BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/BM/DS/2024-25/30558]

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

In respect of
Gajraj Singh Chauhan
(PAN: ADXPC6922H)

In the matter of HBN Dairies and Allied Limited

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an examination of fund mobilization by HBN Dairies and Allied Limited (hereinafter referred to as "**HBN Dairies**"/ "**the Company**") and observed that the Company was running a Collective Investment Scheme (CIS) without obtaining a Certificate of Registration from SEBI required under SEBI (Collective Investment Scheme) Regulations, 1999 (hereinafter referred to as the "**CIS Regulations, 1999**"). Subsequently, an Adjudication Order in the matter of HBN Dairies and Allied Limited vide order number AO/JS/VRP/49-58/2017 dated December 29, 2017 against Mr. Gajraj Singh Chauhan (hereinafter referred to as "**the Noticee**") and nine other entities was passed, imposing monetary penalty of ₹ 1 crore on the Noticee and the nine other entities, jointly and severally under Section 15D(a) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") for violation of provisions of Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, 1999. The

Noticee appealed to the Hon'ble SAT against the order passed by SEBI Adjudicating Officer imposing monetary penalty.

2. Hon'ble Securities Appellate Tribunal (SAT), vide Order dated April 30, 2024, in appeals no. 10 of 2024, while setting aside the Adjudication Order dated December 29, 2017 remanded the case to Adjudicating Officer. The Hon'ble SAT inter-alia observed that:

   "8. Having regard to that the fact that the appellant has not been served with any notice, we are of the view that it would be just appropriate to grant an opportunity to defend his cause before the AO.

   9. Hence, the following:-

   ORDER

   (i) The appeal is allowed.

   (ii) The order dated December 27, 2017 qua the appellant is set aside.

   (iii) The appellant shall appear before the AO on May 24, 2024 at 11.00 A.M.

   (iv) The AO shall hear the appellant and pass a fresh order in accordance with law within outer limit of two months from the date of first appearance. All pending misc. applications stand disposed of."

APPOINTMENT OF ADJUDICATING OFFICER

3. In compliance with the aforementioned directions of Hon'ble SAT, the undersigned was appointed as Adjudicating Officer (hereinafter referred to as "**AO**") on May 06, 2024 to enquire into and adjudge under Section 15D(a) of the SEBI Act,1992, the aforementioned violations against the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice no. EAD/PJ/JAK/OW/3519/2015/05 dated December 21, 2015 (hereinafter referred to as "**SCN**") was issued by the erstwhile Adjudicating Officer

(AO) to the Noticee via Registered Post Acknowledgement Due (RPAD) under the provisions of Rule 4(1) of the Adjudication Rules and section 15-I of the SEBI Act, calling upon the Noticee to show cause as to why an inquiry should not be held against him for the violation of provisions of Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, 1999, and why penalty, if any, should not be imposed on it under Section 15D(a) of the SEBI Act, 1992.

5. The allegations levelled against the Noticee are summarized as under:

   5.1. It was noted that an interim order dated July 12, 2013 was issued by SEBI against the Company and its directors, including the Noticee, with the following directions.

   "a. HBN and its directors Mr. Harmender Singh Sran, Mr. Satnam Singh Randhawa, Mr. Amandeep Singh Sran, Mr. Gajraj Singh Chauhan, Mr. Manjeet Kaur Sran, Ms. Jasbeer Kaur, Mr. Rakesh Kumar Tomar, Mr. Sukhdev Singh Dhillon and Ms. Sukhjeet Kaur, shall not solicit or collect any further money/ investments from investors/ customers into its schemes or launch or carry out any money collection schemes.

   b. HBN and its aforesaid directors shall submit to SEBI, a reasonable proposal including firm time lines with regard to the manner in which it proposes to wind up its schemes and make payments along with the returns which are due to its investors. This proposal shall be submitted within a period of 30 days from the date of this Order.

   c. HBN and its aforesaid directors shall not dispose of any of the properties including the properties mentioned in Annexure A, except for the purpose of winding up of its schemes and repaying the money to its investors/ customers with returns that have been promised to them…"

5.2. It was also noted that SEBI had passed an order dated February 12, 2015 against the Company and its directors, including the Noticee, under Section 11, 11B and 11(4) read with Regulation 65 of the CIS Regulations, 1999, directing:

