

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: SHRI RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER**

ORDER

Under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with regulation 65 and 73 of the SEBI (Collective Investment Schemes) Regulations, 1999 in respect of M/s. Sun-Plant Agro Ltd. and its Directors Shri Awadesh Kumar Singh, Shri Sant Kumar and Smt. Girija Shankar Kumar.

1. Securities and Exchange Board of India ("SEBI") had noticed that M/s. Sun-Plant Agro Ltd. ("SPAL"/The Company") had mobilized funds from the investors/public under its scheme(s). Being satisfied that the schemes of SPAL fall within the definition of 'collective investment schemes' hereinafter referred to as 'the CIS') and as defined under section 11AA of the Securities and Exchange Board of India Act, 1992 ('SEBI Act') and regulation 3 of SEBI(Collective Investment Schemes) Regulations 1999 ('the CIS Regulations') and that SPAL had failed to obtain registration from SEBI to operate such CIS and also failed to wind up its schemes and make repayments to its investors in accordance with the provisions of the CIS Regulations, SEBI, vide order dated May 3, 2011 directed SPAL to wind up its existing CIS and refund the money collected by it under its scheme(s) with returns which were due to the investors as per the terms of the offer within a period of three months from the date of the said order failing which the following actions were to follow:

"i. Initiation of prosecution proceedings, under section 24 of the SEBI Act, 1992, against the company / its promoters / directors/ managers / persons in charge of the business of its scheme(s),
ii. Debarring the company / its promoters/ directors / managers/ persons in charge of the business of its scheme(s) from operating in the capital market and accessing the capital market for a period of five years.
iii. Making reference to the state government / local police to register civil/ criminal cases against the company and its promoters /directors for apparent offences of fraud, cheating, criminal breach of trust and misappropriation of public funds, and
iv. Making a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the company."

2. SEBI vide letter dated July 28, 2011 advised SPAL to confirm compliance with the aforesaid SEBI Order. The SPAL, however, failed to confirm compliance with the order and instead filed a writ petition (W.P. no. 12920 (W) of 2011 before the Hon' ble Calcutta High Court against the said order. Since SPAL failed to confirm compliance of the directions issued to it vide the order dated May 3,

2011, SEBI issued a Show Cause Notice (SCN) dated January 03, 2013 to SPAL and its directors/ persons in charge of business of its scheme(s) {hereinafter referred to as 'the noticees'} calling upon them to show cause as to why appropriate actions, as contemplated in the SCN, in terms of SEBI Act and CIS Regulations should not be taken against the noticees for failure to comply with the said order. The SCN was issued to the following noticees-

Sl.no.	Name of the entity	Whether promoter/director, etc.
1.	M/s. Sun-Plant Agro Ltd	Company
2.	Shri Awdesk Kumar Singh	(Managing Director)
3.	Shri Girija Shankar Kumar	(Director)
4.	Shri Sant Kumar	(Director)

3. The SPAL replied on behalf of all the noticees vide its letter dated January 22, 2013 wherein it *inter alia* stated that the matter was *sub-judice* before the Hon'ble Calcutta High Court. Thereafter, an opportunity of personal hearing was granted to the noticees before me on June 20, 2013. The SPAL vide its letter dated June 08, 2013, again reiterated its submissions that the matter was *sub-judice*. It further stated that various documents had not been supplied to it and in the absence of the same, it would not be possible for it to respond to the allegations levelled against in the SCN. The SPAL also pleaded that the SCN be withdrawn and requested SEBI not to take any further action till disposal of the Writ Petition before the Hon'ble Calcutta High Court.
4. During the personal hearing on June 20, 2013, the authorized representatives of the noticees reiterated their submissions made in the written reply of SPAL. Thereafter, the noticees, vide their letters dated July 8 and 19, 2013 filed their written submissions wherein *inter alia* they had reiterated that the matter was *sub-judice* and in the interest of justice, SEBI should not take any precipitative action without seeking leave from the Hon'ble High Court, Calcutta. It was also stated that during the hearing before the Hon'ble High Court, SEBI had undertaken not to act further in the matter while the proceedings were pending before the Court. It was further stated that the complaint against SPAL, received from the Director of Economic Offences Investigation Cell, Govt. of West Bengal, against SPAL was never furnished in spite of several demands. They also requested for another opportunity of personal hearing in the matter. The said request was acceded to, and another opportunity of personal hearing was granted to the noticees on November 13, 2013, when the authorized representatives of the noticees appeared and submitted that SPAL had wound up its schemes and has already started repaying to the investors therefore the action as contemplated in the SCN should not be taken against the noticees. The learned authorised representatives also sought the permission to file written submissions, within 7 days, along with documentary proof/evidence about winding up of the schemes of SPAL and

repayment to the investors. The permission was granted. However, the noticees failed to file the written submissions alongwith proof/ evidence as undertaken by them and vide their letter dated November 19, 2013 sought extension of time to 14 days for filing the written submissions. Further time was granted and informed to the noticees vide letter dated November 29, 2013.

