

SECURITIES AND EXCHANGE BOARD OF INDIA

DIRECTIONS UNDER SECTION 11B OF THE SEBI ACT, 1992 READ WITH REGULATION 65 OF SEBI (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 1999 AGAINST M/S ENBEE PLANTATIONS LTD.

C/ /2003/CIS

1.1 M/s Enbee Plantations Ltd. (hereinafter referred to as 'company'), having its registered office at "Enbee House" 236, Zone-II M.P. Nagar, Bhopal had filed certain information / details with the Securities and Exchange Board of India (hereinafter referred to as SEBI) regarding the launching of certain schemes. The 'company' had filed the information about its three schemes viz. 'Enbee Bonds', 'Enbee Agro Bond' and a third scheme with the options under Sevan Super and Sevan Bonanza plans. The aforesaid information was filed pursuant to the Press Release of SEBI dated November 26, 1997. In the above Press Release SEBI had inter alia stated that any collective investment scheme which is desirous of taking the benefit of the proviso to section 12 (1B) of the SEBI Act, 1992 (hereinafter referred to as the said Act) is to send to SEBI, certain information within 21 days from the date of the said Press Release.

1.2 The statutory requirement in this regard is clear from the provisions of section 12(1B) of the said Act which is extracted as below:

"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".

1.3 The SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as the 'said Regulations') was notified on October 15, 1999. As per regulation 5 of the said Regulations "any person who immediately prior to the commencement of the Regulations was operating a scheme, shall subject to the provision of chapter IX of the Regulations make an application to the Board for the grant of certificate within a period of 2 months from such date". Regulation 9 of the said Regulations specifies the conditions/ eligibility to get the certificate of registration in respect of the new schemes.

1.4 Chapter IX of the said Regulations prescribes the requirements to be followed by the collective investment schemes which were operating on the date of notification of the said Regulations. In terms of Regulation 73(1) of the said Regulations, an existing collective investment scheme which has failed to make an application for registration with SEBI or has not been granted provisional registration by SEBI or having obtained provisional registration fails to comply with the provisions of regulation 71 of the said Regulations, is required to wind up the existing scheme(s) and repay the investors as specified therein. As per Regulation 74 "An existing collective investment scheme which is not desirous of obtaining provisional registration from the Board shall formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in regulation 73."

2.1 The 'company' was informed of the notification of the said Regulations by SEBI, vide its letter dated October 21, 1999. In the aforesaid letter, SEBI had informed the company that a copy of the said Regulations has been posted on its Website " <http://www.sebi.gov.in/>".

2.2 The requirements of the said Regulations were made public by SEBI vide its notice dated December 10, 1999 and the same was published in all the leading news papers. Further, vide letter dated December 10, 1999, SEBI had advised all the collective investment scheme companies including the "company" to abide by the provisions of the said Act and the said Regulations. In the aforesaid letter SEBI had also informed that all the existing collective investment scheme entities are subject to the provision of the said Regulations and therefore required to apply for registration, as specified in the said Regulations, by December 14, 1999.

2.3 The 'company' was also informed by SEBI vide letter dated December 15, 1999 , about the possible proposed actions which can be taken against it under the provisions of the said Regulations and the said Act, on its failure to apply for registration as advised/ informed earlier . SEBI, in the said letter had also advised the 'company' inter alia to abide by the provisions of the said Regulations and the said Act.

2.4 The 'company' vide letter dated December 17, 1999 filed its reply to the letter of SEBI dated December 10, 1999. In the said letter the 'company' stated that they are not desirous of obtaining provisional registration from SEBI and accordingly, had formulated a scheme of repayment to the then existing investors in the manner specified.

2.5 It was also informed by the 'company' that "As per rule 73, information memorandum has already been sent to all the members, last date for receipt of response from investors are as under:-

S. No.	Scheme	Last date
1	Scheme – I: Enbee Bond	08.01.2000
2	Scheme – II: Enbee Agro Bond	16.01.2000
3	Scheme – III: Enbee Agro Bond (Sewan)	08.01.2000

After getting response from our investors, we shall inform you the status of the scheme"

3.1 SEBI, thereafter, having regard to the interest of the investors and requests received from various entities extended the last date for submissions of the application for registration up to March 31, 2000. The same was intimated to the 'company' by SEBI, vide its press releases dated March 15, 2000 . However, the 'company' has, not, so far, applied for the grant of registration with SEBI in

terms of the said Regulations. SEBI had also issued public notices in various newspapers in this regard for the similarly situated entities inviting attention of the concerned entities including the 'company' about the statutory requirements under the provisions of the said Act and the said Regulations.

3.2 The 'company', as a matter of fact, has neither applied for registration nor has taken any steps for winding up of the schemes and also failed to make the payment to its investors in the manner as provided under the said Regulations. The aforesaid actions of the 'company' are in violation of the provisions of Section 12(1B) of SEBI Act, 1992 and Regulation 5(1) read with Regulation 68(1), 68(2), 73 & 74 of the SEBI (Collective Investment Schemes) Regulations, 1999.