"a. HBN Dairies &Allied Limited [PAN: PAN: AAACH7852C] and its directors/ former directors namely Mr. Harmender Singh Sran [PAN: AIGPS2229B], Mr. Satnam Singh Randhava, Mr. Amandeep Singh Sran [PAN: AUVPS5370E], Mr. Gajraj Singh Chauhan [PAN: ADXPC6922H], Ms. Manjeet Kaur Sran [DIN: 00105878], Ms. Jasbeer Kaur [DIN: 00161623], Mr. Rakesh Kumar Tomar [DIN: 06824416], Mr. Sukhdev Singh Dhillon and Ms. Sukhjeet Kaur shall abstain from collecting any money from the investors or launch or carry out any Collective Investment Schemes including the scheme which have been identified as a Collective Investment Scheme in this Order.

b. HBN Dairies & Allied Limited and its directors/ former directors namely Mr. Harmender Singh Sran, Mr. Satnam Singh Randhava, 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 are restrained from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities market for a period of four (4) years.

c. HBN Dairies & Allied Limited and its directors namely Mr. Harmender Singh Sran, Mr. Amandeep Singh Sran, Ms. Manjeet Kaur SranandMs. Jasbeer Kaurshall forthwith wind up the existing Collective Investment Schemes and refund the money collected by the said company under the schemes with returns which are due to its investors as per the terms of offer, on or before March 09, 2015 and thereafter within a period of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, including the trail of funds claimed *to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds.*

d. The Company shall provide proof including trail of funds, bank statements to support its contention that it has refunded the monies to its investors.

e. HBN Dairies & Allied Limited and its directors namely Mr. Harmender Singh Sran, Mr. Amandeep Singh Sran, Ms. Manjeet Kaur Sran and Ms. Jasbeer Kaur shall not alienate or dispose off or sell any of the assets of HBN Dairies & Allied Limited except for the purpose of making refunds to its investors as directed above.

f. HBN Dairies & Allied Limited and its directors/ former directors namely Mr. Harmender Singh Sran, Mr. Satnam Singh Randhava, 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 are also directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.

g. In the event of failure by HBN Dairies & Allied Limited and its directors namely Mr. Harmender Singh Sran, Mr. Amandeep Singh Sran, Ms. Manjeet Kaur Sran and Ms. Jasbeer Kaur to comply with the above directions on or before March 09, 2015, the following actions shall follow:

> *- HBN Dairies &Allied Limitedand its directors namely Mr. Harmender Singh Sran, Mr. Amandeep Singh Sran, Ms. Manjeet Kaur Sran and Ms. Jasbeer Kaurshall remain restrained from accessing the securities market and would further be prohibited from buying, selling or otherwise dealing in securities, even after the period of four (4) years of restraint imposed in Paragraph 20 (b) above, till all the Collective Investment Schemes of HBN Dairies & Allied Limited are wound up and all the*

monies mobilized through such schemes are refunded to its investors with returns which are due to them.

- SEBI would make a reference to the State Government/ Local Police to register a civil/ criminal case against HBN Dairies & Allied Limited, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and

- SEBI would make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the company, HBN Dairies &Allied Limited.

- SEBI shall also initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder."

5.3. In view of the above orders, it was alleged that the Company and its directors, including the Noticee, were running Collective Investment Schemes without obtaining registration from SEBI, thus violating the provisions of Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, 1999.

6. Pursuant to the restoration of the case to the AO, in accordance with Hon'ble SAT directions, Noticee was advised vide notice dated May 08, 2024, to appear before the undersigned on June 24, 2024. Noticee appeared on the scheduled date through his authorised representative (AR) via video-conferencing mode. During the appearance meeting, the AR requested for a copy of the SCN dated December 21, 2015 and requested for time till June 07, 2024, which was granted by the undersigned. A scanned copy of the SCN dated December 21, 2015, as requested by the AR, was sent to the Noticee through email.

7. Vide email dated June 07, 2024, Noticee submitted its reply to the SCN. The main contentions are summarized below.

7.1. *The Noticee joined the services of M/s HBN Dairies & Allied Ltd (the Company) on 21.03.2000 as a junior executive (accounts) at a total monthly salary of Rs. 5000. It was clearly provided in the appointment letter that the Noticee was required to work under the supervision of such officer as may be determined by the management of said company from time to time and he was required to diligently and satisfactorily carry out the instructions given to him to the best of his skill and ability. As a supporting document, Noticee has submitted the appointment letter dated March 21, 2000, and also a copy of his identity card in the company.*

7.2. *Noticee was subsequently called by the promoters, who informed him that they were appointing him as a director the Company, by the promoters, with effect from 20.06.2003. As the Noticee was only a junior executive and was dependent on the job, he could not refuse the directions of the promoters and agreed to be a director. Even prior to the date of the appointment of the Noticee, the said company was operating its business and the Noticee, either before or after his appointment had no say or role in the nature of the business / scheme being operated by the company.*

7.3. *The Noticee, as a director, never attended any meeting of the board of directors and was only responsible for sale and purchase of general products and dealing with sales tax filing for the company and was never authorized or was in a position to deal with the schemes of the company.*

7.4. *The Noticee, thereafter, on 17.03.2006 resigned from the post of Director of the said Company and his resignation was duly accepted on the said date. Noticee has submitted a copy of the resignation letter dated 17.03.2006 and a copy of Form 32 submitted to the ROC, in support of his submissions.*

7.5. After his resignation as director of the company, the Noticee worked with the Company as a Manager and was promoted as Senior Manager Commercial on 20.04.2007. A copy of promotion letter has been submitted by the Noticee. Noticee has also submitted annual increment letters.

7.6. Finally, the Noticee resigned from the services of the Company vide his resignation letter dated 24.02.2010. The Noticee has submitted a copy of the resignation letter, relieving letter, along with work certificate dated April 01, 2010.

7.7. SEBI had issued SCN dated 16.11.2012 to the Noticee at the Company's address, when the Noticee was not working with the Company.

7.8. The Noticee was director of the Company from 20.06.2003 till 17.03.2006, only as per the instructions of the promoters of the company. However, he was not having any active role over the schemes being run by the Company.

7.9. The Company and other Noticees in the SCN dated 16.11.2012 had submitted a common reply on behalf of the Noticee as well. However, the Noticee was not informed about the said SCN.

7.10. In the common reply, it was also stated that the Noticee had ceased to be director of the company and his name may be dropped from the proceedings. The same has also been recorded as submissions of the directors in the SEBI interim order dated 12.07.2013. Despite the same, the said SEBI interim order included the Noticee's name, while making the directions.

7.11. Subsequently, the directions were made in the SEBI final Order dated 12.02.2015, against the Noticee. Since the Noticee could not be reached at the office address, the Order was passed ex-parte.

7.12. As the Noticee resigned being a director with effect from 17.03.2006 and an employee with effect from 24.02.2010, he cannot be held liable for the failure of the said company to comply with the approved process of repayment and subsequent revival of the show cause notices.

7.13. *The SCN dated 21.12.2015 was also issued to the Noticee at the company's address, and was never received by the Noticee. Thereafter, adjudication order dated 29.12.2017 was passed, without considering the fact that the Noticee was not a director of the company since 2006. Consequently, recovery proceedings were initiated against the Noticee, and his savings bank account with Axis Bank was attached and an amount of ₹ 431430 was transferred to the beneficiary SEBI RECOVERY PROCEEDS vide RTGS transaction dated May 12, 2023.Other accounts of the Noticee with PNB, ICICI Bank and Canara Bank were also attached by the SEBI.*

7.14. *During this time, the Noticee found that adjudication proceedings were initiated and order was passed against the Noticee. The Noticee, thereafter, filed a writ petition before the Hon'ble Delhi High Court. Vide its order dated 10.08.2023, the Noticee was directed to approach Hon'ble SAT within 10 days. Then, the Noticee filed an appeal before the Hon'ble SAT, and subsequently, the matter was remanded back to the AO.*

7.15. *The Noticee had ceased to be a director in the Company with effect from 17.03.2006 and an employee of the Company with effect from 24.02.2010. Therefore, being a mere employee of the company, his liability cannot be co-extensive with the Company and its other Directors / Promoters who were incharge of the day to day affairs of the said Company as has been incorrectly held by SEBI in its order.*

7.16. *Apart from the above, it is noted by SEBI that the properties of the said company were worth way more than the amount required for refunding the customers of the said company as well as the penalty levied vide the attachment order and therefore, there was no reason whatsoever for the SEBI to hold the Noticee coextensively liable with the promoter / directors of the Company and attach the bank accounts of the Noticee.*

8. Vide hearing notice dated June 10, 2024, the Noticee was provided an opportunity of personal hearing in the interest of natural justice. The Noticee was advised to appear before the undersigned on June 24, 2024. The Noticee appeared for the scheduled hearing through his AR. The AR reiterated the submissions already made vide letter dated June 07, 2024.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

9. After perusal of the material available on record, I have the following issues for consideration.

   ISSUE I: Whether Noticee has violated provisions of Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, 1999?

   ISSUE II: Does the violation, if any, on part of the Noticee attract penalty under Section 15D(a) of the SEBI Act, 1992?

   ISSUE III: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

10. Before moving forward it is pertinent to refer to the relevant provisions of SEBI Act, 1992 and CIS Regulations, 1999 which read as under:

    SEBI Act, 1992

    Registration of stock brokers, sub-brokers, share transfer agents, etc.

    12. (1) …

    (1A) …

    (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.

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

FINDINGS

11. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions made by the Noticee vide letter dated June 07, 2024, I record my findings hereunder:

ISSUE I. Whether Noticee has violated provisions of Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, 1999?

12. Subsequent to passing of the SEBI Orders dated July 12, 2013 and December 21, 2015, SCN was issued, alleging that the Company, and its directors, including the

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

Noticee, were running Collective Investment Schemes without obtaining registration from SEBI, thus violating the provisions of Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, 1999. It was alleged that the Noticee, being the director of the Company, was involved in running of the unregistered CIS.

13. The Noticee has submitted that he joined the Company as a junior executive on March 21, 2000 for a monthly salary of ₹5000. He has provided a copy of his appointment letter and identity card in support of his submissions. On June 20, 2003, he became director of the Company. The Noticee has submitted that as he was in a junior position, he could not refuse to become the director. He has further submitted that he did not attend any board meeting or was no consulted for or responsible for any of the decisions taken by the Company. On March 17, 2006, he resigned from the directorship and continued to work as an employee of the Company till February 24, 2010. The Noticee has enclosed a copy of RoC Form 32, his resignation and termination letters in support of his submissions.

14. I note from the material available on record that there is no evidence in the form of documents signed by the Noticee or documents/ information showing that the Noticee was involved in running of the unregistered CIS along with other directors of the Company. Further, there is no evidence on record to show that the Noticee attended the board meetings or signed any documents pertaining to the activities of the Company with respect to the running of the unregistered CIS. From the submissions of the Noticee, I note that he was required to work under the supervision of such officer as may be decided upon by the management from time to time. From the evidence available on record, I note that the Noticee was not involved in day to day activities as director of the Company and as submitted by

him, he was only responsible for sale and purchase of general products and dealing with sales tax filing for the Company.

15. Furthermore, I take recourse to the Order of Hon’ble SAT in Sayanti Sen v SEBI on August 09, 2019 (Appeal 163 of 2018), wherein it was emphasized that where the Company is the offender, vicarious liability of the Directors cannot be imputed automatically. Hon’ble SAT in Sayanti Sen v SEBI on August 09, 2019 (Appeal 163 of 2018), referred to Hon’ble Supreme Court’s decision in SEBI vs. Gaurav Varshney, (2016) 14 SCC 430 and held that “*the Supreme Court held that a company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, officers of a company who are responsible for acts done in the name of the company are sought to be made personally liable for acts which result in criminal action being taken against the company. It makes every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status.*”

16. There is no evidence on record to show that the Noticee was an officer-in-default.

17. Given all of the above, I find that the allegations against the Noticee as mentioned in the SCN cannot be pursued further. I therefore dispose of the SCN dated December 21, 2015 qua the Noticee without imposing any penalty.

18. In view of the above, issues II and III do not require any consideration.

19. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai **BARNALI MUKHERJEE**

Date: June 28, 2024 **ADJUDICATING OFFICER**