5. The noticees vide their letter dated December 09, 2013 filed their written submissions reiterating that the writ petition challenging the SEBI order is still pending and they have already started repaying the investors and have repaid around 60% of them and this fact has not been taken into account when SEBI issued the SCN. They have further submitted that in compliance with the SEBI order the SPAL has been repaying the investors and any precipitative action by SEBI would tantamount to a blatant violation of Article 14 of the Constitution of India in light of the order dated March 19, 2002 passed by the Hon' ble Securities Appellate Tribunal in *Highland Holiday Homes Pvt. Ltd. Vs. SEBI* wherein it was held as under:-

"It is to be noted that the CIS Regulations are meant to protect the interests of the participants in the collective investment schemes floated by various entities. While applying the said regulations, the object of the Regulations should not be pushed aside giving way to mere technicalities. Any measure in the interest of the investors which would pass the legal test provided in the Regulation should be welcome"

6. Relying upon the above order of Honb' le SAT it has further been submitted by the noticees that in a business involving selling of trees, premature selling of trees shall not fetch adequate returns. Therefore, any action taken by SEBI, at this stage amounts to an arbitrary action violative of the Article 14 of the Constitution of India. Further, the duration of three months for the entire repayment granted by SEBI is arbitrary, irrational and impractical. The SPAL has a database of more than 1.75 lakh customers and given the nature of its business it is not feasible to make payments within the given time. The noticees have requested SEBI to grant a further period of 18 months within which the remaining 40% of the amount shall also be repaid. The noticees have also requested for additional time to submit the CA certificate for corroborating repayments already made and are also willing to get an independent audit carried out by any SEBI empanelled auditor to substantiate its stand.
7. I have carefully considered the SCN, the replies/submissions of the noticees and the other relevant materials available on record. The noticees have raised technical objections with regard to non-furnishing of documents relied upon in the present proceedings. I note that the noticees, vide their letter dated June 08, 2013, have made vague submissions in this regard that large number of documents have not been provided to them, except with regard to a copy of the complaint received from the Director of Economic Offences Investigation Cell, Government of West Bengal. I find that that the said letter has not been relied upon in the said SCN issued in the present proceeding.

8. In my view, present proceedings commenced vide the SCN dated January 03, 2013 are limited for determination of the issue as to whether the noticees have complied with directions issued vide order dated May 3, 2011 or not. The order dated May 3, 2011 is in operation and force as it has yet not been set aside, quashed or modified by any court/ Tribunal to date. The documents relied upon in support of the charge in the SCN dated January 03, 2013 are the order dated May 03, 2011 and demand/reminder letters subsequent thereto and those documents have been served upon and received by the noticees. I, therefore, do not find any infirmity in the present proceedings on this count. I further find that the noticees have made extraneous claims in this regard.
9. From the reply and written submissions of the noticees, I note that the arguments of the noticees relevant to the present proceedings are twofold. First, that the matter is *sub-judice* and SEBI should not take any action till the disposal of the writ petition filed by them before the Hon' ble High Court of Calcutta and also that SEBI had undertaken not to act further in the matter while the proceedings are pending before the Court. In this regard, I note that the writ petition filed by the noticees is yet not admitted by the Hon'ble High Court and as on date, there is no stay on the operation of the SEBI order dated May 03, 2011 by any order of Hon'ble High Court Calcutta in the said writ petition. Further, from a perusal of the material available on record, I note that no undertaking was given by SEBI before the Hon' ble High Court as stated by the noticees, nor have the noticees furnished any document to substantiate this claim, I therefore, find that the above argument of the noticees does not hold any ground.
10. The second argument of the noticees is that SPAL has wound up its schemes and has been repaying to the investors. I note that the final order dated May 03, 2011 granted the noticees three months time to wind up the schemes and repay all the investors. As the noticee failed to comply with the directions even after 8 months of the date of the order, the SCN in the matter was issued on January 03, 2013. It has been more than two years since the order has been passed but till date, as per the noticee's own submission without substantiating this claim, the noticees have only repaid 60% of the investors. It is also noted that despite sufficient time granted after the hearing in the matter on November 13, 2013 as undertaken by them, the noticees have failed to substantiate their claim of repayment the investors along with proof/ evidence of the repayment. I, therefore, find that the SPAL has failed to comply with the directions issued vide order dated May 03, 2011.
11. In my view the noticees have been granted enough opportunities to wind up its business, repay all the investors and file the necessary proof/evidence to SEBI, which the noticees have failed to do. In the facts and circumstances of this case, I find that the noticees have adopted dilatory tactics and have attempted to evade compliance of the direction issued vide order dated May 03, 2011. I, therefore, do not find any reason to grant further time as requested.

