BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/KS/AS/AO/10490-10494/2020-21]

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

In respect of

1. **Alchemist Infra Realty Limited (CIN - U74120DL2008PLC176278)**
2. **Mr Brij Mohan Mahajan (PAN - AAWPM1136F)**
3. **Mr Narayan Madhav Kumar (PAN - AYZPK9827A)**
4. **Mr Balvir Singh (PAN - AAAPS5463P)**
5. **Mr Chandra Sekhar Chauhan (PAN - AAEPC9775G)**

In the matter of Alchemist Infra Realty Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated Adjudication proceedings against Alchemist Infra Realty Limited (hereinafter referred to as ***'Alchemist'***) and its present and past directors namely Mr Brij Mohan Mahajan (hereinafter referred to as ***'Brij'***), Mr Narayan Madhav kumar (hereinafter referred to as ***'Narayan'***), Mr Balvir Singh (hereinafter referred to as ***'Balvir'***) and Mr Chandra Sekhar Chauhan (hereinafter referred to as ***'Chandra',*** and all aforesaid entities are collectively referred to as '***Noticees***') as it was alleged that the schemes of Alchemist were of the nature of Collective Investment Scheme (hereinafter referred to as ***'CIS'***), which required registration from SEBI under Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ***'SEBI Act, 1992'***), so that by operating as an

unregistered CIS, Noticees allegedly violated provisions of Section 12(1B) of the SEBI Act, 1992 read with Regulation 3 of the SEBI(Collective Investment Scheme) Regulations, 1999 (hereinafter referred to as ***'CIS Regulations, 1999'***).

2. In the said matter, SEBI had also passed order dated June 21, 2013 directing Alchemist to not collect any money from investors or carry out any scheme identified as CIS in the aforesaid order, and directing the Noticees, *interalia,* to wind up existing CIS schemes, refund the money to investors and restraining them from accessing the securities market.

3. Alchemist being aggrieved by the said order filed an appeal in the Hon'ble Securities Appellate Tribunal (hereinafter referred to as ***'SAT'***), wherein by an order dated July 23, 2013, the Hon'ble SAT upheld the findings of SEBI and allowed Alchemist 18 months' time to refund the money collected from the investors. Alchemist being aggrieved by the order of the Hon'ble SAT dated July 23, 2013 filed a Civil Appeal before the Hon'ble Supreme Court of India (hereinafter referred to as ***'SC'***). This appeal was dismissed as withdrawn by an order dated September 5, 2014 by the Hon'ble SC, so that the order of SEBI holding that the operations of Alchemist as a CIS without obtaining a certificate of registration were illegal and the consequential direction to stop the scheme and refund the amount to the investors became final. Based on the order of the Hon'ble SAT dated July 23, 2013, Alchemist filed an application dated January 22, 2015 seeking extension of time in order to complete the process of refund and also sought permission to circulate an information memorandum in terms of Regulation 73 of the CIS Regulations, 1999. This application was rejected by SEBI by an order dated May 27, 2015 declining the request for extension of time and also refusing permission to circulate an information memorandum. Alchemist challenged the order dated May 27, 2015 passed by SEBI before the Hon'ble SAT in Appeal No. 298 of 2015. The Hon'ble SAT by an order dated June 15, 2015 set aside the order of SEBI dated May 27, 2015 and directed SEBI to verify the claim made by Alchemist regarding refund to investors, and further directed Alchemist

to furnish the particulars demanded by SEBI vide its various letters for the purpose of verifying the said claim.

4. Thereafter, Alchemist again made a fresh representation dated August 7, 2015 seeking permission to circulate an information memorandum under Regulation 73 of the CIS Regulations, 1999. Further, pursuant to the requisite information submitted by Alchemist, SEBI appointed an independent auditor dated August 6, 2015 in order to verify the payments made by the appellant to the investors. Since the appellant was not cooperating with the auditor, SEBI issued a show cause notice dated November 20, 2015 to show cause as to why the order of SEBI dated May 27, 2015 should not be revived. Based on reply submitted by Alchemist, an interim audit report dated May 28, 2016 submitted to SEBI and other extenuating circumstances, vide order dated June 14, 2016, the WTM rejected the application of Alchemist seeking further extension of time to implement the SEBI's order of June 21, 2013 for refund of money to the investors and rejected the request to circulate an information memorandum under Regulation 73 of the CIS Regulations, 1999. Alchemist being aggrieved by the said order filed appeal, so that the Hon’ble SAT vide order dated August 13, 2019 upheld the order of SEBI dated June 14, 2016.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as Adjudicating Officer conveyed vide communique dated January 28, 2020 under Section 19 read with Section 15-I(1) of the SEBI Act, 1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as ***'Adjudication Rules'***) to inquire into and adjudge under Section 15D(a) of the SEBI Act, 1992, the violation of Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, 1999 alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A common Show Cause Notice (hereinafter referred to as '**SCN**') dated February 14, 2020 was issued to the Noticees under the provisions of Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticees and penalty, if any, be not imposed on them under the provisions of Section 15D(a) of the SEBI Act, 1992 for the alleged violation by the Noticees. The allegations in the SCN are given below:

- *SEBI, upon receipt of an anonymous letter on May 25, 2011 alleging that AIRL was operating scheme, plans and mobilizing funds from investors/public, conducted examination in the dealings of AIRL to find out if the activities of AIRL would fall within the ambit of the CIS Regulations or not.*

  On the basis of the said examination, an SCN dated November 20, 2012 was issued to the Noticees alleging that they had been running an unregistered collective investment scheme (CIS) and, therefore, have violated the provisions of Section 11AA read with Section 12(1B) of SEBI Act further read with Regulation 3 of CIS Regulations. Whole Time Member of SEBI (hereinafter referred to as 'WTM)), after examining the material available on record and the replies submitted by the Noticees, passed an order dated June 21, 2013 (Annexure 3), wherein he inter-alia issued the following directions: "SEBI would initiate prosecution proceedings under section 24 and adjudication proceedings under Chapter VI of the Securities and Exchange Board of India Act, 1992 against Alchemist Infra Realty and its directors"

  On the basis of the said direction, adjudication proceedings have been initiated against the Noticees by SEBI.

