BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/GN/2023-24/28378-28379]

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 Name	**PAN Number**
Sudershan Singh Jamwal	AAPPJ8220N
Tej Pal Singh	-

In the matter of
Sheen Agro & Plantation Limited

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted an examination of fund mobilization by Sheen Agro and Plantations Limited (hereinafter referred to as **Sheen Agro / Company**) and observed that Sheen Agro was running a Collective Investment Scheme (CIS) without obtaining a Certificate of Registration from SEBI required under CIS regulations.

2. It was observed during examination that Sheen Agro filed an application seeking registration with SEBI but the same was withdrawn by it and in view of this withdrawal, the said application was rejected by SEBI. After such rejection, Sheen Agro, filed Winding up and Repayment Report (hereinafter referred to as WRR) with SEBI under the provision of SEBI (CIS) Regulations.

3. Further, it was observed that even after filing of WRR with SEBI, Sheen Agro continued to mobilize funds from investors and also renewed the investments of investors instead of repaying them, thereby continuing to operate a CIS without obtaining a certificate of Registration required for the purpose of running CIS from SEBI.

4. Subsequently, an Adjudication Order (hereinafter referred to as AO order) (Adjudication order No. Order/SR//PP/2020-21/8034-8048/31-45) dated June 29, 2020 was passed in the matter, imposing penalty of Rs 25,00,000/- (Rupees Twenty Five Lakh only) (to be paid

jointly and severally by Angrez Singh Bhadwal, Surinder Kumar Trilokia, Naseeb Singh Pawar, Kamal Singh Bhau, Ajeet Lal Sharma, Kripal Singh, Yograj Singh, Sudershan Singh Jamwal (hereinafter referred to as **Noticee 1**) and Tej Pal Singh (hereinafter referred to as **Noticee 2**) under section 15D(a) of SEBI Act for the violation of section 12(1B) of the SEBI Act and regulation 3 of the CIS regulation.

5. Noticee 1 and Noticee 2 (hereinafter collectively referred to as **Noticees**) appealed before the Hon'ble Securities and Appellate Tribunal (hereinafter referred to as SAT), on the ground that the appellant was never served with the impugned order and that he only came to know about the order when his accounts were frozen in April, 2021. Further, Noticees contended that it was not possible to access the hearing notice through email on account of dismal internet services.

6. Hon'ble Securities Appellate Tribunal (SAT), vide Order dated April 26, 2023, in misc. application No. 175 of 2023 and appeal no. 205 of 2023, in the matter of Sheen Agro & Plantations Limited set aside the Adjudication Order dated June 29, 2020 in so far as it relates to Noticees and made the following observations:-

   "The matter is remitted to the AO to pass a fresh order after giving an opportunity of hearing to the appellant."

   "the appellants shall appear personally or through their authorised representation before the AO on 15th May, 2023 on which date the AO will proceed in accordance with law."

APPOINTMENT OF ADJUDICATING OFFICER

7. In compliance with the abovementioned directions of Hon'ble SAT, vide communique dated May 04, 2023 the undersigned was appointed as Adjudicating Officer under Section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as SEBI Act) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "SEBI Adjudication Rules") read with Section 19 of the SEBI Act to enquire into and adjudge under the provisions of Section 15D(a) of SEBI Act, 1992, the alleged violations of Section 12(1B) of SEBI Act read with Regulation 3 of Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999 (hereinafter referred to as CIS regulation) by Noticees**.**

PERSONAL HEARING & REPLY :

8. Pursuant to the restoration of the case to AO, in accordance with the SAT direction Noticees were advised to appear either personally or through authorised representative before the undersigned on May 16, 2023 at 03:00 PM, at SEBI Bhawan 2. It may be mentioned that Noticees were advised to appear on May 16, 2023 instead of May 15, 2023, as directed by SAT, due to some work exigencies. Authorised Representative (AR) of the Noticees appeared on behalf of Noticees and AR confirmed that he has received the copy of the Show Cause Notice dated November 27, 2018. Further, AR requested for additional time for making additional submissions to the Show Cause Notice dated November 27, 2018. Acceding to the AR's request, time till June 15, 2023 was granted to make additional submissions, if any, to the AR.

9. Vide e-mail dated June 15, 2023, AR of the Noticees submitted the reply dated June 14, 2023. The reply of the Noticees is summarised below-

   (i) Noticees submitted that Noticee 1 and Noticee 2 are Father and Son by relation respectively. They were not aware that they have been made directors in Sheen Agro & Plantation Limited.