3.3 In view of this, a notice dated April 03, 2000 was issued to the 'company' asking it to show cause as to why one or more or all actions under the provisions of regulation 65 of the said regulations and under section 24 read with section 11B of the said Act be not imposed against it for the violations as stated therein. SEBI in the aforesaid show cause notice, had also intimated the specific violations committed by the 'company'.

3.4 The 'company' filed its reply to the aforesaid show cause notice vide its letter dated April 11, 2000. In its reply the company has stated that they have not violated any of the regulations and the same has been properly followed in the letter and spirit. It is further stated by the 'company' that they had already sent an information memorandum to the investors who has subscribed to the scheme and that they had also sent the detailed state of affairs of the scheme to the investors. Further, the 'company' stated that the information memorandum is dated and signed by all the directors of the scheme. The 'company' in its above reply has also stated that the information memorandum in scheme 1 & 3 is dated December 1, 1999 and sent by December 8, 1999. The second scheme is dated December 9, 1999 and sent by December 14, 1999. The 'company' has also stated that in winding up of the scheme what the law intended was discharge of the liabilities towards the investors and not liquidation of the assets even if at a heavy loss. Further, the 'company' has stated that it has accepted its liability at a figure as near to as possible to the amount promised in the original scheme.

3.5 The 'company' in its reply mentioned above has also stated that the repayment scheme has already been passed by the investors and over 50% of the investors had already surrendered their original documents. The 'company' further stated that regulation 73(8) of the said regulation is not applicable to them. Further, the 'company' in its reply has stated that they have closed all the schemes and no scheme is under operation now. The 'company' has also requested for a personal hearing in the matter and accordingly, an opportunity of personal hearing was granted to the 'company' on June 2, 2000 before the then Chairman, SEBI and the same was communicated to the company, by SEBI vide letter dated May 12, 2000.

4.1 SEBI had also sent a further notice dated May 12, 2000 to the 'company' asking it to show cause as to why one or more or all the actions stated therein be not initiated against them for the violations of the provisions of SEBI Act, 1992 and the said Regulations as mentioned therein. The aforesaid show cause notice was issued as SEBI was prima facie satisfied that the 'company' has not applied for registration by March 31, 2000 and failed to take steps for winding up of the schemes in terms of the said Regulations.

4.2 The 'company' vide letter dated May 25, 2000 filed its reply to the show cause notice dated May 12, 2000 and stated inter alia that they have not contravened the regulations 73 and 74 of the said Regulations. The 'company' has also stated that the show cause notice dated May 12, 2000 issued by SEBI is erroneous.

4.3 The officials of the company appeared for a personal hearing as requested by them and made submissions on its behalf, before the then Chairman on June 2, 2000. The 'company' had also filed its written submission vide letter dated June 2, 2000. In its written submissions, the 'company' has stated that they had invited public investments through 3 schemes between 1996 to 1998 by way of issue of bonds. The 'company' has also stated that these schemes fell within the definition of collective investment schemes defined under the SEBI (Collective Investment Schemes) Regulations, 1999. The 'company' further stated that they had framed a repayment scheme as per regulation 74 of the said Regulations and an information memorandum was sent to the investors on December 01, 1999 and December 09, 1999. It was also stated that the last date of receipt of consent or exercise of option by investors as per the information memorandum dated December 1, 1999 was January 08, 2000 and information memorandum dated December 09, 1999 was January 19, 2000.

4.4 The 'company' has also stated in its written submissions that as the percentage of investors who opted for continuity of the schemes was less than 25%, they had proceeded with the repayment schemes. Further, the 'company' has stated that the submissions made by them vide its letter dated April 11, 2000 has not been examined by SEBI. The 'company' has also stated that they have opted to comply with regulation 74 under which a scheme of repayment has been formulated and the same has been carried to with the approval of the investors. The 'company' further stated that 2 show cause notices issued to them are self contradictory for the reasons stated therein. Regarding the allegation that the 'company' has not formulated the scheme of winding up as envisaged in the said regulation, the 'company' has stated that the same was made primarily because of non appreciation of the provisions of regulation 74 of the said regulations in contradistinction to the provisions of regulation 73 of the said regulations. The 'company' also stated that as per the approval of the investors, the repurchase scheme has already been implemented and all the existing collective investment scheme came to an end on February 29, 2000. Regarding the allegation that the 'company' has violated regulation 73(8), the 'company' has stated that the said violation is founded on the perception that its case falls under regulation 73.

4.5 In brief the 'company' in para 16 of its reply has stated that " Thus, there has as such been no violation of any of the regulations of SEBI (CIS) Regulations, 1999 . At the cost of repetition we wish to briefly summarise the issues before SEBI for consideration:- made the following submissions :-

(a) As per the provisions of the regulations, the company had an option of not applying for provisional registration, if it formulated a scheme of repayment under regulation 74. In formulation of this scheme of repayment, the company had the flexibility to work out the amount, manner and modus operandi of such repayment subject to a majority approval by the investors in the manner prescribed under regulation 73. The company has formulated and carried out the scheme of repayment as envisaged under regulation 74.

(b) The issue of debenture by the company to the investors specially with the consent of such investors amounted to effectual repayment to the investors and by virtue of which the collective investment schemes came to a legal and consensual end.