- *During the course of examination, SEBI, vide letter dated August 8, 2011, sought information regarding its operations from AIRL. AIRL, vide letter dated September 15, 2011 (Annexure 4), furnished copies of certain documents and submitted that its activities did not fall under CIS.*

- *As the information furnished by AIRL was incomplete in terms of the information sought, SEBI sent another letter to AIRL on November 04, 2011 advising it to submit complete information. In reply to the said letter, AIRL, vide another letter dated December 6, 2011 (Annexure 5), made further submissions wherein AIRL, inter-alia, submitted that it did not issue any advertisement or circular or any brochure for its business transactions, there was no instalment plan. AIRL further submitted that, as per its business model, it was not possible for the purchasers to. purchase land from AIRL without taking the development facility offered by it.*
- *Thereafter, SEBI, vide another letter dated January 31, 2012, again advised: AIRL to provide the details of the development work being done, the details of land holdings, copies of sale deeds executed by it etc. In response to the said letter, AIRL, vide its letter dated March 1, 2012 (Annexure 6), inter-alia stated that AIRL agrees to supervise the land and provide its services to those who seek the same for a fee payable to it. Further, AIRL also submitted that some of the land sold by it were being used for agricultural purposes in which AIRL was entitled to receive the proceeds of farming etc.*
- *SEBI, vide another letter dated April 18, 2012, again advised AIRL to provide copies of registered sale deeds, filled up application forms etc. and also to explain the discrepancies observed in the information furnished in its letter dated March 1, 2012 vis-a-vis earlier information furnished by it. AIRL, vide letter dated April 30, 2012 (Annexure 7), furnished some more information. Vide its letter dated May 23, 2012 (Annexure 8), AIRL submitted copies of some certificates of properties issued to the purchasers of land.*
- *It is observed from the records made available by AIRL that any person, willing to purchase land from AIRL has to apply in a prescribed application form along with the application fee. AIRL has sole discretion to either accept or reject the application. Once the application is accepted, the buyer would enter into a special power of attorney in the name of an employee of AIRL to enable him to exercise all the rights and obligations of the applicant with respect to the*

purchase and management of the plot. Pursuant to this, on behalf of the buyer, the said employee of AIRL will enter into an indenture agreement and/or conveyance deed with AIRL. The purchasers of land would also enter into an agreement with AIRL, called the 'Supervision Agreement' to develop, work, control and supervise the said land on behalf of the purchasers for a particular period of time and a management fee was also being charged by AIRL for performing the task. Thereafter, the deed of conveyance is retained by AIRL and only a Certificate of Property is issued to the purchaser by AIRL, in which the expected value of the said piece of land after the expiry of a fixed period of time is also mentioned.

- *On examination of the material available on record, SEBI concluded that AIRL was operating a CIS in terms of SEBI Act as discussed hereunder.*
- *Section 11AA(2) of the SEBI Act, lists four ingredients/ characteristics that are required to be satisfied for declaring an activity of an entity as CIS. The relevant text of the said provisions of law is being reproduced herein below:*

SEBI Act

Collective investment scheme.

11AA. (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) shall be a collective investment scheme:

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

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized 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.

(3) Notwithstanding anything contained in sub-section (2), any scheme or arrangement—

(i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

(ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-1 of the Reserve Bank of India Act, 1934 (2 of 1934);

(iii) being a contract of insurance to which the Insurance Act, 1938 (4 of 1938), applies;

(iv) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952);

(v) under which deposits are accepted under section 58A of the Companies Act, 1956 (1 of 1956);

(vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956 (1 of 1956);

(vii) falling within the meaning of Chit business as defined in clause (da) of section 2 of the Chit Fund Act, 1982 (40 of 1982),

(viii) under which contributions made are in the nature of Subscription to a mutual fund;

Shall not be a collective investment scheme.

- *From material available on record and as mentioned above, it is alleged that the activities of AIRL fall within the four ingredients/characteristics of CIS in the manner mentioned below:*

  I. Section 11AA(2)(i): Contributions or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement.

  a. *The first condition to be satisfied is accepting payments from investors and pooling and utilizing the same for the purpose of the scheme or arrangement.*

  b. *AIRL is alleged to be accepting money from investors in the form of payment for land and its development. AIRL has contended that it was not running any scheme which was in the nature of CIS. In this regard, AIRL has submitted a few application forms of various investors to SEBI. Upon perusal of one such application forms as received from one Mr. Prakash Mondal, it has been observed that the development tenure is specified as "Plan B, -6 years". Therefore, it is alleged that AIRL had floated some plans based on which buyers were applying. Thus, it is alleged that, in this way, AIRL was collecting/pooling money under the said 'plans'. However, AIRL had denied having any kind of plans/schemes.*

  c. *The following points have further been observed from the filled up application forms referred above:*

     i. *The applicant has to apply for an undivided interest in the land situated in the state of Madhya Pradesh. However, the area of land, location of land or the price of land have not been mentioned anywhere in the application form.*

     ii. *The application can be made for a minimum amount of Rs 1000/- & in multiples of Rs 1000/-.*

iii. *Under category F, AIRL allots immovable property in consideration to the amount paid to the company, and such land can be leased out to the company under 'Fixed term tenancy Agreement.*