   (ii) Noticees submitted that they were relatives of A.S Bhadwal and they were compelled to sign on some Documents & they had deposited the sum of Rupees 3-4 Lacs in the Company under the guise of some investment with returns at a later stage and believing the words of Mr. A.S. Bhadwal who was there relative and, they have not received the said amount till date, Noticees also submitted that in the present case they themselves are the victim.

   (iii) Noticees submitted that in the year 1995, Mr. Angrez Singh Bhadwal had approached both of them and insisted them to visit his company by the name of Shaheen finance" thereafter Mr. Bhadwal pressurised & forced them on the basis of the relationship to deposit considerable capital in the form of investment with Shaheen finance company and out of the proceeds from the retirement funds of Noticee no.1, they had deposited considerable capital amount and Mr. Bhadwal had promised that the company will pay 15% Annual interest as it was conveyed to them, that company in return shall honour Rs.2, 500/- Per Month on the deposited amount and accordingly they had invested there

capital in the form of deposit money with Shaheen finance and company used to give return of Rs.2,500/- per month up to 1998.

(iv) Subsequently, Mr. Bhadwal along with Mr. Naseeb Singh Pawar again approached Noticees in the year 1998 to invest amount into the newly formed company by the name of Sheen Agro & Plantation and thereafter they had invested Rupees 2 lacs into the company and a fixed amount was promised to be paid to them and on that pretext Mr. Bhadwal along with Mr. Naseeb Singh Pawar had obtained there signatures on some documents.

(v) Noticees submitted that at that time they had insisted on the details of the papers to be perused and in reciprocation, Mr. Bhadwal along with Mr. Naseeb Singh Pawar had pacified them to trust their demeanour and sign the documents without verifying the contents on the basis of their relationship as Mr. Bhadwal was brother-in-law to Noticee 1 and was uncle to Noticee 2.

(vi) Noticees submitted that to know the status of their payments due and in that course of time in the year 2004, they came to know from other similar investors that both of us have been included in Sheen Agro as Directors of the company.

(vii) Noticees further submitted that as soon as they came to know that they have been made the director in Sheen Agro, they resigned from Sheen Agro with immediate effect from May 29, 2004.

(viii) Noticees submitted that there signatures were forged and fabricated.

(ix) Noticees submitted that they came to know about their names and signatures being utilised as part of Directors and after that they had immediately tendered their resignation vide MoU dated 19/05/2004 bearing their signatures along with Form No - 32 signifying the resignation from the company, also the minutes of meeting dated 29th May 2004 held at their registered office in which the resignation has been recorded & affidavit dated 29th May 2004 provided by Mr. Yograj Singh Bahu stating that the they have been ceased as Directors having no concern or interest whatsoever and shall not held responsible for any past, present & future liabilities and shall not be sued in the court of law for and on behalf of the Company from the date of resignation.

(x) *Noticees submitted that they were appointed just to complete the quorum of the Directorship and even some of them were unaware about their appointments as Directors and others were employees of the company and were being paid salaries and discharged their duties as per the wishes and desires of the company management.*

(xi) *Noticees further submitted that the AO has biased the conclusion as similar reference of Pawan Kumar khajuria has been concluded in the AO order and the Pawan Kumar khajuria has been exonerated of the charges on the basis of resignation vide MOU and Form- 32 signifying resignations from the company.*

(xii) *Noticees submitted that as per the charge sheet filed in FIR No. 12 of 2008 by Crime Branch, Jammu, all of the Noticees were made responsible for all kind of irregularities, fraud, and forgery. However, they as directors were made to be dummy & they had never participated in taking the decision of the company affairs. They were fraudulently appointed as Directors to complete the quorum of the Directorship.*

10. Vide hearing notice dated July 03, 2023, sent via digitally signed mail and SPAD, Noticees was provided an opportunity of hearing on July 10, 2023. However, vide email dated July 05, 2023, Noticees sought adjournment of hearing and requested to keep the hearing date after July 17, 2023. In view of the same, another opportunity of hearing was provided to the Noticees on July 18, 2023. However, vide email dated July 17, 2023, Noticees sought another adjournment of hearing and requested to schedule the hearing between July 18, 2023 to July 31st, 2023 or to any other date. In view of the same, third opportunity of hearing was provided to Noticees on July 27, 2023. The Noticees and AR of the Noticees appeared through video conferencing for the hearing conducted on July 27, 2023. The AR reiterated submissions already made vide reply dated June 14, 2023 and sought time till July 28, 2023 for replying to the following query raised by the undersigned during the hearing-

    What action Noticees have taken for the alleged forgery and fabrication of their signatures?

