BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SR/PP/2020-21/8034-8048/31-45]

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

In respect of

S.N.	Name of the Entity	PAN	Order No.
1	Angrez Singh Bhadwal	ACBPB5282C	Order/SR/PP/2020-21/8034/31
2	Surinder Kumar Trilokia	ACXPT9782D	Order/SR/PP/2020-21/8035/32
3	Naseeb Singh Pawar	APOPS9255C	Order/SR/PP/2020-21/8036/33
4	Kamal Singh Bhau	BJKPS4811H	Order/SR/PP/2020-21/8037/34
5	Sham Lal Pahwa	APQPP5268L	Order/SR/PP/2020-21/8038/35
6	Sudershan Singh Jamwal	AAPPJ8220N	Order/SR/PP/2020-21/8039/36
7	R.S Bhau	-	Order/SR/PP/2020-21/8040/37
8	Ajeet Lal Sharma	-	Order/SR/PP/2020-21/8041/38
9	Sohan Singh	-	Order/SR/PP/2020-21/8042/39
10	Renu Bala	-	Order/SR/PP/2020-21/8043/40
11	Pawan Kumar Khajuria	-	Order/SR/PP/2020-21/8044/41
12	Anita Sharma	-	Order/SR/PP/2020-21/8045/42
13	Kripal Singh	-	Order/SR/PP/2020-21/8046/43
14	Yograj Singh Bhau	-	Order/SR/PP/2020-21/8047/44
15	Tej Pal Singh	-	Order/SR/PP/2020-21/8048/45

In the matter of Sheen Agro & Plantation Limited

BACKGROUND

1. A Department (**OD**) of Securities and Exchange Board of India (in short **SEBI**) conducted examination of fund mobilization by Sheen Agro & Plantation Limited (in short **Sheen Agro** / **Company**) and into possible violation of provisions of the Securities and Exchange Board of India Act, 1992 (in short **the SEBI Act**). OD observed that Sheen Agro was running a collective investment scheme (**CIS**) without obtaining a Certificate of Registration from SEBI as required under Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999 (in short **CIS Regulations**). Thus, OD observed that the directors of the Company namely Angrez Singh Bhadwal (hereinafter also referred to as Noticee 1), Surinder Kumar Trilokia (hereinafter also referred to as Noticee 2), Naseeb Singh Pawar (hereinafter also referred to as Noticee 3), Kamal Singh Bhau (hereinafter also referred to as Noticee 4), Sham Lal Pahwa (hereinafter also referred to as Noticee 5), Sudershan Singh Jamwal (hereinafter also referred to as Noticee 6), R.S. Bhau (hereinafter also referred to as Noticee 7), Ajeet Lal Sharma (hereinafter also referred to as Noticee 8), Sohan Singh (hereinafter also referred to as Noticee 9), Renu Bala (hereinafter also referred to as Noticee 10), Pawan Kumar Khajuria (hereinafter also referred to as Noticee 11), Anita Sharma (hereinafter also referred to as Noticee 12), Kripal Singh (hereinafter also referred to as Noticee 13), Yograj Singh Bhau (hereinafter also referred to as Noticee 14) and Tej Pal Singh (hereinafter also referred to as Noticee 15) are responsible for carrying out such activities for the company in violation of section 12(1B) of the SEBI Act and regulation 3 of CIS Regulations. Noticee 1 to 15 are collectively referred to as Noticees.

2. Based on the said examination, OD of SEBI initiated adjudication proceedings against the Noticees, to inquire into and adjudge under section 15D(a) of the SEBI Act for alleged violations of provisions under section 12(1B) of the SEBI Act and regulation 3 of CIS Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide an order dated December 15, 2016 Shri Nagendraa Parakh, was appointed as the Adjudicating Officer (in short **AO**) under section 15-I of the SEBI Act r/w rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (in short **Adjudication Rules**) to inquire into and adjudge under section 15D(a) of the SEBI Act, the said alleged violations of provisions of section 12(1B) of the SEBI Act and regulation 3 of CIS Regulations by the Noticees. The said appointment of AO was communicated to the AO vide communique April 28, 2017. Subsequently, matter was transferred and undersigned was appointed as AO vide order dated July 10, 2017. Thereafter, the record was transferred to the undersigned and appointment of undersigned AO was communicated to the undersigned vide revised communique dated May 22, 2018.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A common show cause notice dated November 27, 2018 (hereinafter referred to as **SCN**) was issued to the Noticees in terms of rule 4 of the Adjudication Rules requiring the Noticees to show cause as to why an inquiry should not be held against them for the alleged violations of provisions under section 12(1B) of the SEBI Act and regulation 3 of CIS Regulations and why penalty be not imposed on the Noticees under section 15D(a) of the SEBI Act for the alleged violations as specified in the SCN. It is alleged in the SCN that-

