ADJUDICATION ORDER NO. AO/JS/VRP/49-58/2017

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 BY ADJUDICATING OFFICER) RULES, 1995

In respect of:

Name of the Entity, PAN & Address	Name of the Entity, PAN & Address
1) HBN Dairies & Allied Limited, (PAN: AAACH7852C) 303, Vardhman Chamber, IIIrd FLoor, Sonia Complex, Vikas Puri, New Delhi - 110 018	**6)Ms. Manjeet Kaur Sran, (DIN: 00105878) 303, Vardhman Chamber, IIIrd FLoor, Sonia Complex, Vikas Puri, New Delhi - 110 018**
2)Shri Harmender Singh Sran, (PAN: AIGPS2229B) 303, Vardhman Chamber, IIIrd FLoor, Sonia Complex, Vikas Puri, New Delhi - 110 018	**7)Ms. Jasbeer Kaur, (DIN: 00161623) 303, Vardhman Chamber, IIIrd FLoor, Sonia Complex, Vikas Puri, New Delhi - 110 018**
3)Shri Satnam Singh Randhava, 303, Vardhman Chamber, IIIrd FLoor, Sonia Complex, Vikas Puri, New Delhi - 110 018	**8)Shri Rakesh Kumar Tomar, (DIN: 06824416) 303, Vardhman Chamber, IIIrd FLoor, Sonia Complex, Vikas Puri, New Delhi - 110 018**
4)Shri Amandeep Singh Sran, (PAN: AUVPS5370E) 303, Vardhman Chamber, IIIrd FLoor, Sonia Complex, Vikas Puri, New Delhi - 110 018	**9)Shri Sukhdev Singh Dhillon, 303, Vardhman Chamber, IIIrd FLoor, Sonia Complex, Vikas Puri, New Delhi - 110 018**
5)Shri Gajraj Singh Chauhan, (PAN: ADXPC6922H) 303, Vardhman Chamber, IIIrd FLoor, Sonia Complex, Vikas Puri, New Delhi - 110 018	**10) Ms. Sukhjeet Kaur, 303, Vardhman Chamber, IIIrd FLoor, Sonia Complex, Vikas Puri, New Delhi - 110 018**

In the matter of HBN Dairies & Allied Ltd

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) had passed an Order dated February 12, 2015 in respect of HBN Dairies & Allied Limited (Hereinafter referred to as the **'The Company/ Noticee'**) and its directors namely Mr. Harmender Singh Sran, Mr. Satnam Singh Randhawa, Mr. Amandeep Singh Sran, Mr. Gajraj Singh Chauhan, Ms. Manjeet Kaur Sran, Ms. Jasbeer Kaur, Mr. Rakesh Kumar Tomar, Mr. Sukhdev Singh Dhillon and Ms. Sukhjeet Kaur (Hereinafter referred to as the **'Noticees'**) under Section 11, 11B and 11(4) of Securities and Exchange Board of India Act, 1992

(hereinafter referred to as **'SEBI Act, 1992'**) read with the Regulations 65 of the SEBI (Collective Investment Scheme) Regulations, 1999 (hereinafter referred to as **'CIS Regulations'**) wherein it was held that the Noticees were running Collective Investment Scheme (hereinafter referred to as **'CIS Scheme'**) without obtaining certificated of registration in terms of section 12(1B) of the SEBI Act, 1992 from SEBI thereby violated Section 12(1B) of SEBI Act, 1992 read with Regulation 3 of CIS Regulations by running Collective Investment Scheme (hereinafter referred to as **'CIS Scheme'**).

2. Pursuant to the above, it was alleged by SEBI that the Noticees had violated Section 12(1B) of SEBI Act, 1992 read with Regulation 3 of CIS Regulations by running Collective Investment Scheme (hereinafter referred to as **'CIS Scheme'**) without obtaining certificated of registration from SEBI.

APPOINTMENT OF ADJUDICATING OFFICER

3. An Adjudicating Officer was appointed vide order dated April 06, 2015 under Section 19 read with section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act, 1992'**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 (hereinafter referred to as **'Adjudication Rules'**), to inquire into and adjudge under Section 15D of SEBI Act, 1992. Consequent to transfer, the proceedings are now proceeded with in terms of Order dated May 18, 2017 to inquire into and adjudge under Sections 15D of SEBI Act, 1992 the alleged violations against the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A common Show Cause Notices (hereinafter referred to as **'SCN'**) in terms of the provisions of Rule 4 Adjudication Rules read with Section 15I of SEBI Act, 1992 was issued on December 21, 2015 to the Noticees calling upon the Noticees to show cause as to why an inquiry should not be held against them under Rule 4 of the Adjudication Rules read with section 15I of SEBI Act and penalty be not imposed under section 15D of SEBI Act against all the Noticees for the alleged violation of Section 12(1B) of SEBI Act, 1992 read with Regulation 3 of CIS Regulations. The SCN were duly delivered to all the ten Noticees at the address of the company. The Company vide letter dated sought 30 days' time to submit it reply to the SCN.