(c) The company during the operation of the collective investment schemes, in formulating the scheme of repayment and in currently discharging its obligations towards the debenture holder investors has acted in a manner which is keeping in view the interest of the investors and deserves due consideration by SEBI while adjudging this issue at the touchstone of the investors' interest which is also the prime consideration of SEBI.

(d) The expeditiousness, objectives of the repayment scheme and the way the amount payable to the investors was determined speaks of the intentions of the company in following the letter and spirit of the regulations and interpretation of the regulation in a hyper technical manner to make the company a violator of these regulations would result in miscarriage of justice and undue harshness to the company.

(e) The impact of the possible action of SEBI in discarding the repurchase schemes of the company also deserves consideration. As already mentioned the company has already issued debentures to about two lacs investors aggregating to about Rs. 156 crores. The process of the first redemption of these debentures is already on and is due in the month of June 2000. The interest payable on these debentures in the month of June 2000 is being already forwarded to the investors. If SEBI decides to discard the repayment schemes approved by the investors, apart from the hardship and loss of reputation it will cause to the company and its promoters, the adverse effect on all these debenture holders is unimaginable. We sincerely hope and presume that SEBI would not precipitate such an avoidable and unwanted situation"

5.1 During the course of aforesaid personal hearing the representatives of the company had also submitted that they had filed a writ petition (Number 3268 / 2000) before the Hon'ble Madhya Pradesh High Court at Jabalpur for the issuance of a writ in the nature of certiorari to quash the press release dated May 16, 2000 . It was also submitted that the Hon'ble High Court vide its ex-parte interim order dated May 29, 2000 was pleased to restrain SEBI from taking any coercive steps against the 'company'. The 'company' further stated that as per their repayment scheme, the investors would be repaid by redeeming the Optionally Convertible Debentures (ROCDs) of the requisite value. Further , it is stated that the company has received positive consent from almost 80% of the investors in this regard.

5.2 The 'company' further informed that it is repaying 25% of the debenture amount i.e. Rs.40 crores by June 30, 2000. The 'company' has also submitted that the process has already commenced with the payment of Rs.7 crores on June 1, 2000 itself and the remaining amount of Rs.33 crores would be repaid by June 30, 2000 . In order to establish its contention the 'company' sought time to produce the certificate issued by its auditor and accordingly the 'company' was advised to submit the Certificate issued by the statutory auditors certifying the payment of Rs.40 crores till June 30, 2000 by July 15, 2000 . The said hearing was accordingly the said hearing was adjourned.

5.3 SEBI , further its letter dated September 04, 2000 advised the 'company' to appear before it for the hearing on September 15, 2000 . However the 'company' vide letter dated September 11, 2000 informed its inconvenience for attending the aforesaid hearing for the reasons stated therein and requested for a hearing in the month of October 2000. Accordingly, SEBI vide letter dated September 19, 2000 advised the 'company' to appear before it on October 13, 2000. The representative of the 'company' appeared before the then Chairman on the said date and submitted the certified copy of the proceedings of the Hon'ble High Court of Madhya Pradesh at Jabalpur in Writ Petition No. 3268/2000 filed by the 'company'. It was inter alia mentioned in the said proceedings that the order dated 29.5.2000 shall remain in force till next date of hearing .

5.4 The 'company' , in the aforesaid hearing, had also produced the certificate dated October 11, 2000 obtained from Anup Shrivastava & Associates , Chartered Accountants, which is extracted as below:

"We have verified the records relating to the implementation of the Repayment Scheme of Enbee Plantations Ltd (EPL), Bhopal and hereby certify as under :-

1. That EPL has issued 1,86,514 Debenture Certificates towards 1,57,06,522 nos. 10% 'Unsecured Redeemable Optional Convertible Debentures' (ROCD) of Rs. 100/- each to the investors amounting to Rs. 15,706.52 lacs.

2. That the debenture Certificates comprise of four parts viz. Part A, B, C & D of Rs. 25/- each redeemable / convertible on 1st June, 2000, 1st June, 2001, 1st June, 2002 and 1st June, 2003, respectively.

3. That against Part A debentures for a value of Rs. 3926.63 lacs redeemable on 1st June, 2000, EPL has received 96,897 nos. debenture certificates (Part A) for redemption of Rs. 25/- each against 88,42,300 debentures for a value of Rs. 2,210.57 lacs upto 31st August 2000.

4. EPL has issued 94,703 nos. of cheques amounting to Rs. 2,417.34 lacs to the debenture holders till date towards redemption of Part A of debenture certificates received for redemption inclusive of interest and has allotted equity shares towards the remaining value of Part A of the debentures.

This certificate has been issued on the basis of information and explanation made available to us by the management of the company".

5.5 SEBI , further , vide letter dated December 13, 2000 advised the 'company' to appear before it on December 29, 2000 . The 'company' vide letter dated December 21, 2000 requested SEBI to adjourn the hearing to the last week of January 2001 because of their senior counsel's pre-occupancy for the first fortnight of January. SEBI further vide its letter dated January 10, 2001 again advised the 'company' to appear before it on February 19, 2001 as requested by them . As the said hearing was postponed by SEBI to February 28, 2001 , the same was intimated to the 'company' vide letter dated February 14, 2001. The aforesaid hearing was attended by the representatives of the 'company'.