To enter this agreement minimum land holding should be of 300 sq ft (if not specified otherwise) and additional holdings should be in multiples of 100 sq. ft. Presently the lease amount is fixed at Rs 3300/- per annum for a period of 3 years for an area of 300 sq. ft. The amount will be increased proportionately in accordance with the land holdings. This amount will be made available to the 'allottee' in equated monthly instalments spread through the lease period.

d. *Similarly, it is observed from the indenture also, signed between AIRL and the purchaser (Mr. Prakash Mondal), that the area of land being purchased by the customer has not been mentioned. Wherever the share of the customer is mentioned, it has always been denoted as proportionate undivided interest. Indenture states the total area of land (total 905.016 Kanal) owned by AIRL at Behanta & Tila, Tehsil Kolaras, District Shivpuri (Madhya Pradesh).*

e. *In the same manner, special Power of Attorney, has to be signed by all the applicants at the time of making the application. From the special power of attorney, it is noted that it is a pre-printed document that carries the name of one Mr. Gagnish Arora, an authorized representative of AIRL. The power of attorney is granted in favour of Mr. Arora enabling him to exercise all the rights and obligations of the applicant with respect to the purchase and management of the plot. Also, it is noted that the special power of attorney only carries plot measurement as 1000 sq. ft./sq. yd. (exact unit not specified).*

f. *AIRL has also provided a copy of conveyance deed of Mr. Prakash Mondal which states that out of 0.81 Hectare, 0.0372 hectares or 372 sq. m has been purchased.*

g. Also, the indenture states that the purchaser shall not be entitled to claim division and/or partition of the proportionate undivided interest and shall continue to hold and enjoy the same with its co-owners without any objection.

h. It is observed from the Balance Sheet of AIRL for the year ended March 31, 2011 that an amount of Rs 203.11 Crore has been shown as Advance against land and Rs 884.57 Crore as advance against development charges. The corresponding figures for the year ended March 31, 2010 were Rs 83.97 Crore & Rs 365.44 Crore, respectively. In view of this, it is alleged that the advances against land and development charges are nothing but deposits taken from investors. Therefore, it is alleged that AIRL has in total mobilized funds to the tune of Rs. 1,087 crores as on March 2011.

i. In view of the above, it is alleged that AIRL was collecting money from investors, purchasing large plots of land and developing the same. At the same time, AIRL was not allotting a specific part of the plot to the investor and only an undivided interest is being assigned to each investor. In view of this, it is alleged that through its activities of sale and development of land, the AIRL was accepting "contributions" from customers/ investors, for collective utilization with the aim of purchasing land and developing the same without allotting any specific part of the land to the investors and merely mentioning as undivided interest in the agreements.

j. Thus it is alleged that the scheme fulfils the first condition as specified in Section 11AA(2)(i) of the SEBI Act.

ll. Section 11AA(2)(ii): Receiving of profit by investors:

a. Clause (ii) of Section 11AA(2) of the SEBI Act requires that the investor must be a recipient of any one of the benefits expressed threat i.e. either *profit or income or produce or property, from the scheme or arrangement.*

b. *In this regard, it is alleged that each customer/investor of AIRL is a recipient of agricultural land i.e. property/ profit over property.*

c. *Further, it is also observed from the Certificate of Property issued to the purchaser by AIRL, the expected value of the said piece of land after the expiry of a fixed period of time has also been mentioned.*

d. *It is, therefore, alleged that each customer/investor of AIRL is a recipient of one of the benefits contemplated under clause (ii) namely property/profit over property. In view of the above, it is alleged that AIRL was satisfying the second condition of a CIS as prescribed in section 11AA(2)(ii) of the SEBI Act.*

lll. *Section 11AA(2)(iii) & (iv): Management on behalf of investors and investors do not have day to day control over the management and operation of the scheme or arrangement.*

a. *AIRL, in its letter dated September 15, 2011 (Annexure 4), has submitted that the applicant/buyer/purchaser enters into a supervision agreement with AIRL wherein AIRL agrees to develop, work, control and supervise the land for a fixed period of time and the applicant/buyer/purchaser hands over such land to AIRL for a management fee.*

b. *AIRL submitted that, in terms of the Supervision Agreement, the applicant/buyer/ purchaser has to execute a Special Power of Attorney in favour of the nominee of AIRL, who is one of the authorised representative of AIRL, to enable the nominee to take necessary steps in respect of the development, working and supervision of the land. Further, the term of the supervision agreement can be extended on terms and conditions to be mutually agreed upon by the applicant by making a request six months before the expiry of the agreement;*

c. *AIRL further submitted that, in terms of the supervision agreement, it develops works and supervises the land in such a manner so as to ensure that the applicant/buyer/purchaser may receive the expected and estimated value of the land after the expiry of the fixed period of time.It is observed from the application forms of one Mr. Radha Gobind Das & another Ms. Abha Santara that both the customers had paid Rs 2 lakhs each for an area of 2000 sq. ft. but, upon perusal of the Supervision agreements signed in favour of AIRL by both the abovementioned persons it is observed that in the case of Mr. Radha Gobind Das, the management fees charged is Rs. 46,500/- and for Abha Santara, the fee charged is Rs. 1,48,500/- as development charges. AIRL has not specified how the development charges were being calculated, or for that matter, why in one case out of the application money of Rs 2 lakhs the development charges were being shown as Rs 1,48,500 i.e. around 75% of the application amount.*
d. *Further, from the documents submitted by AIRL, it is observed that some of the buyers of the land are based at a place different from the place of land. For example, Mr. Prakash Mondal is from 24 Parganas in the state of West Bengal; however, the land under question is situated in Madhya Pradesh. It is also observed that the buyers have executed special power of attorney in favour of Mr. Gagnish Arora, an employee of AIRL, based in Noida. The special power of attorney holder has signed the conveyance deed on behalf of the buyers. The witnesses in these conveyance deeds are common i.e. Mr. Mohan Sharma & Mr. Raghuvir Batham. The conveyance deed is signed by Mr. Satish Mehta on behalf of AIRL and Mr. Gagnish Arora on behalf of purchasers. Both Mr. Satish Mehta and Mr. Gagnish Arora are employees of AIRL. It is observed that conveyance deed is stamped in the name of AIRL, as the seller and Mr.*

Gagnish Arora as the buyer even though Mr. Gagnish Arora is only the special power of attorney holder and not the buyer.

e. *Therefore, it is alleged that the purchaser is not in a position to control or supervise the property owned by him. It is further alleged that it is practically impossible for him to visit the land purchased by him, even to determine whether or not AIRL had carried out its promise/ commitment to develop the land on his behalf, even merely on account of the expenses involved in travelling from the place where he ordinarily resides, to the place where the land is situated.*

f. *Further, AIRL has contended that it does not manage its agricultural land sold to investors/customers. During the correspondence AIRL has Stated that it merely "supervises" and "develops" at the option of its customers/ investors the agricultural piece of land sold to them.*

g. *It is also observed that AIRL, in its letter dated December 06, 2011, has submitted that, as per its business model, it was not possible for the purchasers to purchase land from AIRL without availing of the development facility offered by it.*

h. *The applicant/buyer/purchaser has an option of requesting AIRL to identify a suitable party for purchasing the land and for a consideration to be mutually agreed. If the applicant/buyer/purchaser exercises this option, AIRL promises to facilitate sale by either identifying suitable party to purchase the land or AIRL itself purchases the land on mutually agreed price.*

i. *In view of all the above, it is alleged that, in this arrangement, a customer/investor has practically no accessibility to the agricultural land purchased by him. Further, it is also alleged that it is practically impossible for a customer to carry on agricultural or developmental activities on the land purchased by him.*

j. *In this regard, it is observed from point no. 6(c) and 6(d) of the Supervision agreement that AIRL had the sole discretion regarding the sale of produce out of the plot. AIRL also had the right to avail of the services of agro consultants and experts to evolve own method and mode of maintaining land.*

k. *It is further observed that the basic requirement of agricultural activities which includes irrigation and drainage facilities, along with ancillary inputs perpetually remained under the control of AIRL. In this regard, the supervision agreement states that the customer is not entitled to make any claim in respect of the facilities provided by AIRL on land and that AIRL is entitled to remove all installation and/or facilities upon termination of this agreement unless agreed otherwise.*

l. *Therefore, in view of the above, it is alleged that the agricultural land, purchased by the buyer/purchaser/investor is managed for all the times by AIRL on behalf of the said buyer.*

m. *In view of the above, it is alleged that it is practically impossible for any investors/customers to have a day to day control over the agricultural land purchased by him. Day to day control with the investor/customer is one of the most important tests for concluding whether a scheme is a "Collective Investment Scheme" or not.*

n. *In view of the above, it is alleged that the agricultural land purchased by an investor/customer is managed on his behalf by AIRL and investors/customers do not have day control over the agricultural land purchased by them.*

- *From the facts and circumstances mentioned above, it is alleged that the Schemes of AIRL are of the nature of CIS, as defined under section 11AA of the SEBI Act which requires registration from SEBI. However, it is alleged that that AIRL has not obtained registration under CIS Regulations from SEBI. Therefore, it is alleged that the Noticees, by operating an unregistered CIS, have violated* *the provisions of Section 12(1B) of the SEBI Act read with Regulation 3 of the CIS Regulations.*

7. The SCN was sent via Speed Post Acknowledgement Due (SPAD) to the Noticees. The details of delivery of SCN and further communication with each of the Noticees are as follows:

<u>Alchemist and Chandra</u>

The SCNs could not be delivered via SPAD to Alchemist and Chandra. SEBI Indore Local Office was requested to deliver SCN to Chandra through affixture. Vide emails dated July 22, 2020 and July 23, 2020, Indore Local Office informed that SCN could not be delivered by way of affixture to Chandra because of restrictions due to COVID pandemic. Further, SEBI Northern Regional Office was requested to deliver SCN to Alchemist and Chandra through affixture. Thereafter, SCN was delivered via affixture as per Affixture Report dated March 13, 2020. No reply to the SCN was received from Alchemist and Chandra as per the records. Further, vide letter dated November 12, 2020, the two Noticees were granted final opportunity to submit reply to the SCN by November 26, 2020 and were granted an opportunity of personal hearing on December 01, 2020. The said letter dated November 12, 2020 was delivered via SPAD to Alchemist and also via affixture as per Affixture report dated November 28, 2020, to Alchemist and Chandra. No communication was received from Alchemist and Chandra as per the records.

<u>Brij</u>

The SCN was delivered via SPAD to Brij. No reply to the SCN was received as per the records. Further, vide letter dated November 12, 2020, Brij was granted final opportunity to submit reply to the SCN by November 26, 2020 and was granted opportunity of personal hearing on December 01, 2020. The hearing was conducted on scheduled date, so that Brij appeared in person at SEBI Chandigarh Local Office and requested for extension of time for filing written submission to the SCN, while no additional hearing was sought. Acceding to the said request, Noticee was granted time till December 08, 2020 to make the submissions. Hearing minutes are on record. Vide email dated December 09, 2020, Brij requested for time of two weeks for making submissions. However, no reply was received till date as per the records.

<u>Narayan and Balvir</u>

The SCN was not delivered to the two Noticees, i.e. Narayan and Balvir, via SPAD. Thereafter, SEBI Chandigarh Local Office was requested to serve the SCN via hand delivery/ affixture on Narayan and Balvir. Vide email dated July 22, 2020, SEBI Chandigarh Local Office informed that SCN could not be served on the two Noticees via affixture as they were not found at the addresses provided. Further, SCN was served on the two Noticees by way of publication dated August 10, 2020. No reply to the SCN was received as per the records. Thereafter, Narayan and Balvir were granted final opportunity to submit reply to the SCN by 14 days from the date of publication and were granted an opportunity of personal hearing on October 05, 2020 by way of publication dated September 16, 2020. I note that no communication was received from Narayan and Balvir as per records.

8. I note that despite the SCN and hearing notices having been duly served upon the Noticees as per Rule 7 of the Adjudication Rules, they have failed to submit any reply to the SCN till the date of this order. Further, the Noticees except Brij also failed to appear for personal hearing as granted to them. In this context, I would like to rely upon the observations of the Hon'ble SAT in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) wherein it, inter alia, observed that - ".......*the appellants did not file any reply to the second show- cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them*."

9. The Hon'ble SAT has again in the matter of Sanjay Kumar Tayal & Others v SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), interalia, 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….”

10. In view of the above, I am of the view that principles of natural justice have been complied with since the SCN and the Hearing Notices thereafter were served to the Noticees as per Rule 7 of the Adjudication Rules, and Noticees were provided sufficient opportunity to submit their reply to the SCN and to appear for hearing. However, neither did the Noticees file any reply in the matter till date, nor did the Noticees appear on the date scheduled for the personal hearing, except for Brij. Therefore, I am compelled to proceed in the matter against the Noticees *ex parte* on the basis of available documents and information.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have taken into consideration the facts and circumstances of the case and the material available on record, so that the issues that arise for consideration in the present case are:
    - **(a) Whether the Noticees have violated Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of CIS Regulations, 1999?**
    - **(b) Does the violation, if any, attract monetary penalty under Section 15D(a) of the SEBI Act, 1992?**
    - **(c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?**
12. Before moving forward, it is pertinent to refer to the relevant provisions of the SEBI Act, 1992 and the CIS Regulations, 1999, which read as under:

SEBI Act, 1992

Section 11AA

(1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) shall be a collective investment scheme:

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

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized 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.

(3) Notwithstanding anything contained in sub-section (2), any scheme or arrangement—

(i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

(ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(iii) being a contract of insurance to which the Insurance Act, 1938 (4 of 1938), applies;

(iv) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952);

(v) under which deposits are accepted under section 58A of the Companies Act, 1956 (1 of 1956);

(vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956 (1 of 1956);

(vii) falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982 (40 of 1982);

(viii) under which contributions made are in the nature of subscription to a mutual fund;

shall not be a collective investment scheme.

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…..

<u>CIS Regulations, 1999</u>

Regulation 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.

(a) Whether the Noticees have violated Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, 1999?

13. Before proceeding further, it would be appropriate to mention the relevant facts of the case leading to the present proceedings against the Noticees:

(a) SEBI received an anonymous letter on May 25, 2011, in which it was alleged that Alchemist, with its branches spread over West Bengal, Jharkhand, Bihar, UP and Odisha, was operating schemes, mobilizing funds and defrauding investors.

(b) SEBI initiated examination in the matter, and sought certain information from Alchemist vide letter dated August 08, 2011. Vide letter dated September 15, 2011, Alchemist submitted reply to the aforesaid letter wherein it submitted certain documents and contended, *interalia,* that it was involved in business of sale and purchase of land, so that it did not fall under the purview of CIS.

(c) Vide letter dated November 04, 2011, further information was sought from Alchemist by SEBI. Vide letter dated December 06, 2011, Alchemist submitted, *interalia,* that they did not give any assurance to investors, did not issue any advertisement and that it was not possible to purchase land from them without taking the development facility offered.

(d) Vide letter dated January 31, 2012, Alchemist was again advised to provide details of development work being done, details of land holdings etc. Vide letter dated March 01, 2012, Alchemist submitted, *interalia,* that it does not collect or manage money, it provides supervisory services to purchasers/applicants and sellers of land and receives fee in return.

(e) Vide letter dated April 18, 2012, SEBI advised Alchemist to provide copies of registered sale deeds, filled up application forms etc and to explain certain discrepancies in information submitted by it vide various letters. Alchemist submitted some additional information vide letter dated April 30, 2012 and submitted copies of some certificates of properties vide letter dated May 23, 2012.

(f) Thereafter, the WTM of SEBI vide his order dated June 21, 2013 issued certain directions including that SEBI would initiate adjudication proceedings under Chapter VI of the SEBI Act, 1992 against Alchemist and its directors.

14. I note that the allegation in the present matter is that Alchemist had operated CIS without obtaining the necessary registration from SEBI. Therefore, I find it necessary to examine whether the scheme(s) run by Alchemist were in the nature of CIS. In this regard, I note that in order to qualify as a CIS, the scheme has to satisfy the four conditions laid out in Section 11AA(2) of the SEBI Act, 1992, which conditions have been reproduced elsewhere in this order. Now I proceed to consider the schemes of Alchemist in light of the four conditions.

15. The first condition under section 11AA(2) of the SEBI Act, 1992 is *that 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.*

16. In order to understand and appreciate the applicability of the conditions, wherever necessary, I rely upon the application form, development agreement, indenture and certificate of property as available on records.

17. I note from the application forms that the names of plans are referred to as 'development tenure'. For instance, I note from the application forms of Prakash Mondol, Radha Gobinda Das and Sathi Chakraborty, they had made their applications indicating 'Plan B-6' as the 'development tenure'.