a) *SEBI conducted an examination of fund mobilization by Sheen Agro and Plantations Limited (hereinafter referred to as '**Sheen Agro**') and observed that Sheen Agro was running a Collective Investment Scheme (**CIS**) without obtaining a Certificate of Registration from SEBI required under SEBI (CIS) Regulations.*

b) *SEBI further observed that Sheen Agro though 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 on October 16, 2003, filed Winding up and Repayment Report (hereinafter referred to as '**WRR**') with SEBI under the provisions of SEBI (CIS) Regulations. The WRR filed by Sheen Agro provided to the Noticees in the SCN.*

c) *It is alleged that Sheen Agro mobilized 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, as seen from copies of receipts of accepting investment by Sheen Agro from several persons before filing of WRR which are enclosed as provided to the Noticees in the SCN.*

d) *It is further alleged that 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. Copies of receipts of accepting investment and / or renewal of deposits from several persons post filing of WRR by Sheen Agro is enclosed as provided to the Noticees in the SCN. Thus, Sheen Agro was acting in violation of Section 12(1B) of SEBI Act and Regulation 3 of SEBI (CIS) Regulations. The Noticees named in the SCN were directors of Sheen Agro and were responsible for carrying out such activities for the company 'Sheen Agro'. Noticees are therefore, alleged to have violated Section 12(1B) of SEBI Act and Regulation 3 of SEBI (CIS) Regulations.*

e) *The text of the provisions of SEBI Act and SEBI (CIS) Regulations is reproduced hereunder-*
SEBI Act
Registration Certificate
Section 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 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.

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 hereunder 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 collective investment scheme including mutual funds, or one crore rupees, whichever is less.

f) Annexures to the SCN are communique of AO appointment (Annexure A), copy of Information Memorandum filed pursuant to Regulation 73 of CIS Regulations (Annexure B), receipts of investment issued by Sheen Agro to the investors accepting the money from 2002-2004.

5. The SCN was sent to the Noticees through speed post acknowledgment due (SPAD). The SCN issued to Noticee 1 through SPAD returned undelivered with the comment 'expired', SCN sent through SPAD is served upon Noticee 2, 5, 6, 7, 8, 9, 12, 15 and proof of delivery is on record. Thereafter, SCN was uploaded on the SEBI website under "Unserved Summons / Notices". Subsequently, by way of release of public notice dated October 10, 2019 in newspapers (viz. Jammu Excelsior, Amar Ujala, Takseen, The Tribune, Evening Express etc.) in Jammu, Punjab and Himachal Pradesh editions, for the last known address of all

Noticees were there. SCN was served upon the Noticee 1, 3, 4, 10, 11, 13 and 14 by way of publication in terms of Rule 7(d) of the Adjudication Rules and were advised to file their replies to the SCN. Vide said newspaper publication, Noticee 1 to 15 were provided with an opportunity of hearing on October 23, 2019. The said newspaper clippings are on record. Noticee 14 attended the hearing on behalf of Noticee 7 and 14 on October 23, 2019. Noticee 6 and 15 requested for another date for the personal hearing at SEBI Head Office at Mumbai / SEBI Northern Regional Office at New Delhi. In this regard, vide email dated May 20, 2020 to the email ids on record, one last opportunity was provided to them to avail an opportunity of hearing on June 05, 2020. Proof of delivery of said emails is on record. Noticee 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13 and 15 did not avail the opportunity of hearing provided on various dates.