12. I have also perused the order of the Hon'ble SAT in the matter of *Highland Holiday Homes Pvt. Ltd. Vs. SEBI* (Highland case) as relied upon by the noticees. I note that the facts and circumstances of that case are different from those of the present case.. In the *Highland case* by SEBI order dated July 26, 2001, *Highland* and its promoters/directors/managers and persons in charge were debarred for a period of five years from operating in the capital market. In the appeal was preferred against the said order *Highland* had, on the basis of documentary evidence, shown and corroborated its claim /willingness of repaying the investors. In the present case, the noticees have failed to substantiate their claims and have adopted dilatory tactics to evade compliance. Come whatever it may, in this case, the default in compliance of directions issued vide order dated may 03,2011 had already occurred on expiry of the time granted therein and consequences provided in the said order should follow.
13. It is settled position that SEBI Act is welfare legislation and while interpreting its provisions its larger objective should be kept in mind. In this regard, I note that the Hon'ble Supreme Court in *SEBI vs Ajay Agarwal*, AIR 2010 SC 3466, has laid down the principle to be adopted while interpreting the SEBI Act as follows: "*It is a well known canon of construction that when Court is called upon to interpret provisions of a social welfare legislation the paramount duty of the Court is to adopt such an interpretation as to further the purposes of law and if possible eschew the one which frustrates it.*"
14. Therefore, the provisions of section 11(2)(c), 11AA and 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations should be enforced taking into account their purposes and objects In this regard, I further note that Hon'ble Supreme Court in *P.G.F Limited & Ors. vs UOI & Anr.* MANU/SC/0247/2013, (hereinafter referred to as the 'PGFL Case') has clarified the purpose of section 11AA as follows: "*.....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.*" In this PGFL's case Hon'ble Supreme Court further held that: "*Inasmuch as the said Section 11AA seeks to cover, in general, any scheme or arrangement providing for certain consequences specified therein vis-a-vis the investors and the promoters.....,*" I, therefore, am of the view that while enforcing the order dated May 03,2011 and above provisions of the SEBI Act and CIS Regulations, the interests of investors should not be compromised.
15. In view of the foregoing, in exercise of the powers conferred upon me under Sections 11, 11B and 19 of the Securities and Exchange Board of India Act, 1992 read with the regulations 65 and 73 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 I hereby:-
- (a) restrain and debar the following persons/entity from accessing the securities market and further prohibit them from buying, selling or dealing in securities market, directly or indirectly, in any manner whatsoever for a period of 5 years:-

Sl.no.	Name of the entity	PAN number	DIN/CIN number
1.	M/s. Sun-Plant Agro Ltd	AADCS8447H	U01122WB1993PLC059523
2.	Shri Awdesb Kumar Singh (Managing Director)	AKQPS6527G	00301404
3.	Shri Girijs Shankar Kumar (Director)	AKAPK2774R	00355512
4.	Shri Sant Kumar (Director)	N/A	02082593

(b) Prohibit the above entities/persons from mobilizing funds under any schemes or arrangement, existing or future, as defined under section 11AA of the SEBI Act.

16. In furtherance to the above directions, SEBI may initiate all other actions as contemplated in the SCN dated January 03, 2013 including adjudication proceedings, attachment and recovery proceedings under section 28A of the SEBI Act against the above mentioned entities/persons for non compliance of the order dated May 03, 2011.
17. It is hereby clarified that above directions shall not be construed to absolve the SPAL and other noticees from the obligations to wound up all its collective investment schemes and repay the investors to the satisfaction of SEBI.
18. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure that the direction given in para 14 above are complied with.
19. This order shall come into force with immediate effect.

Date: December 30th, 2013

Place: Mumbai

RAJEEV KUMAR AGRAWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA