-parte* Order dated November 09, 2018 (hereinafter referred to as “**interim order**”) passed certain directions *inter-alia* against Noticees. Thereafter, on March 06, 2020, Hon’ble Whole Time Member of SEBI (**WTM**) passed the final order under sections 11(1), 11(4), 11B AND 11AA of the Securities and Exchange Board of India Act, 1992 read with regulation 65 of Securities and Exchange Board of India (collective investment schemes) Regulations, 1999 and regulation 11 of the Sebi (prohibition of fraudulent and unfair trade practices relating to securities market) regulations, 2003 wherein Hon’ble WTM has held the schemes as CIS and issued certain directions to entities including Noticees *inter-alia* to refund the money collected by the said company under its various Collective Investment Schemes with returns which are due to investors as per the terms of offer.

10. Based on the information collected during examination, it was observed that PDAL has mobilized funds even after September 06, 2013 and accordingly, SEBI initiated Adjudication proceedings on December 07, 2017 against PDAL and its directors for the alleged violation of Regulation 4(2) (t) of PFUTP Regulations, 2003 for fund mobilization activities by the company and its directors (Past and Present), post September 06, 2013 without obtaining registration as required under the provisions of Section 12(1B) of the SEBI Act read with Regulation 3 of the CIS Regulations, 1999.

APPOINTMENT OF ADJUDICATING OFFICER

Adjudication Order in respect of 6 entities in the matter of Pragya Dairies and Agro Limited



11. Vide communication order dated December 16, 2020, the undersigned has been appointed as Adjudicating Officer in the matter under Section 15 I (1) of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995(hereinafter referred to as "**The SEBI Rules/ Adjudication Rules**") read with Section 19 of SEBI Act to inquire into and adjudge the alleged violation of the fund raising activities which attracts the Regulation 4(2)(t) of PFUTP Regulations, 2003 by PDAL and its directors viz. Pooja Patidar, Punam Chand Patidar, Nana Lal patidar, Durga Patidar, Ansar Ahmed and Rajesh Jain.

SHOW CAUSE NOTICE, REPLY AND HEARING

12. A common Show Cause Notice dated September 09, 2021 (hereinafter referred to as '**SCN**') was issued to the PDAL and its directors under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry be not held against them in terms of Rule 4 of the SEBI Adjudication Rule read with section 15 I of the SEBI Act; and penalty be not imposed under Section 15HA of the SEBI Act for the alleged violation.
13. SCN issued to Noticees through Speed Post Acknowledgment Due (**SPAD**) was returned undelivered by the Postal Department except Noticee no. 3. I note that, SCN was duly delivered to Noticee no. 3 on September 18, 2021. However, no reply to SCN has been made by Noticee no. 3. Thereafter, in order to serve SCN to other 5 Noticees, a Notice under Rule 7(3) of the Adjudication Rules was published on October 28, 2021 in Indore and Shajapur editions of 'The Times of India' in English language and 'Dainik Bhaskar' in Hindi language which was the regional language of address of Noticees available on record. It was also published in the said newspaper publications that, the said SCN has been published/ uploaded on website of SEBI (www.sebi.gov.in) under the section Enforcement: Unserved Summons/ Notices' and can be downloaded from the website of SEBI (www.sebi.gov.in). Further, Noticees were also advised to submit their reply to the SCN within 14 days of publication of this notice. Vide aforesaid public notice, the Noticees were also granted opportunity of hearing through WebEx platform due to Covid-19 Pandemic on November



16, 2021, wherein it was clearly mentioned that in case Noticees fail to submit their reply to the SCN or avail opportunity of personal hearing in the matter, the matter shall be proceeded further on the basis of material available on record.