18. I further note the following clause from the application form of Prakash Mondal, dated October 09, 2010;

"*I/we intend to purchase and / or acquire, and avail your services for development of immovable properites available with you. I/we, make payment of Rs. 100000 (rupees….) for acquiring undivided interest in your land at Shivpuri, (MP) with development tenue of ………"*

19. I also note that the applicants had to mandatorily enter into a Supervisory agreement / development agreement with Alchemist to surrender control over the land and its development activities.
20. I further note that the application forms submitted by applicants to Alchemist, as per records, do not carry details of the plot being purchased like its size, location, condition etc.
21. In this regard for instance, I note from the Indenture executed between Alchemist and Shri Prakash Mondal, that the indenture mentions that Alchemist (vendor as per the indenture) possesses 905.016 Kanal at Behanta & Tila, Tehsil Kolaras, District Shivpuri (M P). However, from Schedule II to the above indenture I note that it merely mentions as "all that said proportionate undivided interest in land measuring 905.016 Kanal"; thus not mentioning what is the proportionate undivided interest in land that the applicant investor is entitled to and the same has not been earmarked also.
22. Further, I note from the application form that the applicant mentions that Alchemist may allot suitable plot. In this regard I further note the following undertaking to be given by the applicant:

    "I/we shall not raise any objection with regard to the allotment made by you. Please allot me/us a plot, which would be able to give me/us the expected valuation as indicated."

23. I further note the following clause from the indenture:

    AND WHEREAS the Purchaser herein has evinced interest to associate with the Vendor in developing the said property and has agreed to acquire Plot therein and thereafter authorize the Vendor to work, manage and supervise as separately agreed.

    I also note from the replies of Alchemist to SEBI that applicants were required to avail of the development facility which involved surrendering control over the land and allowing Alchemist to carry out development, if they wished to purchase the land from Alchemist. I observe that such an arrangement allowed Alchemist to pool money from its investors, and use it as per its discretion to carry out the development activities.

24. Also, I note from the certificate of property of Radhagobinda Das, Sathi Chakraborty, Shibaji Das etc that, he/she got a proportionate undivided share in a given piece of land, without the mention of vital details such as size of land, actual location etc of the plot. It is also noted that applicants could not claim division of said proportionate undivided interest and had to continue to hold the land with co-owners without objection. I note that in the absence of clear demarcation of plot of land allotted, the applicants could not claim any rights over the land they 'owned', while Alchemist retained complete discretion and *de facto* ownership over the management, restricting the role of applicant to that of an investor whose money was to be utilised as per the scheme.

25. I therefore note that the purchasers or investors invested their money in various development plans of Alchemist, which were in the form of investment schemes promising certain return classified as 'expected value'. These investments were then pooled by Alchemist, for carrying out development activities, as per its sole discretion due to the mandatory supervisory agreement. The investors did not have any control over the land and development activities therein.

26. From the above I note that the Noticee was collecting / pooling monies from investors/ applicants in the name of sale of land however to "develop the land", being the purpose of the plan. I am convinced that schemes of Alchemist allowed pooling of investment and utilizing them for the purpose of the scheme, and therefore, satisfy the first condition mentioned in Section 11AA(2) of the SEBI Act, 1992.

27. The second condition under Section 11AA(2) of the SEBI Act, 1992 is that *the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement.*

28. In this regard I note from the indenture, that 'substantial yields and profits' were assured to the purchaser and the following clause in the indenture witnesses the same:

'*AND WHEREAS the said AIRL has undertaken certain development of the said land and has caused the same to be divided into several plots and has been carrying on diverse types and kinds of activities there at, <u>giving substantial yields and profits</u>'*

29. I also note from the following clause in the application form which reads as follows;

    "I/we shall not raise any objection with regard to the allotment made by you. Please allot me/us a plot, which would be able to give me/us the expected valuation as indicated.";

    that the prime concern of applicants was to receive *'the expected value as indicated'*, based on allotment of land made by Alchemist. I note from Alchemist's letter dated September 15, 2011 to SEBI that as per the terms of Supervision agreement, it endeavours to develop and supervise the land so that the purchaser may receive estimated value of land at the end of specified tenure. I also note from the text of the Supervision agreement, that Alchemist undertook to make endeavours to ensure that at the end of tenure agreed upon, the applicant to receive such expected value of the land. Aforesaid observations indicate that the motivation of purchaser while making payment to Alchemist was to receive certain consideration at the end of tenure as per the agreement so executed.
30. I further note the following from the Certificate of Property:
    'The Estimated value of the said undivided share after development is expected to be not less than Rs………. on expiry of tenure on ……… under the said agreement.'
    The quoted text indicates that the purchaser was guaranteed a certain minimum amount in terms of 'estimated value', after the specified tenure.

31. I observe that the payments made by purchasers with the application forms were primarily with a view to receive certain consideration in the form of estimated value, as *interalia* specified in application form and the certificate of property. Alchemist collected the payments and assured such returns to purchasers, through its 'development activities' undertaken on the land it supervised. Thus, I am convinced that the schemes of Alchemist satisfy the second condition as stipulated in Section 11AA (2) of the SEBI Act, 1992.

32. The third and fourth conditions under Section 11AA (2) of the SEBI Act, 1992 are *that the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors and the investors do not have day-to-day control over the management and operation of the scheme or arrangement.*

33. In this regard I note the following from the sample indenture on record:

    '*AND WHEREAS the Purchaser herein has evinced interest to associate with the Vendor in developing the said property and has agreed to acquire Plot therein and thereafter authorize the Vendor* <u>to work, manage and supervise</u> *as separately agreed.*'

    I note from the above that even after allotment of a plot to purchaser, he/she was required to associate with Alchemist in developing the allotted property so that Alchemist continued to manage the land and development therein.