5. Despite passage of considerable time, no reply was received, thus in terms of Rule 4(3) of the Adjudication Rules, the inquiry was carried forward and an opportunity of hearing was granted to the Noticees on June 02, 2016 vide hearing notice dated May 06, 2016 (**first hearing**). The Noticees vide letter date May 24, 2016 requested to reschedule the hearing to a date in the month of July 2016 or thereafter and committed that they would submit the reply to the show cause notice in the meantime before the rescheduled date of personal hearing. Acceding to their request, s**econd** opportunity of personal

hearing was granted to the Noticees on July 21, 2016 vide hearing notice dated June 29, 2016 with a reminder to submit the reply to the SCN.

6. However, the Noticees vide letter dated July 13, 2016, i.e., after a lapse of more than six months after the issue of the SCN and after grant of two hearing opportunities sought inspection of the relevant documents and requested personal hearing after granting an opportunity of inspection and certified copies thereof. Further the Noticees submitted that order in the present proceeding be passed only after filing of their reply to the SCN and after availing the opportunity of personal hearing.

7. Noticees were informed vide letter dated August 22, 2016 that the relevant documents relied upon in the matter were SEBI order dated July 12, 2013 and February 12, 2015 and the same were available on SEBI website. Simultaneously, **third** opportunity of personal hearing was granted to the Noticees on September 27, 2016. The said hearing notice dated August 22, 2016 returned undelivered with a remark **'left'.** Intriguingly**,** all other communications to the said address were delivered except this notice. Thereafter, **fourth** opportunity of personal hearing was granted to the Noticees on November 09, 2016 vide hearing notice dated October 17, 2016. Given the experience of the delivery of the August 2016 Notice, the hearing notice was affixed on the address of the Noticees at 303, IIIrd FLoor, Vardhman Chamber, Sonia Complex, Vikas Puri, and New Delhi 110018. The Noticees vide letter dated November 02, 2016 again on the eve of the personal hearing sought the inspection of relevant documents and requested personal hearing after granting an opportunity of inspection and certified copies thereof. Further the Noticees submitted that order in the present proceeding be passed only after filing of their reply to the SCN and after availing the opportunity of personal hearing.

8. Pursuant to the change in the Adjudicating Officer, on a review and to persuade the entities to file their response to the SCN, vide letter dated July 05, 2017 documents were provided to the Noticees. The Noticees were once again reminded to file the response to the SCN within 14 days from the date of receipt of the SCN. The Notice was also sent by email on the same day i.e. July 05, 2017.

9. Despite lapse of considerable time no reply to the SCN was received, **fifth** opportunity of personal hearing was granted to the Noticees on August 22, 2017 vide hearing notice dated July 31, 2017, also sent by email. The delivery details show that the same was delivered to the Noticees in Regt. AD as well as in email. The Noticees vide letter dated August 16, 2017 again on the eve of the scheduled hearing sought extension of time to submit their reply to the SCN and requested to reschedule the personal hearing. The said request was acceded too. Thereafter, **sixth** opportunity of personal hearing was granted to

the Noticees on September 21, 2017 vide hearing notice dated August 24, 2017. The Noticees vide email dated September 9, 2017 acknowledged the receipt of the hearing notice dated August 24, 2017 and confirmed that they would attend the hearing on September 21, 2017. However, the Noticees failed to submit the reply to the SCN and failed to avail the opportunity of hearing granted on September 21, 2017. Vide letter dated September 21, 2017 the Noticees were informed that despite having confirmed the presence for the hearing the Noticees failed to appear for the hearing nor submitted any reply to the SCN till September 21, 2107. However, on the said date one person claiming to be appearing on the entities' behalf mentioned that you would not be appearing for the hearing and another date for the hearing be scheduled. The said person did not bear any authority letter, vakalatnama, etc nor was any communication was received from the entities deputing an authorised person to attend the hearing.

10. Given the above, time for written submissions was granted upto October 03, 2017.

11. After the expiry of the said extend time, the Noticees vide letter dated October 04, 2017 submitted their common/ joint reply to the SCN on behalf of all the Noticees, inter alia, admitting that they were running the CIS Scheme and when they came to know that the said scheme was CIS Scheme they had stopped the scheme. The relevant portion of the reply is reproduced as under:
"……

8. The said SCN issued under the SEBI Adjudication Rules mandating for an independent Adjudication Rules mandating for an independent Adjudication Proceeding purely process on the basis that since the said Order dated 12 July. 2013 (Intern Order) and 12 February, 2015 (further Order) passed by the Ld. Whole Time Member of SEBI under a separate independent proceeding inter alia held that HBN and its directors were running Collective Investment Schemes without obtaining registration from SEBI, which is in violation of SEBI (Collective Investment Schemes) Regulations, 1999.