14. Hearing Notice dated February 10, 2022 was sent by SPAD to Noticee no. 3 Noticee viz. Nana Lal Patidar. The said Hearing Notice was returned undelivered with the remarks "Refused" by the postal authorities. The refusal of Hearing notice indicates that the Noticee no. 3 has no respect for law. I note that SCN was duly served upon Noticee no. 3 on September 18, 2021 through SPAD and thus, Noticee no. 3 is well aware that adjudication proceedings had been initiated against him for the aforesaid violations of PFUTP Regulations, 2003. The deliberate refusal to accept the hearing notice can be deemed to be serving of the hearing notice of the proceedings with the adjudicating officer and thus, complying with the principle of natural justice. It is noted that despite being provided opportunity of hearing to defend/explain the allegations mentioned in the SCN against him, Noticee no. 3 failed to either submit a reply to the show cause notice or to appear for the hearing.

15. As None of the Noticees availed the opportunity of hearing and also failed to respond to the SCN till the date of this order. I also note that no reply has been made by Noticees during 11B Proceedings in the matter as well. Therefore, I am compelled to proceed in the matter, based on the available facts of the case and material on record.

CONSIDERATION OF ISSUES

16. I have taken into consideration the facts and circumstances of the case and the material available on record. Issues that arise for consideration in the present case are:

- I. Whether the Noticees have violated the provisions of Regulation 4 (2) (t) of SEBI (PFUTP) Regulations, 2003?



- II. Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act?
- III. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

FINDINGS

Issue No. I: Whether the Noticees have violated the provisions of Regulation 4 (2) (t) of SEBI (PFUTP) Regulations, 2003?

17. Before examining the issues above, it would be appropriate to mention the relevant facts of the case leading to the present proceedings against the Noticees.
18. From the details contained in the copies of Certificates issued by PDAL as well as from the details of various plans, it was noted that the PDAL has collected funds from the public during the FY 2010-11, 2011-12, 2012-13 and 2013-14 under various 'Collective Investment Schemes referred to as Business Plans. For soliciting money from public, the company has devised such schemes "joint venture consideration" for selling "cattles/ghee". Further, for fund mobilization, it has devised the following business plans ranging from 3 yrs 4 months, 5 years, 6 years 3 months, 7 years 6 months, and lump sum payment plans of 72 months, 102 months and 132 months. It was observed that the certificates issued by PDAL in respect of the investment under these plans mention 'Expected Sum Payable on Expiry of Term C.O.C./Ghee' (here C.O.C. appears to be denoting cost of cattle), which appears to be the maturity amount (inclusive of return on investment) payable to the investor at the end of the term.
19. Various documents including financial statements filed by PDAL with Registrar of Companies were accessed through the MCA21 portal. It was noted therefrom that PDAL had filed its balance sheet only up to the Financial Year (FY) 2011-12. The Balance Sheets



of PDAL for FYs 2010-11 and 2011-12 indicate that PDAL had a current liability of Rs.6,86,87,882/- and Rs.12,98,27,007/- as on March 31, 2011 and March 31, 2012 respectively, on account of 'Sundry Creditors under Joint Venture'.

Table 1 Business plans/schemes

b) On perusal of the certificate issued by the company, the certificate read as follows :

c) The face of the certificate also provides the following details:

- 1 Registration no. and date of commencement
- 2 Plan No. Term
- 3 Cost of cattle/ Ghee
- 4 Joint venture's Consideration, C.O.C/ Ghee
- 5 Expected sum payable on Expiry of term C.O.C / Ghee

20. From the analysis of certificates, it appears that Investor invests in "Cattle/Ghee" scheme offered by company under payment plan and at maturity / expiry of term, investors would be payable expected sum of cost of cattle/ Ghee.