11. Vide reply dated July 28, 2023, AR of the Noticees replied to the above query and made the submission, the same is summarized below-

12. *Noticees submitted that considering the close relationship with Angrez Singh Bhadwal and assurances made by him, they had not made any criminal complaint against him for the forgery and fabrication of signature done by the Angrez Singh Bhadwal. Noticees further*

submitted that during that period Angrez Singh Bhadwal had serious heart attack and was undergoing medical treatment, due to which they had restrained themselves from taking any legal action against Angrez Singh Bhadwal. Noticees further relied on the order passed by the Hon'ble SAT in the matter of Sayanti Sen vs SEBI.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

13. I have taken into consideration the facts and circumstances of the case and the material available on record and the submission of the Noticees. The issues that arise for consideration in the present case are:

ISSUE I: Whether Noticees has violated the provisions Section 12(1B) of SEBI Act, 1992 read with Regulation 3 of CIS regulations?

ISSUE II: Does the violation, if any, on part of the Noticees attract penalty under Section 15 D(a) of the SEBI Act?

ISSUE III: If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?

14. Before proceeding further, it will be appropriate to refer the provisions of Sections Section 12(1B) of SEBI Act, 1992 read with Regulation 3 of CIS regulations alleged to have been violated by the Noticees. The texts of the alleged provisions are as under-

SEBI Act, 1992

Section 12- Section 12(1B) of SEBI Act, 1992 read with Regulation 3 of CIS regulations.

Section 12(1B) - (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.]*

Securities and Exchange Board of India (Collective Investment Scheme) Regulations 1999

Regulation – 3 - No Person Other than Collective Investment Management Company to Launch Scheme

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.

<u>FINDINGS</u>

15. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticees I record my findings hereunder:

ISSUE I: Whether Noticees has violated the provisions Section 12(1B) of SEBI Act, 1992 read with Regulation 3 of CIS regulations?

16. It has been alleged that there was fund mobilization by Sheen Agro and that Sheen Agro was running a Collective Investment Scheme (CIS) without obtaining a Certificate of Registration from SEBI required under CIS regulations and this activity was in violation of Section 12(1B) o SEBI Act and Regulation 3 of CIS regulations, and the Noticees were the directors of Sheen Agro among other directors.

17. I note that Sheen Agro filed an application on December 31, 1999 seeking provisional registration with SEBI. Subsequently the same was withdrawn by it and in view of this withdrawal, the said application was rejected by SEBI on February 28, 2003. After such rejection, Sheen Agro on October 16, 2003, filed Winding up and Repayment Report with SEBI under the provision of SEBI (CIS) Regulations. As observed from the documents available before me Sheen Agro filed the WRR under Regulation 73 of the CIS Regulation. Regulation 73 of the CIS Regulations which provides as under:-.

73. (1) An existing collective investment scheme which:
(a) has failed to make an application for registration to the Board; or

(b) has not been granted provisional registration by the Board; or

(c) having obtained provisional registration fails to comply with the provisions of regulation 71;shall wind up the existing collective investment scheme

(2) The existing Collective Investment Scheme to be wound up under sub-regulation(1) shall send an information memorandum to the investors who have subscribed to the collective investment schemes, within two months from the date of receipt of intimation from the Board, detailing the state of affairs of the [collective investment scheme], the amount repayable to each investor and the manner in which such amount is determined.

(3) The information memorandum referred to in sub-regulation (2) shall be dated and signed by all the directors of the collective investment scheme.

(4) The Board may specify such other disclosures to be made in the information memorandum, as it deems fit.

(5) The information memorandum shall be sent to the investors within one week from the date of the information memorandum.

(6) The information memorandum shall explicitly state that investors desirous of continuing with the [collective investment scheme] shall have to give a positive consent within one month from the date of the information memorandum to continue with the [collective investment scheme].

(7) The investors who give positive consent under sub-regulation (6), shall continue with the [collective investment scheme] at their risk and responsibility :

Provided that if the positive consent to continue with the [collective investment scheme], is received from only twenty-five per cent or less of the total number of existing investors, the [collective investment scheme]shall be wound up.

(8) The payment to the investors, shall be made within three months of the date of the information memorandum.