…..

9 (i) ….

(ii) The Company applied with SEBI for registration as CIS on 30.06.2010 and later on vide letter dated 23.12.2010 withdrew its application for registration as CIS.

(iii) SEBI, after receiving an investor complaint, sought various documents and information form HBN including audited balance sheet for financial years 2009-10, 2010-11 which duly provided by the company.

(iv) SEBI vide intern order dated 12.07.2013 directed HBN not to raise funds from public and further directed the Company complied with the said Order and did not raise ant funds thereafter.

(v) On 08.08.2013, a proposal for repayment was submitted by HBN with SEBI seeking a time period of nine quarters to make complete repayment to investors and continued making repayments and kept filing the details of repayment with SEBI from to time.

(vi) SEBI issued a letter dated 06.01.2014 detailing the procedure to be followed by the company for repayment including opening of escrow account, RTA etc. Copy of the Said letter is annexed hereto and marked as Annexure 1

(vii) The Company duly appointed RTA, opened Escrow Account with Bank of Baroda, Sansad Marg Branch, New Delhi among other compliances. However, the Company was facing various difficulties in implementing the repayment procedure suggested by the said SEBI letter dated 06.01.2014.

(viii) The Escrow Account was opened with the Bank of Baroda, Sansad Marg Branch which is situated in the same building where the SEBI Delhi NRO office is situated. However,

the bank failed to cooperate and provide the necessary stationary for payments to be made despite repeated follow ups by the company and resultantly the escrow account account could not be used for repayment. The difficulties were duly communicated to SEBI and the same was put on record in SAT Appeal 292/2016 as well.

(ix) HBN, vide its letter dated 11.07.2014, also sought permission and clarification from SEBI for obtaining loan against property to reply the investors. The request remained unanswered.

(x) Vide letter dated 14.08.2014, HBN sent a letter to SEBI informing about it approaching Punjab & Sind Bank, Indian Overseas Bank and Easy Ventures India Pvt Ltd. (NBFC) for availing loan against property. However the lenders did not proceed in light of SEBI Order and in absence of any approval from SEBI.

(xi) The Company, despite all hardship, during July 2013 to November 2014, was able to generate Rs. 242.17 crores from sale of its immovable properties, sale of investments, FDR etc. for repayment to the investors.

(xii) The company made all possible efforts to reply the investors in the given time frame but due to situations extraneous and beyond its control, the company was unable to complete the repayment in the time frame prescribed by SEBI.

(xiii) Some of the reasons critical to the delay in completion of repayment ate as under:

a) The Company has been facing serious global meltdown condition in the real estate section. Efforts to generate funds were not fructifying due to depressed market condition and liquidity crunch. The company also approached UTI for disposing off the properties by way of tender process but it did not get any positive response from UT. The Company also approached SEBI for permission to raise loans against the properties in order to reply the investors, which requests were not acceded by SEBI.

b) Pressure from various investor group:

That subsequent to the company publishing advertisement/public notice in compliance of SEBI's directions vide SEBI's letter dated July 10, 2014 for selling the properties through Auction/Tender process, a panic spread amongst investors. The company has been under tremendous pressure from certain group of alleged investors claimed refund of their amounts untimely. Some of the investor groups started filing police complaints against the company creating undue pressure. For instance, in Raipur and FIR No.: 142 dated 24.12.2013 was field by one Mr. Suraj Nirmalkar who is neither an investor of the Company nor has any interest in the company. The Company has been regularly victimized by such alleged investors implicating the company in false and frivolous cases.

….

(d) Escrow Account:

The company's escrow account No: 05860200001467 opened with bank of Baroda on 29.04.2014, in which the company deposited INR 32 Lakhs initially, could not become operational / functional for the purpose it was opened due to callous and non-cooperative approach of Bank of Baroda vide various correspondences to provide 'At Par' facility in the cheques as per the RBI norms along with NICR code and cheque number series for 21, 00,000 investors so as to facilitate their payments. Despite repeated reminders so as to facilitate their payments. Despite repeated reminders (vide latter dated 08.07.2014, 25.07.20147, 06.08.2014, 03.09.2014, 20.10.014 and 18.11.2014 including letter written to Mr. Mr. P K Kaushik, Chief Manager on 03.06.2014) and personal follow ups, the Bank of Baroda failed to provide the necessary support, including Cheque Payment facility to enable the escrow account become functional. Due to non-cooperation from bank with respect to the escrow account, the Company was compelled to make repayments through other modes and channels. Hereto annexed and marked as Annexure 2 is copy of correspondences address to Bank of Baroda by the Company.