6.1 Further, SEBI vide letter dated March 7, 2001 informed the 'company' about the next date of hearing i.e. on April 17, 2001. The 'company' vide their letter dated April 10, 2001 requested for an adjournment and sought for a hearing in the month of May / June 2001. Accordingly, a hearing was granted to the 'company' on May 24, 2001 and the same was intimated to it by SEBI vide letter dated May 15, 2001. The 'company' vide letter dated May 22, 2001 requested for an adjournment of a hearing scheduled on May 24, 2001, accordingly, the 'company' was advised to appear for the hearing on June 11, 2001, vide SEBI's letter dated May 24, 2001. The company officials attended the hearing on June 11, 2001 and during the course of the hearing submitted a certificate

dated June 07, 2001 from their statutory auditors regarding repayment of Rs. 59.95 crore , inter alia, stating that payment to investors by way of annual returns, by sister concerns against purchase of Bonds/ Debentures , redemption of Debentures under repayment scheme.

6.2 An opportunity of hearing was further granted to the 'company' on August 29, 2001 and the same was intimated to it vide letter dated August 7, 2001. The said hearing was also again adjourned to September 26, 2001 on a request made by the 'company' vide its letter dated August 24, 2001. The aforesaid hearing was further adjourned to November 26, 2001 on the request made by the 'company' vide its letter dated September 25, 2001. The said hearing also could not take place due to the request made by the 'company' to grant them a hearing after January 10, 2002, accordingly, the 'company' was advised to appear before SEBI on January 16, 2002. The 'company' vide letter dated January 11, 2002 sought for an adjournment for the hearing scheduled for January 16, 2002 for the reasons stated therein and accordingly, the 'company' was advised to appear on February 8, 2002.

6.3 The 'company' vide letter dated February 7, 2002 informed SEBI inter alia that there are no pendency of VIP complaints as on January 31, 2002. The representatives of the 'company' appeared before the then Chairman on February 8, 2002 and reiterated the submissions made by them vide their letter dated May 25, 2000. As the hearing could not conclude on that day, the same was adjourned to May 15, 2002 and the 'company' was advised to appear before SEBI on the said date , vide letter dated April 4, 2002. The aforesaid hearing was preponed to May 13, 2002 instead of May 15, 2002 and the same was communicated to the 'company' vide letter dated May 7, 2002. The said hearing was also adjourned on the request made by the 'company' vide letter dated May 09, 2002, to July 12, 2002. The 'company' failed to appear before me on the aforesaid date as scheduled instead , vide letter dated July 10, 2002 reiterated its stand that it has not committed any violation of the said Regulations. The aforesaid letter was received by SEBI on July 15, 2002.

6.4 In view of the conclusion of the hearing and for proceeding further and moreover for protecting the interest of the investors , SEBI filed an application for the vacation of the aforesaid interim order passed by the Hon'ble High Court of Madhya Pradesh at Jabalpur in W.P no. 3268/00 filed by the 'company'. The aforesaid application filed by SEBI was heard by the Hon'ble High Court on December 17, 2002 and accordingly an order was passed which is extracted as below :-

" The investor's money is to be recovered. SEBI is making the steps . In the circumstances of the case , I do not find any justification to continue with the order dated 29.5.2000. The interim order is vacated.

M(W) P No. 559/2002 is disposed of. Let SEBI take a decision in accordance with law"

6.5 I have perused the show cause notices, the replies, documents and the submissions made by the 'company' before SEBI during the course of its personal hearings as mentioned above. It is also worth mentioning the observation made by the Hon'ble High Court in its order dated December 17, 2002 that "The investor's money is to be recovered. SEBI is making the steps".

7.1 On a perusal of the aforesaid documents and the submissions, following issues have arisen for consideration before me.

Issues:

(1) Whether the schemes through which the company collected money is a collective investment scheme so as to attract the provisions of the SEBI Act, 1992 and SEBI (Collective Investment Schemes) Regulations, 1999

(2) Whether they have complied with the provisions of the SEBI Act, 1992 and SEBI (Collective Investment Schemes) Regulations, 1999.

(3) Directions, if any, to be passed against the 'company'

Issue no.(1)

7.2 The Collective Investment Management Company which intends to operate or operating the collective investment schemes at the time of the notification of SEBI (Collective Investment Schemes) Regulations, 1999 has to comply with the various provisions mentioned therein. The said Regulations has been framed after much deliberation and discussion to restrict the mushrooming growth of plantation companies which offer high return without having any financial fundamentals and growth results.

7.3 The term 'Collective Investment Scheme' has been defined in section 11AA of SEBI Act, 1992 (hereinafter referred to as the said Act) and the same has been adopted in regulation 2(2) of the said Regulations . Section 11AA of the said Act is extracted , as under:-

11AA.(1) Any scheme or arrangement which satisfied 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 demand 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 the 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”.

7.4 It can be seen that the 'company' by its schemes i.e. 'Enbee Bonds', 'Enbee Agro Bond' and 'Enbee Agro Bonds' under Sevan Super and Sevan Bonanza plans had pooled money/property from various investors for the purpose of its management and for the purpose of giving profits to the said investors who did not have any day to day control of the management of the scheme. The said conditions are sufficient to prove that the 'company' was running collective investment schemes as specified under the provisions of the said Act and the said Regulations.