34. As has been noted elsewhere in this order an applicant was mandatorily required to enter in to a Supervisory agreement with Alchemist, so that the land allotted continued to be under supervision and management of Alchemist for all purposes. I note the aforesaid Supervisory agreement also provided for a 'management fee' to be paid to Alchemist. For instance, I note from the Supervisory agreements entered into by Shri Prakash Mondal and Ms. Mira Debi Singh, the management fee was mentioned as Rs 48,750/- and Rs 61,000/- respectively.

35. Further, I note the following from the Supervisory agreement of Shri Prakash Mondal:

    "Similarly, during the term aforesaid, you shall not deal with, dispose/and or encumber your interest without express consent in writing from us. You have deposited the document of title i.e. Indenture dated 09/10/2010, with us for being held on your behalf"

    I note from the above extract that the agreement required purchaser not to deal with or dispose his interest in land, without consent obtained from Alchemist. Further, the Supervisory agreement granted Alchemist the right to carry out any work and undertake constructions, payment of taxes, carrying of cultivation or taking any other steps it deemed fit in relation to managing or supervising the land. I am of the view that through the said Supervisory agreement, a purchaser surrenders his right to manage and control the land as purchased to Alchemist, and does not have any stake in management decisions once the application process is over and supervisory agreement is signed.

36. Further, following is noted from the Supervisory agreement:

"During the term, you shall be entitled to inspect the said land and/or activities carried on thereat, upon due notice and intimation to us. However, you shall not interfere with the working, managing, controlling and supervising of the said plot in any manner whatsoever.

You shall not be entitled to make any claim in respect of the facilities provided by us at the said land and we shall be entitled to remove all out installation and/ or facilities upon termination of the Agreement unless agreed otherwise."

I note from the above that even for inspecting the land, the purchaser was required to give notice to Alchemist, and that the purchaser was prohibited from interfering with working, management, control and supervision of the plot. Further, Alchemist was entitled to remove any installation or facility on the land it developed without any claim by purchaser in this regard. I observe that purchaser did not retain any right in running the operations of Alchemist, and day to day controls were in the hands of Alchemist.

37. Further, the purchaser was required to grant special power of attorney to representative of Alchemist for managing the land, which allowed the representative to exercise all of the purchasers' rights with respect to purchase and management of the land, including *interalia,* the right to sign documents, deeds etc, enter into agreement and submit affidavits, thereby obviating the need of approval from purchaser for such decisions.

38. I also note that for involvement in day to day operations, it is required that purchasers of the land stay close to the property or have some arrangement to ensure reach or continuous access at the said location. However, I note that in the instant proceedings, applicants residing at locations distant from the location of

plots allotted/purchased had also purchased land. For instance, I note from the application forms on record, that Prakash Mondal, Mira Debi Singh, Tarun Patra, Radha Gobinda Das and other applicants, though resided in West Bengal, but were allotted land in Madhya Pradesh. In this regard, I find it relevant to note observations of the Hon'ble Supreme Court of India in PGF Ltd & Ors vs Union of India in this regard, "*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…"*

39. I observe that by allotting unspecified plot to applicant, Alchemist retained control over all management processes, while applicant was assured a return at the end of tenure without any insight into how decisions were being taken as regards their property.

40. I further note from available records that applicant was required to request Alchemist for selling the said land to another party as well, so that even the decision to sell plot 'owned' by applicant to another person was managed and controlled by Alchemist.

41. As has been discussed, I note that applicants were required to submit their right to manage, control and supervise the land allotted to them to Alchemist mandatorily, vide the indenture, supervisory agreement and the power of attorney. The said Supervisory agreement granted overarching right to Alchemist to undertake activities like construction of structures, undertaking cultivation, arranging sale of produce etc and taking any other steps as it considered necessary. Also, Alchemist had the right to engage experts and advisors to evolve methods to maintain and carry the development activities.

42. I observe from the above that, Alchemist reduced the role of purchasers to that of investors, whose stakes were limited to investing certain sums and receiving the returns or the estimated value, without any possession of the plot or participation in the development process. Also, the applicants could not purchase land without taking development facility as offered, which meant that an investment activity was carried out under the garb of land sale/purchase, with the applicant having no management over the property. Further, I note that under given circumstances, which included the restrictions put in place due to the agreements as executed and constraints of geographical distance, it was impossible for applicants to take part in running of the scheme/ property on a day to day basis. I am therefore convinced that the third and fourth conditions stipulated in Section 11AA(2) of the SEBI Act, 1992 are also satisfied.

43. In view of the aforesaid discussion / observations and material available on record, I conclude that the schemes of the Noticees satisfy all four conditions of section 11AA (2) of the SEBI Act, 1992. I, therefore, find that Noticees were engaged in the fund mobilising activity from public through investment contracts by floating / sponsoring / launching collective investment schemes as defined in section 11AA of the SEBI Act without obtaining registration from SEBI as mandated under Section 12(1B) of the SEBI Act, 1992 read with Regulation 3 of the CIS Regulations, 1999 for sponsoring / launching collective investment schemes.