21. Further SEBI has obtained various documents / details available at MCA portal. As per the records of MCA basic details of PDAL are provided as follows

Date of Incorporation : 18/03/2010
 CIN : U01400MP2010PLC023243
 PAN : AAFCP3908E
 Registered Address : 201, Mayank Villa, 123, Chikitsak Nagar
 Indore MP 452001 IN

22. The details of Directors of PDAL are as follows :

Table-2 Directors of the company

Full Name	DIN	PAN	Design.	Date of Appntmt	Date of Cessation
Punam Chand Patidar	02977863	BTUPP0108C	Director	18/03/2010	Continuing
Nana Lal Patidar	02978194	AJWPP3490J	Director	18/03/2010	Continuing
Pooja Patidar	02977813	AVBPP1293Q	Director	18/03/2010	
Durga Patidar	02977847	APJPP6921M	Director	18/03/2010	
Rajesh Jain	02978284	AEDPJ0277M	Director	18/03/2010	03/03/2011
Ansar Ahmed	02336694	AFFPA4197L	Director	07/08/2014	13/08/2015



23. As per the Financial Statements of the company for 2 years, there is an incremental increase in liabilities and assets of the company:

Table 3- Balance sheet details

Liabilities	31.03.2011 (Rs)	31.03.2012 (Rs)	31.03.2013 31.03.2014 &31.03.2015 (Rs)
Sundry Creditors for Joint Venture	6,86,87,882	12,98,27,007	Not filed
ASSETS	31.03.2011	31.03.2012	31.03.2013 to31.03.2015
Freehold land : 27,92,000			N/A
Advancefor purchase of land : 2,11,000	1,89,87,798		
Advance for land (Betma) : 3,74,000			
Advances for agro products : 50,000			
Advances to customers for (: 1,20,23,025			
Purchase (Tea) : 3,55,200			
Purchase (Vetinary product) : 3,62,273			
For agro product & ORC purchase) : 28,20,300			
Total 1,89,87,798			
Freehold land : 27,92,000		1,24,91,446	
Advance for purchase of land : 2,11,000			
Advance for land (Betma) : 3,74,000			
Advances for agro products : 7,50,350			
Advances to customers for (: 83,64,096			
For agro product & ORC purchase)			
Total 1,24,91,446			

24. From the analysis of Balance Sheets it is noted as under:

- It is observed from the balance sheet that the company is engaged in fund mobilizing activities from public/ investors under the scheme of cattle/ghee in the form of Sundry creditors for joint ventures. Further, in respect to such collection of funds company has built up its land inventory and agro products.



- b. During the financial Year 2011-12 significant rise in "Sundry Creditors for Joint Venture" was noted. The amount raised through Sundry Creditors for Joint Venture has increased during the financial Year 2011-12 from Rs. 6,86,87,882 to Rs. 12,98,27,007
- c. Further it was noted that company has filed its annual return for only two Financial Year (FY 2010-11 and FY 2011-12).

25. Bank statement analysis

The bank statement of the company bearing Account No - 910020014112887 in Axis Bank, was analysed for the period from 24.04.2010 to 30.06.2017. From the bank statement analysis, it was noted that company has collected fund during the FY 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16. As per the said bank statement, company has collected total funds, in the form of cash deposit, amounting to RS 6, 57, 20, 439/- in the bank account of the company during the said period.

26. The detail of the 'Scheme' offered by the company was considered in light of Section 11AA of the SEBI Act. The said Section 11AA, which provides for the conditions to determine whether a scheme or arrangement is a 'collective investment scheme', reads as follows:

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

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

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



- (i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;*
- (ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;*
- (iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;*
- (iv) the investors do not have day to day control over the management and operation of the scheme or arrangement.”*

(2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.

27. I note that the aforementioned schemes offered by the Company have to be considered in light of Section 11AA(2) of the SEBI Act, 1992. The aforesaid Section 11AA(2) of the SEBI Act, 1992, stipulates certain conditions to determine whether a scheme or arrangement is a 'collective investment scheme' and the same should not fall within any of the exceptions mentioned in section 11AA(3) of SEBI Act. Thus, I proceed to consider now whether the four conditions mentioned in section 11AA(2) of SEBI Act are satisfied in the instant case. The conditions as stipulated vis-à-vis the facts of the case are discussed in succeeding paragraphs.

Condition no. 1: Whether the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement.