7.5 On a perusal of the Information Memorandum submitted by the company, the following modus operandi of the schemes are observed:

(a) the scheme member hands over the land to the plantation company to carry out the agricultural / plantation activities.

(b) the amount handed over by the investor is, as per the agreement, a non refundable advance to the plantation company.

(c) part of the amount paid by the investor as aforesaid is paid as license fee to the land owner on behalf of the investors and the balance is retained by the plantation company for utilization towards its agricultural operations /business.

8.1 The above modus clearly proves that the schemes which were in operation and through which the company mobilized money from the public are collective investment schemes coming under the purview of SEBI Act, 1992 and SEBI (Collective Investment Schemes) Regulations, 1999. It is also worth mentioning that 'company' in its letter dated June 02, 2002 had admitted that –

“these schemes fell within the definition of collective investment schemes defined under the SEBI (Collective Investment Schemes) Regulations, 1999”.

In the Information Memorandum circulated by the 'company' it has been stated that its schemes fall within the definition of “ Collective Investment Schemes” as defined under the said Regulations.

8.2 In view of the above facts, it is proved that the schemes of the 'company' which were in operation and mobilised money from the investors at the time of the notification of the SEBI (Collective Investment Schemes) Regulations, 1999, are collective investment schemes coming under the purview of SEBI Act, 1992 and SEBI (Collective Investment Schemes) Regulations, 1999.

Issue (2)

9.1 Having come to the conclusion that the company was running collective investment schemes and mobilised money from the investors through its various schemes as mentioned above, the next issue to be decided is whether the company has complied with the provisions of the said Act and the said Regulations i.e SEBI Act, 1992 and SEBI (Collective Investment Schemes) Regulations, 1999.

9.2 It has been proved that the 'company' was running collective investment schemes which are subject to the regulatory measures provided in the said Regulations. The schemes which were already in operation at the time of the notification of the said Regulations i.e October 15, 1999 is an existing scheme, attracting the provisions of chapter IX of the said regulations. Therefore, the schemes of the 'company' are termed as existing collective investment schemes. Chapter IX of the said regulations prescribes the steps to be taken by the existing collective investment schemes. In this context, the contents of section 12(1B) of the said Act, which is already extracted in the above para, is also relevant. In fact Chapter IX by itself, to some extent is a self contained code as far as the existing collective investment schemes are concerned. The said Chapter inter alia details the method and manner of obtaining the provisional registration, the manner of repayment and winding up the schemes which fails to comply with regulation 73(1) of the said Regulations.

9.3 In the present matter the 'company' in its reply dated December 17, 1999 stated that they are not desirous of obtaining provisional registration from SEBI and therefore they had formulated a scheme of repayment. As the company has stated that they are not desirous of obtaining provisional registration then the 'company' has to wind up its schemes and repay its investors. The extract of the relevant provisions in the said Regulations are mentioned below:

73. Manner of repayment and winding up.—(1) An existing collective investment scheme which,—

(a) has failed to make an application for registration to the Board; or

- (b) has not been granted provisional registration by the Board; or
- (c) having obtained provisional registration fails to comply with the provisions of regulation 71;

shall wind up the existing scheme.

(2) The existing collective investment scheme to be wound up under sub-regulation (1) shall send an information memorandum to the investors who have subscribed to the schemes, within two months from the date of receipt of intimation from the Board, detailing the state of affairs of the scheme, the amount repayable to each investor and the manner in which such amount is determined.

(3) The information memorandum referred to in sub-regulation (2) shall be dated and signed by all the directors of the scheme.

(4) The Board may specify such other disclosures to be made in the information memorandum, as it deems fit.

(5) The information memorandum shall be sent to the investors within one week from the date of the information memorandum.

(6) The information memorandum shall explicitly state that investors desirous of continuing with the scheme shall have to give a positive consent within one month from the date of the information memorandum to continue with the scheme.

(7) The investors who give positive consent under sub-regulation (6), shall continue with the scheme at their risk and responsibility:

Provided that if the positive consent to continue with the scheme, is received from only twenty-five per cent or less of the total number of existing investors, the scheme shall be wound up.

(8) The payment to the investors, shall be made within three months of the date of the information memorandum.

(9) On completion of the winding up, the existing collective investment scheme shall file with the Board such reports, as may be specified by the Board.

74. Existing scheme not desirous of obtaining registration to repay.—An existing collective investment scheme which is not desirous of obtaining provisional registration from the Board shall formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in regulation 73."

9.4 On a perusal of the above cited regulations, it is clear that if an existing collective investment scheme is not desirous of obtaining provisional registration for its existing collective investment schemes, then the said scheme which was in operation on the appointed day, i.e., October 15, 1999 has got only one option i.e. to wind up the schemes and formulate a scheme of repayment and make such repayment.