6. Replies of the Noticees are summarized hereunder-

a. Noticee 2, 3, 5 and 10 vide their joint submissions in letter dated December 20, 2018 interalia submitted that (i) Noticee 1 had expired. (ii) Noticee 3 had come to know about the SCN dated November 27, 2018 on December 19, 2018 telephonically from Noticee 5. (iii) Sheen has been promoted by Managing Director B S Bhau and his family members in 1996, who kept active control throughout till 2005 when the Sheen had already filed the winding up repayment report in the year 2003. (iv) Noticee 10 had never been appointed as Director, never remained in Sheen and 40% physically handicapped have been proposed to be appointed as consultant for launching the agro based project by Sheen somewhere in 2000 and no further communication with the company had ever been made. (v) In PIL also, final charge sheet stood filed by J&K Crime Branch of Police, same is pending disposal in Sessions Trial in a case titled State vs. B S Bhau & Others before the court of First Additional Sessions Judge, Jammu.

b. Noticee 3 vide another reply dated October 18, 2019 interalia submitted that (i) Job given to him was to recover loans from defaulters. (ii) He was never incharge / responsible to the company. (iii) He was only the Director Incharge Recovery of loans.

c. Notice 5 vide another reply dated October 21, 2019 interalia submitted that (i) B S Bhau had appointed Noticee 5 verbally as Branch Manager in the office of Sheen on May 10, 1999 and thereafter Noticee 5 continues as an employee till May 29, 2004. (ii) B S Bhau many a times coerced him to sign some papers even on dotted lines and sometimes blank papers / documents. (iii) Noticee 5 served the company with full transparency and dedication. Noticee 5 never had any administrative or managerial power to take any independent decision in the role of the company and Noticee 5 has been exploited because of the bad intention of B S Bhau. (iv) From May 16, 2004 to May 29, 2004, B S Bhau took all the records of the company and we were informed that the resignation of all the existing Directors have been accepted and accordingly we were issued affidavit in this regard. On March 16, 2005 a letter was received from ROC regarding furnishing of resignation letter of each Director and its acceptance in the Board meeting.

d. Noticee 10 vide her another letter dated October 25, 2019 reiterated the submissions made vide letter dated December 12, 2018 mentioned above.

e. Noticee 7 and 14 vide their joint reply dated December 20, 2018 and October 13, 2019 interalia submitted that (i) Noticee 7 was only non-executive Director appointed on April 09, 1996 and has resigned from company on June 16, 1998. Form 32 as filed with ROC is enclosed with the reply. (ii) Noticee 14 stated he was no longer Director of the company enclosing the letter dated May 16, 2018, wherein appointment date mentioned as May 16, 2004 and resignation date as November 26, 2005. (iii) Company was under liquidation from December 30, 2003. Noticee 14 has applied to the ROC Jammu for certified copies of the appointment and resignation of Noticee 14, in which the said ROC has clearly mentioned in his reply that the appointment and resignation of the Noticee 14 are not registered and ROC can issue the certified copies of only registered documents from which it is clear that Noticee 14 had nothing to do with the affairs of Sheen. (iv) Sheen has filed its WRR on May 01, 2003 and Noticee 14 was introduced in the company in 2004 and when Sheen has filed WRR in 2003, how Noticee 14 will become the promoter and director of the company. The time Noticee 14 remained as director of the company for resolving the management dispute, both the accounts of company are empty. In this regards, Noticee 7 and 14 has submitted various documents viz. ROC Form 32 filing, balance sheet, annual returns, bank statements and copy of order of winding up issued by High Court of J & K. Upon receipt of additional evidence furnished by Noticee 14, same were sent to OD for their comments vide office note dated October 25, 2019. OD reverted back on December 11, 2019 stating that the AO may like to pass the order after taking into account evidences placed in the file and submissions made by the entity.

f. Noticee 6 and 15 vide their joint reply dated October 21, 2019 interalia submitted that (i) They are father and son respectively. They were not aware that they have been made directors in Sheen Agro. They were made directors by misrepresentation is also evident from the fact that they never participated in any board meetings. (ii) As soon they came to know about the directorship in Sheen Agro they resigned from Sheen with effect from May 29, 2004 as soon as they came to know about their directorship in Sheen. (iii) Their signatures were forged and fabricated. (iv) They did not get any unlawful gain / remuneration / funds of any nature from Sheen. (v) They are victims themselves and they have deposed as witness in a case against Noticee 1 and others in charge sheet dated May 02, 2017 in the matter of Welfare Association of Shareholders vs. State of J&K, and State vs. B S Bhau. In this regard, enclosures includes the document wherein signatures are forged along with the statement recorded in the said court matters.

g. Noticee 11 vide reply dated October 23, 2019 stated that (i) he joined the company as a clerk in 1986, resigned and rejoined in 1987. (ii) He has no knowledge regarding any mutual funds scheme floated by Sheen Agro and never participated in any meeting regarding the same. Any document showing his participation in any meeting regarding the mutual funds is forged and fabricated. (iii) He was never a Director of Sheen Agro. He was an employee of Sheen Agro, he resigned because he was not getting paid his salary for months. During the period he was named as Director of the subsidiary company he worked as a branch manager and never ever worked as Director. (iv) A writ filed by the association representing the people who had their deposits with the company which is pending before High Court of Jammu and Kashmir. There was allegation against Managing Director B S Bhau and others. The undersigned was not figured in the list of people. (v) There were numerous FIR's in the matter relating to cheating and misappropriation of funds of the companies in question and the undersigned nowhere figured in the arena of accused persons rather the undersigned duly facilitate the investigation proceedings. (vi) The address given in the notice and the newspaper publication is wrong and the undersigned request to update the address in records. Further, the enclosed documents includes Transfer order dated April 25, 1997 as Branch Manager, resignation dated Mach 19, 2008, Order of Hon'ble High Court of J & K dated February 08, 2010 directing status quo with respect of properties in the matter and copy of Form 32 presented by Noticee 1 evidencing acceptance of Noticee 11's resignation from Sheen Agro.

h. Noticee 1, 4, 8, 9, 12 and 13 has neither filed reply to the SCN nor availed of the hearing on the stipulated date. In view of the above reasons, I am compelled to proceed further in the matter on the basis of facts/material available on record.

After taking into account, the allegations levelled in the SCN, reply of the Noticees and other material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

7. I have carefully perused the charges levelled against the Noticees in the SCN and other material available on record. In the instant matter, the following issues arise for consideration and determination:-

(a) Whether Noticees were directors of Sheen Agro and were responsible for carrying out such activities for Sheen Agro in contravention of section 12(1B) of SEBI Act and regulation 3 of CIS Regulations?

(b) If yes to issue a, does the failure on the part of the Noticees attract any monetary penalty under section 15D(a) of the SEBI Act?

(c) If yes to issue b, then what would be the monetary penalty that can be imposed upon the Noticees, taking into consideration the factors mentioned in section 15J of the SEBI Act read with rule 5(2) of the Adjudication Rules?

8. Before proceeding further, I refer to the relevant provisions of the SEBI Act and CIS Regulations:

SEBI Act
Registration Certificate
Section 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 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.

9. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings as under.

Issue (a) Whether Noticees were directors of Sheen Agro and were responsible for carrying out such activities for Sheen Agro in contravention of section 12(1B) of SEBI Act and regulation 3 of CIS Regulations?

i. From the SCN, it is alleged that Noticees were directors of Sheen Agro (CIN: U01122JK1996PLC001529, Address: 243, SHEEN BHAWAN, CANAL ROAD JAMMU TAWI JAMMU AND KASHMIR JK 180001 IN as per RoC website master database search ‘sheen agro’) and are responsible for carrying out CIS activities in contravention of the provisions of section 12(1B) of the SEBI Act and regulation 3 of CIS Regulations.

ii. I note that Sheen Agro filed WRR on October 16, 2003 with SEBI under the provisions of CIS Regulations, from the copy of WRR which is on record. In the instant case, admittedly, the scheme of the Company was a collective investment scheme. It is for this reason that the WRR in this case was filed by Sheen Agro under regulation 73 of the CIS Regulations which reads 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(Formatting please….