28. From the copies of certificates issued by PDAL which are available on record, it is noted that PDAL collected funds from general public towards its scheme under “Registered Joint Venture for consideration” for selling of cattle/ghee and issued certificates to investors. As



per the information contained in certificate, it is observed that the customer invests in the said scheme of cattle/ghee under installment plans and lump sum payment plans. It is noted that under the said scheme, the returns offered to the investors are 'Expected sum payable on Expiry of Term C.O.C./Ghee.

29. Further from balance sheet of the company as on 31.03.2012, it is observed that the company had mobilized a sum of Rs. 12,98,27,007/- and reported as *Advance under Joint Venture* in the balance sheet and thereafter utilized the same for purchase of land, agro products etc. Also from the submission of auditor of the company it was noted that Company was engaged in trading of agriculture products, seeds, allied items, contract farming, seed production and consolidation of people in the form of joint venture to achieve its main object. Thus, *fund mobilization activity of PDAL* satisfies the first condition of "*pooling of contribution or payments and utilize the same for the purposes of the scheme or arrangement.* ", as stipulated in Section 11AA(2)(i) of the SEBI Act.

Condition no. 2: 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.

30. On perusal of the copy of certificates issued by PDAL, it appears that that investor invests money in the scheme either to get cattle/ghee or return on their investment. For example, on perusal of the certificate, the investor is "**Registered Joint Venture of consideration**" under a plan of R-75 for 6 yrs-3 months and invested Rs.37500/- towards cost of cattle/ghee. As per the certificate the term expires on 13.03.2017 and investor would be paid expected sum payable Rs.62500/-.
31. Thus, investors' contributions or payments towards such scheme, as mention in above paragraphs, is made with an intention to earn profit/ income.



32. I further note that SEBI had received complaints from the investors of PDAL alleging that PDAL has failed to honor its promised returns and also failed to refund the amount invested by them. I also note that the 'Expected sum payable on expiry of Term C.O.C/Ghee' as was mentioned on the Certificates, is in substance, nothing but promise of returns to the investors. Thus, in view of the above, I find that the contributions/payments made by the investors towards the schemes pertaining to Cattle/Ghee as offered by PDAL, was with a view to receive profit or income.

33. In view of the aforesaid, it is clear that the instant 'scheme' satisfies the second condition as stipulated in Section 11AA(2)(ii) of the SEBI Act.

Condition no. 3: The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors, and

Condition no. 4: The investors do not have day-to-day control over the management and operation of the scheme or arrangement.

34. Based on the scheme, payment plan and contents of certificate, it may be stated that the investment solicited through "cattle/ghee" plans are for a certain duration which can be interpreted that the said investments were managed by company till the period of agreement period/maturity period mentioned in the certificate. Further, the complainants have alleged that the company is not refunding the amount invested by the investors. In view of the above, it is apparent that control over the management and operation of activities in accordance with the scheme vests with the company.

35. The aforesaid observations indicate that the property, contribution or investment forming part of the scheme, is managed by PDAL on behalf of the investors and the investors do not have any say or control over the day-to-day management and operation of the scheme.

36. Further, I also do not find any material on record, to show that the investors in the schemes of PDAL were/are any director or officers of PDAL. Thus, I find that the investors in the



schemes of PDAL do not have day-to-day control over the management and operation of the aforementioned schemes being run by PDAL. I also note that though the schemes referred to as Business Plans are described as 'Joint Ventures pertaining to Cattle/Ghee' by PDAL, but I note that these schemes in effect do exhibit any features of a joint venture, but they mere pooling of funds, wherein the investors do not have any say in its day to day management and operation.

37. In view of the above, the fund mobilization activity of PDAL satisfies the third and fourth conditions stipulated in Section 11AA(2) (iii) and (iv) of the SEBI Act, 1992.

38. In view of the aforesaid, I am of the view that the schemes / plans run by PDAL satisfy the pre-requisites laid down under Section 11AA(2) of the SEBI Act to be classified as a collective investment scheme. Further, PDAL has not obtained any Certificate of Registration from SEBI under the CIS Regulations. From the material available on record, I also note that the schemes of PDAL does not qualify for exemption provided u/s 11AA (3) of SEBI Act.