…..

(xv) The company and its directors challenged the said order dated 12.02.2015 before SAT vide Appeal No.216 of 2015. The Noticee carves leave to refer to and rely upon the papers and proceedings in the said Appeal No. 2016 of 2015. For the sake of brevity and environment, the Noticees are not annexing or reproducing herein the documents and submissions which are already part of the said Appeal No. 2016 of 2015.

…..

(xvii) The company, keeping in mind the above practical difficulties, and after discussions with financial and market experts, prepared another proposal for repayment. The proposal for repayment proposes formation of a Special Purpose Entity (SPE) to act as a Trustee who will sell / manage the identified assets of the Company and which SPE shall hold such assets of the Company in Trust solely for the purpose of repayment to the investors. The

SPE, acting in Trust for the investors, shall sell the assets vested in it to generate the best market price, and disburse the amounts so generated to the rightful\investors in a professional and systematic manner. There will be neither any control nor role of the Company in selling of the assets transferred to the SPE nor in the disbursement to the investors. The entire process shall be supervised by SEBI and such bodies/ authorities as may be appropriate. This proposal for repayment was submitted by the Company with SEBI on 13.01.2016 and it was made abundantly clear that the company suggests by use of methodology of trusteeship of SPE or any better solution which SEBI may suggest to enable the company repay the investors.
…..

(xxi) The Hon'ble SAT, vide Order dated 24.02.2017 acknowledged that the company has expressed its willingness to refund the amounts to the investors in compliance of the WTM order dated 12.02.2015 and to enable the company prove its bonafides, directed the company to deposit Rs.50 lakhs with SEBI within two weeks from the date of the said order and further directed the company to deposit with SEBI the original title deeds in respect of the assets set out at page 10 and 11 of the further affidavit filed by the Company on 24.02 .2017 in the said SAT Appeal 292 / 2016. Copy of the SAT Order dated 24.02.2017 is annexed hereto and marked as Annexure-5.

(xxii) The Hon'ble SAT, vide its final Order dated 28.06.2017 recorded that it is not in dispute that pursuant to the SAT Order dated 24.02.2017 the Appellants therein have deposited Rs.50 Lakh with SEBI and also deposited with SEBI the original title deeds in respect of the assets set out at page 10 and 11 of the further affidavit filed by the Appellants therein on 24.02.2017. The Hon'ble SAT further recorded that:

"As the Appellants are ready and willing to comply with the impugned (order passed by SEBI and the Appellants are agreeable for SEBI to sell the immovable properties (the title deeds of which are already deposited with SEBI) we dispose of these appeals by passing the following order:-
(a) SEBI is at liberty to get the revaluation of the immovable properties (the title deeds of which are already deposited by the Appellants with SEBJ). If revaluation is done, SEBI shall furnish a copy of the revaluation report to the Appellants before auctioning the said immovable properties.
(b) SEBI is directed to sell off the immovable properties (the title deeds of which are already deposited with SEBJ) as expeditiously as possible ad preferably within a period of 6 months from today. "...
Copy of the SAT Order dated 28.06.2017 is annexed hereto and marked as Annexure-6.

(xxiii) Pursuant to the above SAT order, the Noticees continue to be in regular touch with SEBI and assisting them as per their instructions for revaluation, providing details, documents etc. as sought from time to time with the sole objective of expedited repayment to the investors.
…..

12. It is submitted that the Noticees are law abiding and God fearing entities. The Noticees started and ran the business believing it to be completely compliant with all legal requirements. There arose no occasion for the Noticees to even once assume that their business falls under the CIS Regulations. When the Noticees were advised that they should register themselves under the CIS Regulations, they immediately filed an Application dated 30.06.2010 with SEBI for registration as CJS. As the (application for Registration was pending with SEBI for almost six months, the company decided to discontinue their business which was allegedly falling under the CIS Regulations and to repay the existing investors. Thus the company withdrew the application for registration as CIS vide latter dated 23.12.2010.

13. It is pertinent to point out that there was no malafides and malice on part (of the notices. The Company was regularly paying its investors and there has been no default by the Company in honoring its obligations at any) point of time throughout its business till 2013. The total amount required to be Schemes aggregated to Rs.1136 Cores (approx.) taken upto due dates for payment. Since 2013, the Company has repaid a sum of Rs.369 crores (approx.) leaving a balance of a sum of Rs.767 crores (approx.). It was only after the SEBI order came to be passed that the investors panicked and the subsequent sequence of events including the aforesaid Order of the Delhi High Court Order passed in July 2014 completely restraining the company from disposing off any of the assets till the end of year 2014, which tied the hands of the Noticees badly affecting the repayment process.

14. It is submitted that the Company has proved its bonafides before the Hon'ble SAT and offered the assets to SEBI to sell and repay the investors and the same has been duly recorded in the SAT Order dated 28.06.2017.