9.5 The argument of the company that its case falls under regulation 74 and not under regulation 73 of the said Regulations is not justified and can not be accepted. The said argument of the company is self contradictory and not justifiable. It is the case of the company that it has circulated the Information Memorandum signed by all the directors to the investors of the schemes. The company further submitted that the aforesaid Information Memorandum contains the details of affairs of the schemes, the option to the investors to continue with the schemes etc. These are the requirements specified in regulation 73 of the said Regulations. Therefore, the contention of the 'company' that their case falls under 74 and not under 73 is not correct and contradictory to their own statement and therefore can not be accepted.

10.1 In the Information Memorandum which is alleged to be circulated by the company, it is stated that it has fulfilled all its due commitments under the schemes so far and are no defaults whatsoever towards any investors. Under the head 'objective of this memorandum', the company has stated that the same has been framed with a view to provide an overall picture of the Enbee Agro Bonds (sevan) scheme of the company and formulate a scheme of repayment by giving a reasonable return to all the investors as envisaged under regulation 74 of the said Regulations. The company has also stated that the special resolution pursuant to section 81(1A) of the Companies Act, 1956 has been passed by the shareholders at their extraordinary general meeting held on November 22, 1999 giving their consent to issue shares to persons other than existing shareholders as a part of the repurchase scheme.

10.2 Under the Head "The state of affairs of the existing scheme" in its information memorandum the company has stated that it had floated Enbee Bond Scheme which opened on November 1, 1997 and closed on August 31, 1998. The company has also stated that the amount payable to the investors under the cumulative scheme of Enbee Agro Bonds (Sevan) shall be their original investment amount as increased at the rate of 10% annual rate of return from the month of their investment upto February 29, 2000. On a perusal of the "Information Memorandum" circulated by the company to its investors it was noted that under its proposed repayment schemes, the schemes were not being wound up. Instead, the company had proposed to issue Redeemable Optionally Convertible Debentures (ROCDs) having no connection with the assets of the scheme. Further it was observed that the company proposed to discharge its liabilities in the aforesaid manner by starting repayment from June 1, 2000 till June 1, 2003. This again is in violation of the said Regulations which provides that the repayment should be made within three months from the date of the Information Memorandum.

10.3 It has been stated by the company in the Information Memorandum that the amount so arrived shall be crystallized and frozen as on February 29, 2000. The company has also given a comparison of buy back returns under the original scheme and returns under repurchase scheme in its information memorandum. It has been further stated that the debentures will carry 10% simple rate of interest and also that the investors shall have an option of redeeming their debentures by conversion into equity shares of the company on the basis of independent recognised valuator on the dates given therein. The company has stated that on implementation of the repurchase scheme with effect from March 1, 2000 the original scheme shall be deemed to have come to an end.

10.4 If the 'company' is not desirous of obtaining provisional registration from SEBI they are duty bound to wound up its schemes and they are not entitled to give an option to its investors as regards the continuance of its schemes. In the present matter, in its Information Memorandum, the company had given an option to its investors for the continuance of its schemes. The 'company', in the present matter can not continue with its schemes, as themselves stated that they are not desirous of obtaining provisional

registration form SEBI. Assuming, without admitting that , the contention of the company is correct , even regulation 74 mandates that the repayment should be made as per regulation 73 of the said Regulations. Regulation 73 specifies that the payment to the investors shall be made within 3 months from the date of the Information Memorandum.

10.5 It is the case of the company that they had circulated an Information Memorandum to its investors. If the company had done so, they have to comply with the other requirements relating to the Information Memorandum and the subsequent formalities prescribed under the said Regulations. In the winding up proceedings under regulation 73 of the said Regulations, the first and foremost requirement of the said is that an information memorandum is to be send to its investors within 2 months from the date of intimation from SEBI and the same should be dated and signed by all the Directors .The aforementioned information memorandum inter alia should contain the state of affairs of the scheme and the amount of repayable to each investor and the manner of its calculation.

11.1 On a perusal of the Information Memorandum it can be observed that though it is dated , the same is not signed by even a single director , thereby failing the requirement of the regulation that the Information Memorandum should be signed by all the directors. The omission to sign the said document is in effect a serious violation of the said Regulations. The contention of the 'company' that it had an option of not applying for provisional registration, if it formulate a scheme of repayment under regulation 74, is not satisfactory as the 'company' has to not only repay the investors of the schemes but also to wind up the schemes. The repayment provided under regulation 74 of the said Regulation is to be ultimately carried out as provided in regulation 73. It has been specifically provided in regulation 74 that the repayment to the investors should be made as per 73. The 'company ' can not lay down a criteria of its own for making the repayment to its investors. The method and manner of calculation of the amount arrived etc should be made known to the investors prior to the repayment .

11.2 SEBI has incorporated various conditions in the said Regulations in order to protect the investors who have put their hard earned money in the collective investment schemes which offered lucrative return , so as to enable them to protect the investors and to have transparent operations of the schemes. Therefore, by non complying to the mandatory requirements prescribed under regulation 73 of the said Regulations it is proved that the company has violated the said provisions.

11.3 The contention of the company that its case falls under regulation 74 of the said Regulations and not under regulation 73 is not tenable, self contradictory and hence can not be accepted. The company vide letter dated April 11, 2000 contended that regulation 74 of the said Regulations is an independent regulation and envisages voluntary action on the part of the schemes. On a perusal of regulations 73 and 74 it is difficult to believe that regulation 74 is independent and instead it depends upon regulation 73. It is also not correct to contend that SEBI has failed to examine the reply dated April 11, 2000 filed by the company. The company further reiterated its submissions vide letter dated June 02, 2000.