39. Moving further with respect of the allegation against the Noticee no. 1 to 6 is that they have violated regulation 4(2) (t) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (PFUTP Regulations, 2003), which reads as follows:-

4. Prohibition of manipulative, fraudulent and unfair trade practices

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely;

(a)...

"(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."



40. It may be noted the PFUTP Regulations was amended with effect from September 06, 2013 and clause (t) to reg. 4(2) was inserted. Thus, Subsequent, to introduction of Regulation 4(2) (t) of PFUTP Regulations, 2003, The illegal mobilisation of funds by means of collective investment schemes ("CIS") are deemed to be fraudulent. The company carrying on unregistered collective investment schemes and all those persons who are directors as on and after the date of introduction of Regulation 4(2) (t) of PFUTP Regulations, 2003 i.e., September 06, 2013 will be liable for action, for violation of Regulation 4(2) (t) of PFUTP Regulations, 2003. Thus, money mobilized post September 06, 2013 is only being considered for the purpose of present proceedings.
41. I note that Noticee no. 2 and 3 are the present Directors and continue to be responsible for the affairs of PDAL. On the perusal of Form Nos. DIR-12 filed with Registrar of Company, I note that, Noticee no. 4 and 5, who were appointed as directors on 18/03/2010 had resigned on 18/03/2010 itself. However, the Form 20B filed by PDAL for FY 2011-12 lists them as directors as on 29/09/2012. The same indicates that they were still directors during the period of fund mobilization post September 06, 2013. I also note that Noticee no. 6 had joined as director on 07/08/2014 and had resigned on 13/08/2015, which indicates that he was a director of PDAL during the period of fund mobilization.
42. As stated in abovementioned paragraphs and Final order dated March 06, 2020 passed by Hon'ble WTM, it is clearly established that the Noticees were engaged in fund mobilizing activity from public through such 'CIS 'as defined in Section 11AA of the SEBI Act, 1992 without registration post September 06, 2013 resulting in violation of Regulation 4(2) (t) of PFUTP Regulations, 2003. As the issue of existence of an unregistered CIS is established, there is no requirement to deliberate on the issue of existence of a CIS. As regards mobilization of funds, it is observed from the bank statement analysis of the company that, the fund mobilization by Noticees continued subsequent to September 06, 2013 and it was noted that around Rs. 2,17,60,424 were collected from the public by the company and its directors post September 06, 2013 till November 2015. Thus, it is clear that the Noticees



were engaged in fund mobilization in its CIS without obtaining registration from SEBI, during the relevant time when Regulation 4(2) (t) of PFUTP Regulations was in force.

43. Noticees have not filed any reply to the SCN despite service of the SCN including by ways of public Notice. In this regard, it is pertinent to note that, The Hon'ble Securities Appellate Tribunal in the matter of **Classic Credit Ltd. v. SEBI [2007] 76 SCL 51 (SAT - MUM.)** *inter-alia* held that—

“the appellants did not file any reply to the second showcause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them”.

44. Noticees did not file any reply to the SCN till the date of this order. Thus, in the instant matter it is presumed that the Noticees have admitted the charges alleged against them in the said SCN.

45. The Hon'ble SAT also made such proposition in case of *Sanjay Kumar Tayal & Ors. Vs. SEBI (in appeal No. 68/2013)* decided on February 11, 2014 viz. “....., 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 charges levelled against them in the show cause notices”.

46. In view of the above analysis, it is therefore established that the Noticees were engaged in fund mobilizing activity from public through such 'CIS' as defined in Section 11AA of the SEBI Act, 1992 without registration resulting in violation of Regulation 4(2) (t) of PFUTP Regulations, 2003

47. Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)* held that “once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such



violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow". Thus, as the violation of the statutory regulations by the Noticees have been established, I hold that the Noticees are liable for monetary penalty under Section 15HA of the SEBI Act which reads as under:

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 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."

ISSUE – III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

48. While determining the quantum of monetary penalty under Section 15HA of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

*"15J - **Factors to be taken into account by the adjudicating officer:** 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 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.