iii. From the annexures provided to the Noticees alongwith the SCN, I note that Information Memorandum filed under regulation 73 of CIS Regulation was signed on September 25, 2003 by Noticee 1, 2, 3, 4, 6 and 15 as directors of Sheen Agro which is on record. Further, from the certificates with the caption 'Non transferable' Fixed Deposit Receipts (FDRs) on account of term deposit for a period of 12 months signed and stamped under the name of Branch Manager of 'Sheen Agro & Plantation Limited' and also the receipts of amount paid to the investor in 2005 i.e. upon maturity of FDs which are available on record and also enclosed at annexure D with the SCN, I note that the Sheen Agro continued with mobilization of funds from the investors since the FDs were issued in the year 2004 i.e. post filing of WRR by Sheen Agro on October 16, 2003. 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	26.6.2004	26.6.2005	NA
NA	Sarla Rana	20000	26.6.2004	26.6.2005	NA
7695	Vinod Kumar Rana	20000	28.2.2004	28.2.2005	NA
13231	Sarla Rana	16650	26.6.2004	26.6.2005	NA
2324	Raksha Devi	NA	NA	26.5.2005	38850
13206	Raksha Devi	NA	NA	27.2.2005	33300
12235	Raksha Devi	NA	NA	12.4.2005	25320
7673	Arun Kumar	NA	NA	21.1.2005	22400
7674	Arun Kumar	NA	NA	21.2.2005	21280

2320	Mahindar Singh	NA	NA	02.5.2005	30802
9330	Rama Devi	NA	NA	27.4.2005	37296
13231	Sarla Rana	15000	26.6.2004	26.6.2005	NA
13232	Sarla Rana	15000	26.6.2004	26.6.2005	NA
13233	Sarla Rana	20000	26.6.2004	26.6.2005	NA

iv. Thus from the abovesaid 14 certificates / receipts issued by Sheen Agro in different months in 2004 and the maturity date of the said receipts in 2005, it is evident that Sheen Agro had continued mobilization of public funds post filing of WRR in the contravention of section 12(1B) of SEBI Act and regulation 3 of CIS Regulations.

v. As regards, 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. 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…."
Thus it is evident that Sheen Agro was mobilising fresh funds after filing of WRR on October 16, 2003, which was in contravention of section 12(1B) of SEBI Act and regulation 3 of SEBI (CIS) Regulations. It is alleged that the 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.

vi. As regards, role of the Noticees i.e. directors etc, in the said contraventions committed by Sheen Agro, I refer to the order of Hon'ble Securities Appellate Tribunal in Dr. Uppal Devinder Kumar vs SEBI decision dated 25.09.2019 (Appeal No. 220 of 2017) wherein referring to tribunal's decision dated 09.08.2019 in Sayanti Sen vs. SEBI; and the Hon'ble Supreme Court's decision in SEBI vs. Gaurav Varshney, (2016) 14 SCC 430, Tribunal has observed as under:-

13. In Sayanti Sen vs. SEBI (Appeal No. 163 of 2018 decided on 09.08.2019) the Tribunal held:

"12. 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.

13. 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.*

14. 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."

14. Thus, if a company is liable to refund the monies received from the investors and if the company fails to pay the amount then the amount can be recovered jointly and severally from every Director of the Company who is an officer in default. Therefore, when the company is the offender, the vicarious liability of the acts of the Directors cannot be computed automatically. The contention that being a Director of the Company the appellant cannot disown his responsibility for the acts of the Company is misconceived. It is not possible to lay down any hard and fast rule as to when a Director would be vicariously responsible for the acts as a Director in charge of day-to-day affairs of the Company. However a finding has to be arrived at that the appellant was responsible for the day-to- day affairs of the Company and was involved in the collection of the monies and in the implementation of the schemes. In our view, it is not necessary that every director is required to be penalized merely because he is a director on the ground that he was deemed to responsible for the affairs of the company. If the director can explain that he had no role to play in the alleged default or that he was not responsible for the affairs of the company in which case penalty could not be fastened upon him on the mere ground that he was a director….

15. In SEBI vs. Gaurav Varshney, (2016) 14 SCC 430 the Supreme Court held that a company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, officers of a company who are responsible for acts done in the name of the company are sought to be made personally liable for acts which result in criminal action being taken against the company. It makes every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status."

In light of these case laws it is imperative upon me to analyse the role of each of the Noticees as to whether they were officers in default, responsible for mobilising of fresh funds after filing of WRR on October 16, 2003 by Sheen

Agro. As per RoC website master database search 'sheen agro' today, I note that the list directors shows "No Signatory Exists for Company/LLP".

vii. As stated above, the SCN and hearing notices have been duly served upon all the Notices and sufficient opportunities to submit reply and appear in personal hearing have been given to the Noticee 1, 4, 8, 9, 12 and 13, none of which were availed by them. Therefore, I find it pertinent to refer to the judgment dated December 08, 2006 of Hon'ble Securities Appellate Tribunal in the matter of Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003) wherein, it observed, "… 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". I also observe that the Hon'ble Securities Appellate Tribunal in the matter of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014) had inter alia observed that, "...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, 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..."