….

16 In light of the above facts and peculiar circumstances of the case, it is most respectfully prayed that no inquiry be held against the noticees and that no penalty should be imposed under Section 150 of the SEBI Act against the noticees.

…..”

12. Pursuant to the submission of the reply to the SCN, the entities again sought an opportunity of hearing in the matter before any order is passed. Thereafter, **seventh** opportunity of personal hearing was granted to the Noticees on November 15, 2017 vide hearing notice dated October 27, 2017. The said hearing notice returned undelivered with a remark ‘left’. The Noticees were posted to the same address to which the earlier Notices were delivered. Thereafter, **eighth** opportunity of personal granted to the Noticees on December 20, 2017 vide hearing notice dated November 24, 2017. Again, the said hearing notice returned undelivered with a remark ‘left’ though sent on the same address that the earlier notices were delivered. Thereafter, the said hearing notice sent through hand deliver through Northern Regional Office and the same was delivered to the Noticees as per the acknowledgement on records. The Authorised Representative appeared on behalf of the HBN Dairies & Allied Limited, Harmander Singh Saran and Manjeet Kaur Sran and reiterated that submissions made vide letter dated October 04, 2017.

13. Given the above, enough latitude has been provided to the Noticees in the interest of satisfying the principles of natural justice. I rely on the ratio given in judgment of Hon’ble Supreme Court of India in the matter of *Sahara India Real Estate Corporation Limited & Ors Vs. Securities and Exchange Board of India & Anr.* in civil appeal no*. 9813 of 2011* wherein it was held that

“80. What needs to be kept in mind while applying the rules of natural justice is, that the same are founded on principles of fairness. Two cardinal principles of fairness are incorporated in the rules of natural justice. Firstly, the person against whom action is contemplated, is liable to be informed of the basis on which the proposed action is to be taken (i.e., the affected party is required to be put to notice). And secondly, before taking any adverse action, the affected party is liable to be afforded an opportunity to present his defence (i.e., an opportunity to be heard, under the tenent “audi alterm partem”).

81. The rules of natural justice being founded on principles of fairness can be available only to a party which has itself been fair, and therefore, deserves to be treated fairly. ……………Do the rules of natural justice have any limitations? Whether fair or not, must the concerned party always enjoy the advantage of procedural prescriptions under the rules of natural justice? It is in respect of these propositions, that an answer is being attempted. In so far as the present controversy is concerned, opportunities were repeatedly provided by SEBI, to the appellant-companies, but they remained adamant and obstinate. ………………...

82. ………….placing the contours of the rules of natural justice in the right perspective, that the instant determination on the scope of applicability of the rules of natural justice has been recorded……………….”

The ratio given in the above judgment is applicable in the case in hand. The Noticees were provided ample opportunities to avail the hearing, in all eight opportunities of hearing were granted to the Noticees and only three Noticees namely HBN Dairies & Allied Limited, Harmander Singh Saran and Manjeet Kaur Sran has availed the opportunity of hearing and that to at the eighth opportunity. Hence, the matter is proceeded with based on the material available on record.

ISSUES FOR CONSIDERATION

14. After perusal of the material available on record, I have the following issues for consideration, viz.,
    1. *Whether the Noticees have violated the provisions of Section 12(1B) of SEBI Act, 1992 read with Regulation 3 of CIS Regulations by running Collective Investment Scheme without obtaining certificated of registration from SEBI?*
    2. *Does the violation, if any, on the part of the Noticees attract monetary penalty under Section 15D of the SEBI Act, 1992?*
    3. *If so, what quantum of monetary penalty should be imposed on the Noticees considering the factors stated in section 15J of SEBI Act, 1992?*

FINDINGS

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, the findings hereunder.

ISSUE I: Whether the Noticees have violated the provisions of Section 12(1B) of SEBI Act, 1992 read with Regulation 3 of CIS Regulations by running Collective Investment Scheme without obtaining certificated of registration from SEBI?

16. The first issue is whether the Noticees have violated the provisions of Section 12(1B) of SEBI Act, 1992 read with Regulation 3 of CIS Regulations by running Collective Investment Scheme without obtaining certificated of registration from SEBI. The Section 11AA dwells on the aspects as to what shall determine to be in the nature of collective investment schemes as below:-

    Section 11 AA of the SEBI Act, which provides as under:

    "(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 the exemptions from CIS 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 personunder 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.

17. The text of the provisions of Section 12(1B) of SEBI Act, 1992 read with Regulation 3 of CIS Regulations is reproduced as under:

CHAPTER V
REGISTRATION CERTIFICATE

Section 12 (1B) of SEBI Act, 1992

Registration of stock brokers, sub-brokers, share transfer agents, etc.
***12.** (1B) No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations:*
Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30.]
Explanation- For the removal of doubts, it is hereby declared that, for purposes of this section, a collective investment scheme or mutual fund shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment besides the component of insurance issued by an insurer.