(9) On completion of the winding up, the existing collective investment scheme shall file with the Board such reports, as may be specified by the Board.

18. Thus in the instant case, admittedly the scheme of the company was a collective investment scheme

19. I note from the documents available before me that the Information Memorandum filed under regulation 73 of CIS regulation was signed on September 25, 2003 by Noticees, A. S. Bhadwal, N.S. Pawar, S K Trilokia and Kamal Singh as directors of Sheen Agro, which is on record.

20. I note from the material available before me that in the year 2004 the certificates with the caption 'Non Transferrable' and 'Fixed Deposit Receipts' (FDRs) was issued. Further it is mentioned on the said certificates that "on account of term deposit for a period of 12 months" and then stamped under the name of Branch Manager of 'Sheen Agro & Plantation Limited'. Further, the receipts of amount paid to the investor in 2005 i.e. upon maturity of

FDs are available on record. Thus I note that even after filing of WRR on October 2003 Sheen Agro continued with mobilization of funds from the investors. Details of the said certificates / receipts is as under-

Certificate No. /Receipt No	**Investor name**	**Amount**	**Date of receipt**	**Date of maturity**	**Amount paid**
NA	Sarla Rana	15000	26/06/2004	26/06/2005	NA
NA	Sarla Rana	20000	26/06/2004	26/06/2005	NA
7695	Vinod Kumar Rana	20000	28/02/2004	28/02/2005	NA
13231	Sarla Rana	16650	26/06/2004	26/06/2005	NA
2324	Raksha Devi	NA	NA	26/05/2005	38850
13206	Raksha Devi	NA	NA	27/02/2005	33300
12235	Raksha Devi	NA	NA	12/04/2005	25320
7673	Arun Kumar	NA	NA	21/1/2005	22400
7674	Aruna kumar	NA	NA	21/02/2005	21280
2320	Mahinder Singh	NA	NA	02/05/2005	30802
9330	Rama Devi	NA	NA	27/04/2005	37296
13231	Sarla Rana	15000	26/06/2004	26/6/2005	NA
13232	Sarla Rana	15000	26/06/2004	26/6/2005	NA
13233	Sarla Rana	20000	26/06/2004	26/6/2005	NA

21. Thus from the above said certificates / receipts issued by Sheen Agro in different months in 2004 and the maturity date of the said receipts in 1 year i.e. in 2005, I observe that Sheen Agro had continued mobilization of public funds post filing of WRR and without obtaining the certificate of registration from SEBI for the said collective investment scheme.

22. As regards to Sheen Agro mobilising fresh funds even after filing of the WRR, I refer to the Order of Hon’ble Whole Time Member, SEBI dated November 14, 2014, which says that:-

"….It is evident from the submission of the Company that on maturity of investments contributed by investors from whom positive consent had been obtained, the Company renewed some of the investments for an additional term. In this regard, it is relevant to mention that regulation 73 of the CIS Regulations is not meant to enable an unregistered CIS entity to perpetuate its operations even after the expiry of the original term for which investments had been accepted from the consenting investors. In my view, since the application of Company seeking registration as 'collective investment scheme' was rejected by SEBI it could not continue such activity. In this regard, reference may be drawn to section 12 (1B) of the SEBI Act, 1992 in terms of which "no person shall sponsor or cause to be sponsored or carry on or cause to be carried on Collective Investment Scheme including mutual funds unless he obtains a certificate of registration from the Board in accordance with the Regulations". Further, 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 Regulations shall carry on or sponsor or launch a collective investment scheme. "Hence, renewal of investments post submission of the WRR and after the expiry of the original term of such investments, and mobilization of fresh funds by Sheen Agro after submission of WRR is in violation of the provisions of the CIS Regulations and the SEBI Act."

23. Thus from the above, I observe that Sheen Agro was mobilising fresh funds after filing of WRR on October 16, 2003 in contravention of the provisions of CIS Regulations.

24. I further note that it is alleged that Noticees were directors of Sheen Agro at the relevant time of default and responsible for carrying out such activities for the company in violation of section 12(1B) of SEBI Act and regulation 3 of CIS Regulations.

25. Noticees in their reply have submitted that they were not aware that they have been made directors in Sheen Agro. Noticees further submitted that they were relatives of A.S Bhadwal and they were compelled to sign on some Documents and they had deposited the sum of Rupees 3-4 Lacs in the Company under the guise of some investment with returns. Noticees submitted that they came to know from other similar investors that both of them have been included in Sheen Agro as Directors of the company and as soon as they came to know that they have been made the director in Sheen Agro, they resigned from Sheen Agro with immediate effect from May 29, 2004.