Therefore, in view of the above case law, it is presumed that the Noticee 1, 4, 8, 9, 12 and 13 has admitted the charges levelled against them in the said SCN. However, in the interest of justice, I still proceed to decide the matter on the basis of material available on record.

viii. As regards, the allegation against all the Noticees and the contentions made by Noticee 2, 3, 5, 6, 7, 10, 11, 14 & 15, the same are viewed in light of the material available on record:

a) Noticee 1: SCN sent to Noticee 1 has returned undelivered and as seen from the said undelivered/unopened SEBI envelope with the comment 'expired'. The SCN was then delivered through newspaper publication dated October 10, 2019. There is no reply from the Noticee 1 nor has he availed of the opportunities of hearing. Further, Noticee 2, 3, 5 and 10 in their joint submissions submitted that Noticee 1 had expired. However no documentary proof submitted in this regard.

From the material on record viz. Information Memorandum (IM) on the letterhead of the Sheen Agro signed on September 25, 2003 by the Directors i.e. Noticee 1, 2, 3, 4, 6 and 15 have signed the IM filed with the WRR.

The copy of memorandum of understanding (MoU) brought on record by Noticee 14, it is noted that the MoU was executed on May 16, 2004, between the existing Board of Sheen Agro and Noticee 14 for reorganizing the Board of Sheen Agro to run the company efficiently and effectively. It is worth mentioning that the Noticee 1, 2, 3, 4, 6 & 15 had signed the MoU as existing Board of Sheen. Also, it is mentioned in the MoU that all the existing Board shall have no responsibility for the assets and liabilities of Sheen Agro w.e.f May 29, 2004 and they shall be absolved from all the past, present as well as future liabilities of whatsoever nature including adjustments, manipulations or otherwise of Sheen Agro and they shall not be answerable to the new Board for any matter of whatsoever nature. From the material on record, I find that Noticee 1 was an officer in default as regards the allegations levelled by OD and the same stand established.

b) Noticee 2 : In this regard from the IM and MoU discussed in para a) above, I note that Noticee 2 was officer in default as regards the allegations levelled by OD and the same stand established.

c) Noticee 3 has contended that he was only the Director Incharge Recovery of loans. However from the IM and MoU discussed in para a) above, I note that Noticee 3 was officer in default as regards the allegations levelled by OD and the same stand established.

d) Noticee 4 has not filed any submissions however from the IM and MoU discussed in para a) above, I note that Noticee 4 was officer in default as regards the allegations levelled by OD and the same stand established.

e) Noticee 5 has contended that B S Bhau had appointed him verbally as Branch Manager in the office of Sheen on May 10, 1999 and thereafter he continued as an employee till May 29, 2004 and that Noticee 5 never had any administrative or managerial power to take any independent decision in the role of the company and Noticee 5 has been exploited because of the bad intention of B S Bhau. From the material available on record, I note there is no evidence against Noticee 5 showing him officer in default, thus as regards the allegations levelled by OD and the same do not stand established.

f) Noticee 6 contended that he was never a Director of Sheen Agro and his signatures were forged and fabricated. He is victim himself and he has deposed as witness in a case against Noticee 1 and others in charge sheet dated May 02, 2017 in the matter of Welfare Association of Shareholders vs. State of J&K, and State vs. B S Bhau. In this regard, he has submitted the document wherein signatures are forged along with the statement recorded in the said court matters. However, from the IM and MoU discussed in para a) above, I note that Noticee 6 was officer in default as regards the allegations levelled by OD and the same stand established.

g) Noticee 7 submitted a copy of letter dated June 16, 1998 addressed to Sheen Agro with the subject "Resignation from the Directorship of the Company ", certified copy of Form no. 32, copy of resolution passed in the Board of Directors meeting of the company held on June 16, 1998 wherein resignation of Noticee 7 was accepted and signed by B S Bhau, Managing Director of Sheen Agro. From the evidentiary proof adduced by Noticee 7, I note that Noticee 7 was not an 'officer in default' and thus as regards the allegations levelled by OD and the same do not stand established.