44. I also note from records that Mr Balvir Singh, Mr Brij Mohan Mahajan, Mr Sunil Kanti kar, Mr Chandra Shekhar Chauhan and Mr N Madhav Kumar were directors of Alchemist during the relevant period. I also note from the reply of Alchemist to SEBI, that Mr Balvir Singh and Mr Chandra Shekhar Chauhan had resigned from the directorship of Alchemist. However, I note that copies of Form 32, filed under the provisions of the Companies Act, 1956 read with Companies (Central Government's) General Rules and Forms, 1956, for resignation of aforesaid directors have not been brought on record. Inspite of the absence of the copies of Form 32 and based on the letter of Alchemist, I note that Mr Balvir Singh and Mr

Chandra Shekhar Chauhan were directors for a part of the period when Alchemist had been mobilizing funds and carrying out the CIS as per the records.

45. Since a company is an artificial legal person, it operates through its Board of Directors. Therefore, the role of Board of Directors assumes importance. It is the entire responsibility of the Board of Directors to ensure compliance with applicable laws. I note that Section 291 of the Companies Act, 1956 empowers the Board of Directors to do all acts and things which a company can do. When powers are vested in the Board of Directors, naturally, the Board is to shoulder all responsibilities also. Further, in this regard, it is pertinent to rely upon the provisions of officer in default as mentioned in Section 5 of the Companies Act, 1956 (section 2(60) of the Companies Act, 2013) read with Section 27 of the SEBI Act, 1992. Additionally, I find it relevant to quote here the observations of the Hon'ble Supreme Court of India in the matter of Shri N. Narayanan vs. SEBI decided on 26.04.2013, wherein it was observed that -*"... Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence.*". Further, Hon’ble High Court of Madras in Madhavan Nambiar vs Registrar of Companies (2002 108 CompCas 1 Mad) has held that –“... *Section 5 of the Companies Act defines the expression "officer who is in default". The expression means either (a) the managing director or managing directors ; (b) the whole-time director or whole-time directors ; (c) the manager ; (d) the secretary ; (e) any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act; (f) any person charged by the board with the responsibility of complying with that provision ; (g) any director or directors who may be specified by the board in this behalf or where no director is so specified, all the directors. ... Section 29 of the Companies Act provides the general power of the board....Therefore it follows there cannot be a blanket direction or a blanket indemnity in favour of the petitioner or other directors who have been nominated by the Government either ex officio or otherwise. Hence the*

second point deserves to be answered against the petitioner.... There may be a delegation, but ultimately it comes before the board and it is the board and the general body of the company which are responsible..."

46. Further, I note that Section 27 of SEBI Act, 1992 also deals with offences by Companies. In the said provision, Section 27(1) says that, in case of a default by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Therefore, I hold that the directors of Alchemist are also guilty in the instant matter. I note that the SCN in respect of one of Noticee director i.e. Mr Sunil Kanti Kar had been disposed of vide Order Number Order/KS/AE/2020-21/9432 dated October 22, 2020.

(b) Does the violation, if any, attract monetary penalty under Sections 15D(a) of the SEBI Act, 1992?

47. The Hon'ble Supreme Court of India in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary*".

48. In view of the above, I am convinced that it is a fit case to impose monetary penalty on the Noticees under the provisions of Section 15 D(a) of the SEBI Act, 1992, which reads as under:

    Penalty for certain defaults in case of mutual funds.

    15D. If any person, who is—

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

(c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?

49. While determining the quantum of penalty under Section 15D(a) of the SEBI Act, 1992, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act, 1992 which read 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.

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.

50. The material available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the non-compliance committed by the Noticees.

51. However, I find it relevant to note the observations made by the Hon'ble SAT vide order dated August 13, 2019 in the same matter, *"In the light of the aforesaid, we are of the view that the appellant resorted to all kinds of dilatory tactics in not getting the repayments verified, namely, whether the appellant had actually refunded the amount to the investors. The WTM also took note of the income tax report in which it was indicated that monies have not been refunded to the investors and have been diverted to a sister company of the appellant. In the light of the conduct of the appellant, we are of the <u>opinion that admittedly the entire amount has not been repaid to the investors and whatever has been alleged by the appellant to have been repaid has not been verified</u>……….. <u>It may be stated here that more than Rs. 1900 crores were collected which till date has not been refunded inspite of the order being passed by SEBI on June 21, 2013.</u> Thus, no relief can be granted to the appellant."*

52. Further, I note from the Balance Sheet of Alchemist that it had mobilized funds to the tune of Rs 54.1 Crore, Rs 449.41 Crore and Rs 1087.68 Crore as on March 31, 2009, March 31, 2010 and March 31, 2011 respectively. I further note from Section 15D(a) of the SEBI Act, 1992 that upon failure to take necessary registration under relevant provisions of the SEBI Act, 1992 and the CIS Regulations, 1999, the entity becomes liable for a penalty of Rs One Lakh for each day during which the CIS is carried out or Rs One Crore, whichever is lesser. The aforesaid three balance sheet figures on records establish with certainty that Alchemist was carrying out CIS activities atleast in the financial years 2008-09, 2009-10 and 2010-11 while Alchemist was incorporated in the year 2008. I note that Alchemist was carrying on unregistered CIS activities atleast for three financial years.

ORDER

53. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act, 1992 and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 1,00,00,000 (Rupees One Crore only), on the Noticees namely Alchemist Infra Realty Limited, Mr Brij Mohan Mahajan, Mr Narayan Madhav kumar, Mr Balvir Singh and Mr Chandra Sekhar Chauhan under the provisions of Section 15D(a) of the SEBI Act, 1992. The amount of penalty shall be payable jointly and severally by the Noticees. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.
54. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.
55. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051."

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)	

56. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees namely Alchemist Infra Realty Limited, Mr Brij Mohan Mahajan, Mr Narayan Madhav kumar, Mr Balvir Singh and Mr Chandra Sekhar Chauhan and also to the Securities and Exchange Board of India.

Date: February 22, 2021	**K SARAVANAN**
Place: Mumbai	**ADJUDICATING OFFICER**