Regulation 3 of CIS Regulations

REGISTRATION OF COLLECTIVE INVESTMENT MANAGEMENT COMPANY
No Person Other than Collective Investment Management Company to Launch [1][collective investment scheme]

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

Regulation 5 of CIS Regulations
Application by existing Collective Investment Schemes.
5. (1) Any person who immediately prior to the commencement of these regulations was operating a [2][collective investment scheme], shall subject to the provisions of Chapter IX of these regulations make an application to the Board for the grant of a certificate within a period of two months from such date.

[1] *Substituted by the SEBI (Collective Investment Schemes) (Amendment) Regulations, 2014, w.e.f. 9-1-2014*

[2] Substituted by the SEBI (Collective Investment Schemes)(Amendment) Regulations, 2014, w.e.f. 9-1-2014.

(2) An application under sub-regulation (1) shall contain such particulars as are specified in Form A and shall be treated as an application made in pursuance of regulation 4 and dealt with accordingly

18. The company has maintained that they had "*operated a business believing it to be completely compliant with all legal requirements. There arose no occasion for the Noticees for the Noticees to even once assume that their business falls under the CIS Regulations."* Further while they applied for registration as CIS with SEBI, during the pendency of the application they had decided to discontinue the business and thus withdrew the application for registration.

19. Given the above, the issue of whether the Noticees were infact running a business in the nature needs to be arrived at based on the information available on records. The Noticees were provided the material available on records.

20. Based on the material available on records it is observed from the copy of 'rule book' and 'certificate' as submitted by HBN along with its registration application of June 2010 explains the scheme of the "joint venture"- one of the key attributes is as given below:-

1 Introduction

………

The joint-venturer shall enter into an agreement with the company on a non-judicial stamp paper after 12 month of receipt of application under category-I plans and after 3 years in case of category-II plans. ... ...

20 Other Terms and conditions…….

(i) Joint Venturers will be repaid on expiry of Term. ...

(vii) The terms of joint venture agreement shall commence from the date of realization of cheques/ demand drafts/ bankers' cheques.

(ix) Payment of installment, if discontinued may be renewed on the basis of a fresh application duly submitted at the CSC.

...

(xi) Application shall be accepted only in the prescribed application form.

...

(xv) In case of any dispute(s) difference(s) controvery(ies) whatsoever, the relevant contents of English Version of Rule book shall be the exclusive basis of settlement/ resolution of the said dispute(s)/ difference(s)/ controversy(ies). ... ..."

21. The Rule Book goes on to describe the various schemes and plans available. The application form has the following fields

    Category Plan no.
    Term of plan,
    Consideration,
    Date of commencement,
    Expiry date of joint venture,
    Mode of Payment, etc.

22. Other than the above, the application/ certificate form also captures the attributes of the investor like name of applicant, correspondence address, nominee name, etc. Further it is noted that the Company issues 'a certificate' against the investment taken from the customers/ investors which contains the following details: -

    name and address of Joint Venturer,
    registration number,
    date of commencement,
    plan no./ term,
    cost of cattle/ ghee, etc.

23. The 'certificate' mentions the 'expected sum payable on expiry of term C.O.C./ Ghee', date of last payment, date of expiry of term. Thus this document basically evidences the investment made by the investors as per the plan/scheme indicated therein.

24. The objective for the investor is to subscribe to one of the plans offered by the Company for purchase and rearing of cattle. Further, the certificate, does not contain identify with one to one correlation evidencing the investments made by the investors and the asset so allocated for the investor against such an investment. By analogy it can be seen that the funds so collected from the investors in the schemes and plans are pooled in and utilised by HBN for the purposes of the scheme or arrangement'. Thus satisfying the stipulation in Section 11AA(2)(i) of the SEBI Act.

25. The scheme and plan assure the investors returns based on the “expected cost of the developed cattle/ghee. HBN in its reply dated July 08, 2013 mentions that the customer who enters into an agreement with the company is entitled to assured returns on the payments so made as per the plans. Further the schemes/ plans offer the investors an option to purchase cattle however investors are not under obligation to purchase the cattle from the company. Given this feature the scheme /plan satisfies the second stipulation of Section 11AA(2)(ii) of the SEBI Act.

26. HBN in its reply dated July 08, 2013 to SCN has stated that the so called property (cattle in the present context) always remains with the Company and the customer has option to buy, in case, if so desired by him, however the cattle would continue to be retained at the physical custody of HBN. Further as per the terms of the scheme and plans mentioned in the rule other than the financial closure at the end of the terms of the plan the investor has no control over how the invested money would be untilised. This satisfies the third and fourth stipulation of the Section 11AA(2)(iii) and Section 11AA(2)(iv) of the SEBI Act.