26. I note from the material available before me i.e. Winding Up & Repayment Report (WRR) was signed by the Noticees and A S Bhadwal, N S Pawar, S K Trilokia and Kamal Singh on September 25, 2003 which is on the letter head of Sheen Agro & Plantation Ltd. which says that *"to be furnished on the letterhead of the Collective Investment Scheme / Entity duly signed by all the directors (who had signed the information memorandum (IM) so as to reach SEBI with in three & a half months of the date of the IM".*

27. I note that the Memorandum of Understanding (MoU) was executed on May 16, 2004, between the existing Board of Sheen Agro and Yograj Singh Bhau for reorganizing the Board of Sheen Agro to run the company efficiently and effectively.

28. I further note from the aforesaid MoU that there were two parties to the MoU, first party consists of existing Board of Sheen Agro i.e. Noticees, Kamal Singh, Surinder Kumar Trilokia, Angrez Singh Badwal and Naseeb Singh Pawar and second party consist of Mr. Yograj Singh Bhau and it was mentioned in the said MoU that existing Board of Sheen Agro shall resign on or before May 29, 2004 from the directorship of Sheen Agro. And the aforesaid MoU was signed by the Noticees, Kamal Singh, Surinder Kumar Trilokia, Angrez Singh Badwal and Naseeb Singh Pawar as the existing Board of the Sheen Agro and Mr. Yograj Singh Bhau as the second party. Thus I observe form the material available that the Noticees were the directors of Sheen Agro at the relevant time.

29. The Noticees have submitted that they were not aware that they were made the directors of the company. They further submitted that they were made directors without their consent and their signatures were forged and fabricated. They took active steps to resign from the company when they became aware of their directorship in the company.

30. Noticees has also submitted a copy of the charge sheet filed by the Crime Branch, Jammu & Kashmir wherein it is observed that Angrez Singh Bhadwal was the Managing Director of the Company during the relevant time (i.e. from April 29, 1998 to May 29, 2004). From the documents before me I find that the signature of the Noticees are there only on the WRR report. There are no documents available on record to show whether they were involved in the day to day affairs of the company. Further there is no evidence to demonstrate that the Noticees were responsible for the affairs of the company. Further in case of Sayanti Sen vs SEBI Hon'ble Securities Appellate Tribunal (SAT) (decision dated August 09, 2019) held as under:

The usual pattern in economic legislations is that when an offence is committed by a company, the liability is not imposed on all the officers of the company en bloc. Those who are guilty are generally sorted out from those who are not guilty. The Companies Act, however, makes a slight departure from this conventional pattern. It gives an opportunity to the board of directors to distribute the work as between the members of the board or to appoint a managerial person like managing director or whole time director or manager. If nothing of this sort is done, only then the whole board is liable to be prosecuted.

As per Section 5 of the Companies Act it becomes clear that a managing director, whole time director, manager, secretary and any person who has been authorized by the board or by any director are now officers in default. Section 5(g) of the Companies Act makes it apparently clear that if there is a managing director appointed in a company, he would be an officer in default. Further, in the absence of any managing director, if the board has specified any particular director or manager or any other person as an officer in default in which case only that specified director or manager etc. as the case may be would be an officer in default.

Section 5(g) of the Companies Act further provides that apart from the directors any officer can also be penalized if his role can be attributed to be an officer in default. If any officer has played some role in bringing about the default or he might have performed the duties assigned to him then he could be penalized as an officer in default. Section 5(g) of the Companies Act thus makes it clear that in the absence of any managing director or any specific order of a board, then by a deeming fiction, all the directors of the company would be officers in default.

31. I observe that the company had Managing Director during the relevant period who is an officer in default as per the Companies Act and has been held liable for consequences by erstwhile AO in order dated June 29, 2020. There is no further evidence to show that the Noticees' role to be attributed to be "officer in default".

32. Given all of the above, I find that the allegations against the Noticees as mentioned in the SCN cannot be perused further. I therefore dispose of the SCN dated November 27, 2018 qua the Noticees without imposing any penalty.

33. In view of the above, Issues II and III do not require any consideration.

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

Date: July 31, 2023	**BARNALI MUKHERJEE**
Place: Mumbai	**ADJUDICATING OFFICER**