h) Noticee 8: From the text copy of the Board resolution passed in meeting of Board of Directors of Sheen Agro held on March 19, 2005 stated that the Noticee 8 was appointed Additional Director w.e.f March 19, 2005 and same was signed by Noticee 8 as Managing Director and Yograj Singh Bhau /Noticee 14 as Executive Director. I note from the material available on record, that Noticee 8 was officer in default, thus the charges levelled by OD against Noticee 8, thus stand established.

i) Noticee 9: From the material on record, it cannot be ascertained that Noticee 9 was officer in default during the relevant period, thus as regards the allegations levelled by OD and the same do not stand established.

j) Noticee 10 submitted that, she is 40% physically handicapped and have been proposed to be appointed as consultant for launching the agro based project by Sheen somewhere in 2000 and no further communication with the company had ever been made. She has contended that she had never been appointed as Director. From the material on record, it cannot be ascertained that Noticee 10 was officer in default during the relevant period, thus as regards the allegations levelled by OD and the same do not stand established.

k) Noticee 11 contended that he was never a Director of Sheen Agro. Further, the copy of undated letter attached with his reply addressed to the Chairman, Sheen with the subject "Resignation from the post of Director" with effect from May 17, 2000 and Form 32 was presented by Angrez Bhadwal (Noticee 1) of Sheen Agro evidencing that the resignation of Noticee 11 was accepted. Record shows that Noticee 11 was not an officer in default, thus as regards the allegations levelled by OD and the same do not stand established.

l) Noticee 12: From the material on record, it cannot be ascertained that Noticee 12 was officer in default during the relevant period, thus as regards the allegations levelled by OD and the same do not stand established.

m) Noticee 13: From ROC Form 32 submitted by Noticee 14, in its reply, it is noted that the same is signed by Noticee 13 on November 26, 2005. I note from the material available on record, that Noticee 13 was officer in default, thus the charges levelled by OD against Noticee 13, thus stand established.

n) Noticee 14 has contended that (i) Sheen has filed it's WRR on May 01, 2003 and Noticee 14 was introduced in the company in 2004. In this regard, Noticee 14 has brought a copy of memorandum of understanding (MoU) on record, it is noted that the MoU was executed on May 16, 2004 between the existing Board of Sheen Agro and Noticee 14 and it is mentioned that Noticee 14 shall be appointed as Executive Director w.e.f. May 16, 2004. (ii) Noticee 14 has enclosed copy of letter dated May 22, 2018 issued by ROC stating that "*Yograj Singh Bhau has applied to the ROC Jammu for certified copies of the appointment and resignation of Yograj Singh Bhau as a Director of Sheen Agro ...the said documents are not registered and ROC can issue the certified copies of only registered documents*". (iii) Noticee 14 has further enclosed Form 32 evidencing the resignation of Noticee 14 from the post of Director with effect from November 26, 2005 and Form 32 was presented by Kirpal Singh, Director (Noticee 13) of Sheen Agro bearing the stamp of ROC cash counter. In this regard, it is seen from the record that monies have been raised by Sheen Agro after filing of WRR, as noted from receipts dated June 26, 2004 which are on record. I note from the material available on record, that Noticee 14 is signatory to many of the documents, and as per record available he was officer in default, thus the charges levelled by OD against Noticee 14, thus stand established.

o) Noticee 15 contended that he was never a Director of Sheen Agro and his signatures were forged and fabricated. He is victim himself and he has deposed as witness in a case against Noticee 1 and others in charge sheet dated May 02, 2017 in the matter of Welfare Association of Shareholders vs. State of J&K, and State vs. B S Bhau. In this regard, he has submitted the document wherein signatures are forged along with the statement recorded in the said court matters. However, from the IM and MoU discussed in para a) above, I note from the material available on record, that Noticee 15 was officer in default, thus the charges levelled by OD against Noticee 15, thus stand established.

10. The section 12(1B) of the SEBI Act, 1992 states that "*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*" and regulation 3 of the CIS Regulations, states that "*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. Thus it is evident that Sheen Agro was mobilising fresh funds after filing of WRR on October 16, 2003, which was in contravention of section 12(1B) of SEBI Act and regulation 3 of CIS Regulations. I note from the record that Noticee 1, 2, 3, 4, 6, 8, 13, 14 and 15 were officers in default for the said contraventions by Sheen Agro. Thus, in view of the material available on record, I am of the opinion that the Noticee 1, 2, 3, 4, 6, 8, 13, 14 and 15 are instrumental in Sheen Agro mobilising funds even after filing of the winding up report with SEBI and have thereby violated section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations. With regards to Noticee 5, 7, 9 10, 11, and 12 record does not show that they were officers in default in the stated

violation of section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations.