27. Further it is on records that the nature of their business does not fall under any of the exemptions provided in sub-section 3 of the Section 11 AA of the SEBI Act 1992.

28. Hon'ble Supreme Court, made in the matter of *PGF Limited & Ors.* Vs. *Union of India & Anrs.* (Civil Appeal No. 6572 of 2004):

"Therefore, the paramount object of the Parliament in enacting the SEBI Act itself and in particular the addition of Section 11AA was with a view to protect the gullible investors most of whom are poor and uneducated or retired personnel or those who belong to middle income group and who seek to invest their hard earned retirement benefits or savings in such schemes with a view to earn some sustained benefits or with the fond hope that such investment will get appreciated in course of time. Certain other Section of the people who are worstly affected are those who belong to the middle income group who again make such investments in order to earn some extra financial benefits and thereby improve their standard of living and on very many occasions to cater to the need of the educational career of their children.

38. Since it was noticed in the early 90s that there was mushroom growth of attractive schemes or arrangements, which persuaded the above vulnerable group getting attracted towards such schemes and arrangements, which weakness was encashed by the promoters of such schemes and arrangements who lure them to part with their savings by falling as a prey to the sweet coated words of such frauds, the Parliament thought it fit to introduce Section 11AA in the Act in order to ensure that any such scheme put to public notice is not intended to defraud such gullible investors and also to monitor the operation of such schemes and arrangements based on the regulations framed under Section 11AA of the Act.

... ...

40. It will have to be stated with particular reference to the activity of the PGF Limited, namely, sale and development of agricultural land as a collective investment scheme, the implication of Section 11AA was not intended to affect the development of agricultural land or any other operation connected therewith or put any spokes in such sale-cum-development of such agricultural land. 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 is, therefore, apparent that all other schemes/arrangements operated by all others, namely, other than those who are governed by sub-section 3 of Section 11AA are to be controlled in order to ensure proper working of the scheme primarily in the interest of the investors.

... ...

42. Therefore, in reality what sub-section (2) of Section 11AA intends to achieve is only to safeguard the interest of the investors whenever any scheme or arrangement is announced by such promoters by making a thorough study of such schemes and arrangements before registering such schemes with the SEBI and also later on monitor such schemes and arrangements in order to ensure proper statutory control over such promoters and whatever investment made by any individual is provided necessary protection for their investments in the event of such schemes or arrangements either being successfully operated upon or by any misfortune happen to be abandoned, where again there would be sufficient safeguards made for an assured refund of investments made, if not in full, at least a part of it.

... ...

In the light of our above conclusions on this ground it will have to be held that Section 11AA is a valid provision, not suffering from any infirmity, as it does not intrude into the specific activities of sale of agricultural land and its development.

... ...

It is needless to state that as per the agreement between the customer and the PGF Limited, it is the responsibility of the PGF Limited to carry out the developmental activity in the land and thereby the PGF Limited undertook to manage the scheme/arrangement on behalf of the customers. Having regard to the location of the lands sold in units to the customers, which are located in different states while the customers are stated to be from different parts of the country it is well-neigh possible for the customers to have day to day control over the management and operation of the scheme/arrangement. In these circumstances, the conclusion of the Division Bench in holding that the nature of activity of the PGF Limited under the guise of sale and development of agricultural land did fall under the definition of collective investment scheme under Section 2(ba) read along with Section 11AA of the SEBI Act was perfectly justified and hence, we do not find any flaw in the said conclusion.

....

53. We, therefore, hold that Section 11AA of the SEBI Act is constitutionally valid. We also hold that the activity of the PGF Limited, namely, the sale and development of agricultural land squarely falls within the definition of collective investment scheme under Section 2(ba) read along with Section 11AA (ii) of the SEBI Act and consequently the order of the second respondent dated 06.12.2002 is perfectly justified and there is no scope to interfere with the same. In the light of our above conclusions, the PGF Limited has to comply with the directions contained in last paragraph of the order of the second respondent dated 06.12.2002 ... ..."

29. Noticees in their reply dated October 04, 2017 stated that "*the company and its directors challenged the order dated 12.02.2015 before SAT vide Appeal No.216 of 2015 and rejection of repayment proposal vide appeal No. 292 of 2016. The Noticees further craves leave to refer to and rely upon the papers and proceedings in the Appeal No. 216 of 2015 and appeal No. 292 of 2016 for the sake of brevity and environment, the Noticees are not annexing or reproducing herein the documents and submissions which are already part of the said Appeal No. 216 of 2015 and appeal No. 292/2016"*. In one such affidavit filed on February 24, 2017 before Hon'ble SAT the notices who were appellants had stated they were ready and willing to comply with the SEBI Order dated February 12, 2015 and the appellants are agreeable for SEBI to sell the immovable properties. Further, the Noticees in its reply dated October 04, 2017 had submitted that, the company applied with SEBI for registration as CIS on June 30, 2010 and later on vide letter dated December 23, 2010 withdrew its application for registration as CIS. The Noticees further submitted that the total amount required to be repaid under the Schemes aggregated to Rs.1136 crores (approx) taken upto due dates for payment.