11.4 The contention of the company that the issue of debentures by the them to the investors with their consent amounted to effectual repayment can not be accepted as the same has not been done according to the said Regulations. In this connection it is pertinent to note that the company has not produced any documentary evidence to show that they have obtained consent from the investors, with respect to its effectual payment. However, the duty of the 'company' is to follow the statutory requirements and they can not bye pass the said requirements on the pretext that they have received investor's consent for their activities, which is otherwise not proved by the company. This can be proved from the fact that SEBI, even now, in receipt of complaints from the investors of the schemes of the 'company' alleging that they have not received their repayment from the company even after considerable point of time.

11.5 It is known to the 'company that they are not going to obtain provisional registration from SEBI which is proved from its letter dated December 17, 1999 addressed to SEBI. There is also negligence on the part of the 'company' to comply with requirements of the said Regulation. It can be seen that the 'company' has got sufficient opportunities to comply with the said requirements. The 'company' could not make its commitments even after the completion of more than 3 years. Further it is mandatory on the part of the company to repay to its investors within 3 months from the date of the Information Memorandum. By not repaying the money to its investors within the aforesaid 3 months , the company has violated the provisions of regulation 73 (8) of the said Regulations.

12.1 The said Regulations stipulates that the repayment to the investors should be made within 3 months from the date of the Information Memorandum irrespective of the fact that the repayment has been done in regulation 73 or 74 of the said Regulations. In the present matter, it can be seen from the Information Memorandum circulated by the company that the repayment is not completed within the aforesaid 3 months. The company in turn fixed a time frame for the repayment which goes out of the said 3 months. Ultimately as far as the repayment is concerned, SEBI is still getting complaints from the investors of the schemes of the company.

12.2 The repayment by way of issuance of redeemable optionably convertible debentures is not as per the provision of the said Regulation and the same can not be accepted as an effective payment as per the said Regulations. It is also proved that the repayment effort taken by the 'company' has also failed as SEBI is still receiving the complaints form various investors of the schemes. A total of 2896 complaints are pending as on December 31, 2002 against the company.

12.3 The aforesaid requirements are mandatory and the 'company' can not fix the amount of repayment without the complying the aforesaid requirements. Assuming for argument sake that the 'company' is correct in its submission that it can formulate a scheme regarding its repayment, then as per the express provision of regulation 74 the 'company' has to repay to its investors as specified in regulation 73. By not repaying within the stipulated time as prescribed under the said Regulations, the company has not only violated the statutory requirements but also not protected the interest of the investors. Therefore the contention of the company that it has protected the interest of the investors of its schemes can not be believed. The fact that the company still unable to fulfill its commitment to the investors is by itself detrimental to the interest of the investors. It can be observed from the method adopted by the company for its alleged repayment , that the company is only interested in the manner of repayment and not on the actual repayment. Moreover till date , the company has not produced any satisfactory evidence to prove that it has repaid to investors in full .

12.4 Therefore, the contention of the company that the issue of debentures with the consent of the investors is an effectual repayment can not be justified and not tenable and not based on the larger interest of the investors. . It is proved that the company

has violated the provisions of regulations 73 and 74 of the said Regulations .

12.5 It is to be noted here that several opportunities were given to the 'company' to comply with the said Regulation. The company has not submitted any document to show that it has repaid all its investors. Further, the company vide letter dated June 11, 2001 enclosed a certificate obtained from its Chartered Accountant , Anup Shrivastava & Associates, dated June 07, 2001 stating that out of the total amount of Rs. 12,296. 98 lakhs collected from the investors they had repaid Rs. 5995.19 lakhs . It can be observed that even the company could not repay 50% of the mobilised amount. Therefore the company itself has admitted that it could not make the entire repayment to the investors of its schemes which is violation of the said Regulations.

13.1 It is to be noted that the company vide letter dated September 25, 2001 had informed SEBI that " we wish to inform you that we are in the process of arranging funds which are likely to be available with us something during November this year. The repayment to the investors shall be made in full by the year end". It is also proved from the said letter that the company could not repay the money to its investors even after 1 year and 9 months.

13.2 The company, further , vide letter dated Feb08, 2002 stated that they shall be making repayment to their investors of more than Rs. 10/- crores in the next 10 days and requested SEBI to adjourn the hearing after March 31, 2002 . The company vide letter dated February 07, 2002 had inter alia stated following

" 1. During June 01 to Jan 02, 2002 , we have had about 750 complaints for pay out of approx. Rs. 2700 lacs out of which we have complied 422 complaints and paid out Rs. 16.55 lacs including 20 VIP complaints. Remaining 328 complaints of Rs. 10.50 lacs are in the process of compliance and shall be settled within next 15 days or so, compliance in due format shall follow".

13.3 The above admission in itself proves that the company has contravened the provisions of the said Regulations. It is very important from the side of the investors that , SEBI , pursuant to the aforesaid Information Memorandum circulated by the 'company' received various complaints from the investors with respect to the repayment of their investment . The investors have also requested SEBI to direct the company to release their payment. The complaints received by SEBI were sent to the company for necessary action at their side .