I therefore conclude that the Noticee 1, 2, 3, 4, 6, 8, 13, 14 and 15 were the 'officers in default' and their action were in contravention of section 12(1B) of SEBI Act and regulation 3 of CIS Regulations thus the allegations levelled by OD stand established against Noticee 1, 2, 3, 4, 6, 8, 13, 14 & 15. As regards Noticee 5, 7, 9, 10, 11 and 12 allegations do not stand established thus Noticee 5, 7, 9, 10, 11 and 12 are exonerated.

Issue (b) If yes, does the failure on the part of the Noticees attract any monetary penalty under section 15D(a) of the SEBI Act?

11. Therefore, after taking into account the aforesaid entire facts / circumstance of the case, I am of the view that the Noticee 1, 2, 3, 4, 6, 8, 13, 14 and 15 are liable for monetary penalty under Section 15D(a) of the SEBI Act which is reproduced below:

The 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 hereunder 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 collective investment scheme including mutual funds, or one crore rupees, whichever is less.*

Issue (c) - If yes, then what would be the monetary penalty that can be imposed upon the Noticees, taking into consideration the factors mentioned in section 15J of the SEBI Act read with rule 5(2) of the Adjudication Rules?

12. While determining the quantum of penalty under section 15J of SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act read with rule 5(2) of the AO Rules, which reads as under:-

The SEBI Act
15J "Factors to be taken into account by the adjudicating officer-
While adjudging quantum of penalty under section 15J, 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."

13. I am of the opinion that mobilizing funds through an unregistered CIS is certainly a serious violation which affects interest of gullible investors at large as there is a scope of investors losing their hard earned money. Although record does not provide details of amount so mobilized, or uptodate details of the money already refunded. However, I observe that the default is of repetitive nature as the mobilization of funds continued even after the WRR was filed by the Sheen Agro, I consider it as fit case for imposition of penalty on the Noticee 1, 2, 3, 4, 6, 8, 13, 14 and 15 under section 15D(a) of the SEBI Act for running of a CIS in contravention to section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations.

14. I am of the view that a penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh only) would be commensurate with the violation of section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations committed by Noticee 1, 2, 3, 4, 6, 8, 13, 14

and 15 i.e., Angrez Singh Bhadwal, Surinder Kumar Trilokia, Naseeb Singh Pawar, Kamal Singh Bhau, Sudershan Singh Jamwal, Ajeet Lal Sharma, Kripal Singh, Yograj Singh Bhau and Tej Pal Singh, jointly and severally.

ORDER

15. In exercise of the powers conferred under section 15-I of the SEBI Act and rule 5 of the Adjudication Rules, I hereby impose penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh only) jointly and severally on Noticee 1, 2, 3, 4, 6, 8, 13, 14 and 15 as detailed in the table hereunder-

Noticee	violation	Penalty
Angrez Singh Bhadwal	section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations	Rs. 25,00,000/- (Rupees Twenty Five Lakh only)
Surinder Kumar Trilokia		
Naseeb Singh Pawar		
Kamal Singh Bhau		
Sudershan Singh Jamwal		
Ajeet Lal Sharma		
Kripal Singh		
Yograj Singh Bhau		
Tej Pal Singh		

16. The Noticee 1, 2, 3, 4, 6, 8, 13, 14 and 15 shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:

a. By using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html
b. By way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai

17. Details of Demand Draft made as given in format below shall be sent to "The Division Chief, EFD-DRA-III, Securities and Exchange Board of India, SEBI Bhavan-II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in

a) Case Name
b) Name of the 'Payer/Noticee'
c) Date of Payment
d) Amount Paid
e) Transaction No.
f) Bank Details in which payment is made
g) Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)

18. 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.

19. Copies of this Adjudication Order are being sent to all the Noticees and also to SEBI in terms of rule 6 of the Adjudication Rules.

Date: June 29, 2020	**SANGEETA RATHOD**
Place: Mumbai	**ADJUDICATING OFFICER**