30. Section 12(1B) of the SEBI Act mandates that no person, shall sponsor or cause to be sponsored or carry on or caused to be carried on any CIS unless it obtains a certificate of registration from SEBI in accordance with the CIS Regulations.

31. Regulation 3 of the CIS Regulations provides that no person other than a Collective Investment Management Company which has obtained a certificate under the said regulations shall carry on or sponsor or launch a 'collective investment scheme'. A person can launch or sponsor or cause to sponsor a collective investment scheme only if it is registered with SEBI as a Collective Investment Management Company.

32. Therefore, the launching/ floating/ sponsoring/ causing to sponsor any 'collective investment scheme' by any 'person' without obtaining the certificate of registration in terms of the provisions of the CIS Regulations is in contravention of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations.

33. It is noted that the Noticees namely the company HBN Dairies and Allied Limited and its directors launched a CIS Scheme without obtaining certificate of registration from SEBI, thereby contravened the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations.

ISSUE II: Does the violation, if any, on the part of the Noticees attract monetary penalty under Section 15D of the SEBI Act, 1992?

34. The Noticee in its reply submitted that there was no malafides and malice on part of the Noticees. The Submissions of the Noticees are not tenable in view of the ratio cited in the judgment of Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) wherein it was held that

"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".

35. Thus relying on the above, it is clear that where there has been a violation, the penalty would follow.

36. The violations referred at para 33 on the part of the Noticees attract monetary penalty under Section 15D(a) of the SEBI Act. The text of the said provision is as follows:

Penalty for certain defaults in case of mutual funds.

15D.If any person, who is—

(a)required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty [3][which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees]

37. The provisions of section 15D(b) to 15D(f) are applicable to the persons those who have already registered/ obtained the certificate of registration form SEBI.

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[3] Substituted for the words —"of one lakh rupees for each day during which the sponsors or carries on any collective investment scheme including mutual funds, or one crore rupees, whichever is less" by the Securities Laws (Amendment) Act, 2014,w.e.f. 08-09-2014

ISSUE III: If so, what quantum of monetary penalty should be imposed on the Noticees considering the factors stated in section 15J of SEBI Act, 1992?

38. While determining the quantum of monetary penalty under Section 15D(a) of SEBI Act, 1992 I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

Factors to be taken into account by the adjudicating officer.

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

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

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

39. As per Section 15D(a) of the SEBI Act, 1992 of the Noticee is liable to penalty, not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees, as the violations is in continuation.

40. Further, under Section 15-I of the SEBI Act, the adjudicating officer is mandated to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty.

41. It is noted that in the present case the amount of disproportionate gain or of loss caused to an investor or group of investors as a result of the default is not available on records however, it is undisputed that the Noticees has indeed collected amount of Rs.1136 crore from the investors under the unregistered and unauthorised business.

42. It is a matter of records that the Noticees were prohibited from operating such a business by way of SEBI Order dated July 12, 2013. There is no information available on records in the present proceedings to state that the Noticees have operated the schemes beyond the stated date and thus it is assessed that the unregistered activity continued till this date.

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[4] Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Prt II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

ORDER

43. After taking into consideration all the facts and circumstances of the case, and after considering the factors enumerated in section 15J of SEBI Act, 1992. A penalty of **Rs 1,00,00,000/- (Rupees One Crore Only)** is imposed under Section 15D(a) on the Noticees HBN Dairies & Allied Limited and its directors namely Mr. Harmender Singh Sran, Mr. Satnam Singh Randhawa, Mr. Amandeep Singh Sran, Mr. Gajraj Singh Chauhan, Ms. Manjeet Kaur Sran, Ms. Jasbeer Kaur, Mr. Rakesh Kumar Tomar, Mr. Sukhdev Singh Dhillon and Ms. Sukhjeet Kaur jointly and severally, which in my opinion, will be commensurate with the violations committed by the Noticee.

44. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below;

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

45. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to Enforcement Department (DRA-III) of SEBI. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided At Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;
    1. Case Name :
    2. Name of Payee:
    3. Date of payment:
    4. Amount Paid:
    5. Transaction No:
    6. Bank Details in which payment is made:
    7. Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)

46. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the SEBI.

Date: December 29, 2017 **Jeevan Sonparote**
Place: Mumbai **Adjudicating Officer**