49. I find that in such a matter of money mobilization through operation of CIS, it is not possible to bring out the disproportionate gain or unfair advantages to the Noticee and loss caused to investors. However, in order to satisfy the aforesaid factors enumerated in section 15J of the SEBI Act and to decide penalties to be imposed on Noticees, I observe that the whole amount which has been illegally mobilized without obtaining registration from SEBI, can be considered as the amount of disproportionate gain or unfair advantage as a result of the default of not obtaining registration and the said disproportionate gain or unfair advantage to the Noticees is at the cost of loss caused to the investors of the schemes of Noticee no. 1. I further note that though, there has been illegal mobilization of funds in previous years as well, since the present proceedings are for violation of Reg. 4(2)(t) of the PFUTP Regulations which has been notified on September 6, 2013, the money mobilized post this date is only being considered for the purpose of imposition of monetary penalty in the present proceedings and it was noted from the bank statement analysis of the Noticee no. 1 that around Rs. 2,17,60,424/- were collected from the public by the company and its directors post September 06, 2013 till November 2015. It suggests that the violation by the Noticees is repetitive in nature.

50. I find it relevant to refer to the judgment of 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, the court observed 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.” Thus, I am of the view that the Noticees’ act of carrying on an unregistered collective investment scheme was not only a violation of provisions of SEBI Act and regulations made thereunder, but it also put investments of a large number of investors in jeopardy.

51. I am of the opinion that, such violators should be suitably penalized so as to demonstrate the enforcement as effective deterrence in such cases as envisaged in legislative intent of section 15HA of the SEBI Act.

52. Before I impose the penalty, I must refer to the existing situation wherein SEBI vide order dated March 06, 2020 had directed Noticees *inter-alia* to refund the money collected by PDAL, under its various Collective Investment Schemes with returns which are due to investors as per the terms of offer. Thus, though this case deserves imposition of 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. However, as the interest of the investors is paramount, in exercise of the powers conferred upon me under Section 15-I (2) of the SEBI Act read with Rule 5 of the Rules, I am of the view that an appropriate penalty under section 15HA of the SEBI Act upon the Noticees should be commensurate with their violations in this case.

ORDER

53. After taking into consideration all the aforesaid facts / circumstances of the case and factors enumerated in section 15J of the SEBI Act and loss to the investors, an appropriate penalty for violation of alleged provisions of Regulation 4(2)(t) of the SEBI (PFUTP) Regulations, 2003, as mentioned in the table below, in exercise of powers conferred under section 15I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, under section 15HA of the SEBI Act, is imposed upon Noticee No. 1 to 6.

54. The Noticees will be jointly and severally liable to pay the penalty amount as mentioned in the table below;

No tic ee No	Name of Noticee	PAN of Noticee	Penalty Amount (in Rs.)
1.	Pragya Diaries and Agro Limited	AAFCP3908E	60,00,000/- (Sixty Lakhs Only)
2.	Punam Chand Patidar	BTUPP0108C	
3.	Nana Lal Patidar	AJWPP3490J	
4.	Pooja Patidar	AVBPP1293Q	
5.	Durga Patidar	APJPP6921M	
6.	Ansar Ahmed	AFFPA4197L	

I am of the view that the said penalty is commensurate with the violations committed by the Noticees.

Adjudication Order in respect of 6 entities in the matter of Pragya Dairies and Agro Limited



PENALTY PAYMENT OPTIONS

55. The amount of penalty(ies) shall be paid either by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by online payment through following path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.
56. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to “The Division Chief (Enforcement Department-1-DRA-3), the Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C7, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid :	
Transaction No. :	
Bank Details in which payment is made :	
Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

57. 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.

Adjudication Order in respect of 6 entities in the matter of Pragma Dairies and Agro Limited



58. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to the Noticees and also to the Securities and Exchange Board of India.

Date : February 28, 2022

Place : Mumbai



V.K. Verma.
Vijayant Kumar Verma
Adjudicating Officer