13.4 In one such complaint , Shri. Jethmal Lakhani vide letter dated February 22, 2000 informed SEBI that the 'company' in its letter dated January 22, 2000 has offered to convert his investment into their unsecured convertible Debentures as a compulsion instead of repayment in cash . SEBI has been regularly forwarding investor complaints received by it against the company, advising it to redress the same.

13.5 SEBI had also sent the complaints received from Shri Janardhan Joshi and Shri SV Mansukhani regarding the repayment of the company vide letters dated May 05, 2000 and May 08, 2000 . SEBI had also forwarded the copy of the complaint received from shri. VG Nigam, Chairman , BSRB, Bhopal to the company, vide its letter dated October 11, 1999. SEBI had also vide its letter dated August 11, 2000 forwarded the complaint of Smt. Sudha Dubey to the company for redressal.

14.1 SEBI vide letter dated September 18, 2001 had also forwarded the copies of 127 complaints received from the investors for redressal. SEBI received a letter dated May 27, 2002 from Enbee Plantation Investors Association in the matter of non receipt of redemption amount with interest . The same was informed to the company at the subsequent hearing. SEBI has received various complaints from the investors regarding the non receipt of the repayment. SEBI had also sent a copy of the letter no. ROC-G/COMPLAINT/STA/T/2930 dated October 08, 2002 , which contains various complaints, sent by Asst. Registrar of Companies, MP & Chattisgarh, to the company for redressal .

14.2 It is also important to mention that the investors of the company have not only complained to SEBI in this regard but few investors have also approached the Hon'ble High Court of Madhya Pradesh by way of a Writ Petition No. 6409/2002 – Shilpi Agarwal and ors Vs. Enbee Plantations Ltd., alleging therein that the company has failed to pay the redemption amount . In the aforesaid writ petition they have made SEBI also one of the respondents with the company.

14.3 As a matter of fact, the company had formulated a scheme of restructuring and not a scheme for winding up of the schemes and effective repayment to its investors as envisaged in the said Regulations . This is in violation of the provisions of Section 12 (1B) of the SEBI Act, 1992 and Regulation 5(1) read with Regulation 68(1), 68(2), 73 & 74 of the said Regulations.

14.4 The company has not adduced any satisfactory evidence to show that it has taken necessary efforts to return the money to all its investors. There is nothing on record which will enable the company to prove that they had complied with the requirements of the said Regulations. On the other hand SEBI is in receipt of complaints from the investors on the issue of non payment of their investment in the schemes of the company. Assuming, without admitting, that even if the investors are repaid as per the scheme proposed by the company vide its Information Memorandum dated 01.12.1999, they would get back their money only after 01.06.2003, which itself is not a compliance of the Regulations which envisages that the repayment after winding up the schemes has to be completed within 3 months from the date of Information Memorandum.

14.5 In view of the reasons stated above it is proved that the company has not complied with the requirements of SEBI Act, 1992 and SEBI (Collective Investment Schemes), 1999 and violated the specific provisions of regulation 73 and 74 of SEBI (Collective Investment Schemes), 1999 .

Issue no.(3)

15.1 It has been proved that the company mobilised money through various collective investment schemes without complying with the statutory requirements as provided under the SEBI Act, 1992 and SEBI (Collective Investment Schemes) Regulations , 1999 . The company violated the specific provisions of regulation 73 and 74 of SEBI (Collective Investment Schemes) Regulations, 1999, by not winding up and repaying to its investors as specified therein. The aforesaid violations of the company are serious in nature. The fact that the company has got sufficient time to comply with the provisions for winding up and repayment and by non complying to the aforesaid provisions, the company has not only violated the statutory requirements but also failed to repay its investors. It is also found that the company is still unable to fulfill its commitments as specified in the said Regulations. SEBI is in receipt of complaints from various investors regarding the non payment of money to them by the company. As on December 31, 2002 as much as 2896 complaints are awaiting redressal by the company . Therefore, the company is not entitled for any leniency in the matter . Further SEBI vide letter dated January 20, 2003 forwarded to the company a reference received from the Commissioner ,

Institutional Finance & Secretary to Govt. of Madhya Pradesh ,enclosing the compliant of one Shri Rakesh Gupta against it for redressal/ comments . However , the said letter was returned undelivered by the postal authorities with the comments " Refused to accept, Return". It is , therefore, establishes that the company not only redress the complaints but also reluctant to accept the complaints lodged against it.

Therefore, in exercise of the powers conferred upon me under Section 11B read with Section 4(3) of the SEBI Act, 1992 and Regulation 65 of SEBI (Collective Investment Schemes) Regulations, 1999, I, hereby direct the company to refund the money collected under its Collective Investment Schemes with returns which is due to the investors as per the terms of the offer within a period of one month from the date of this Order failing which the actions as permitted under SEBI Act, 1992 and SEBI (Collective Investment Schemes) Regulations, 1999 would be adopted .

G.N. BAJPAI

Chairman

Securities and Exchange Board of India

Place: Mumbai

Date: 14 th Feb, 03