

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: Dr. T.C. NAIR, WHOLE TIME MEMBER

IN THE MATTER OF PEARLS GREEN FORESTS LIMITED

Date of hearings: April 5, 2006, July 7, 2006, November 24, 2006,
July 6, 2007

Appearances :

For Noticees: Shri Vinay Bhasin, Senior Advocate
Shri Rohit Tandon, Advocate
Shri S. Bhattacharya, General Manager, PGFL

For SEBI: Shri Amarjeet Singh, Regional Manager
Ms. Jyoti Jindgar, Deputy General Manager
Ms. Radhika Varma, Assistant General Manager
Ms. Kshama Chavan, Legal Officer

ORDER

DIRECTIONS UNDER SECTION 1 OF THE SEBI ACT, 1992 READ WITH REGULATIONS 65, 68, 69, 73 AND 74 OF SEBI (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 1999 IN THE CASE OF M/s PGF LIMITED (FORMERLY KNOWN AS PEARLS GENERAL FINANCE LIMITED & ALSO PEARLS GREEN FORESTS LIMITED)

1. M/s. PGF Limited (hereinafter referred to as "PGFL"/ "the company") was originally incorporated on January 19, 1983 as Pearls General Finance Ltd. Its name was changed to Pearls Green Forests Ltd. in 1988 and finally to PGF Ltd. in 1997. PGFL is stated to be operating two kinds of schemes - firstly, joint venture schemes and secondly, schemes involving sale, purchase and development of agricultural land.
2. It came to the notice of Government of India that there were entities

which were issuing instruments against investments such as agro bonds, plantation bonds, etc. by offering very high rates of return which were inconsistent with the normal rate of returns in such schemes. Such entities mobilized huge amounts from the public and then misutilised these funds, for purposes not disclosed at the time of inviting investment, thereby not only causing loss to the investors who lost their lives' savings with such unscrupulous entities, but also eroding the confidence of the general public. Considering the high element of risk associated with such schemes, the Central Government felt that it was necessary to set up an appropriate Regulatory framework to regulate such entities. Hence, in order to protect the interest of the investors and to ensure that only legitimate investment activities are carried on, vide Press Release (hereinafter referred to as 'PR') dated November 18, 1997, the Central Government communicated its decision that schemes through which instruments such as agro bonds, plantation bonds, etc. are issued by the entities would be treated as Collective Investment Schemes (hereinafter referred to as "CIS") under the provisions of the SEBI Act, 1992 (hereinafter referred to as "SEBI Act") and directed Securities and Exchange Board of India (hereinafter referred to as "SEBI") to formulate Regulations for the purpose of regulating these Collective Investment Schemes.

3. Pursuant to the Central Government's PR, SEBI vide PR dated November 26, 1997 notified that, as per the directions of the Central Government, it had initiated action for drafting regulations for Collective Investment Schemes including Plantation Schemes, which would be issued in due course. It was further stated that any Collective

Investment Scheme desirous of taking benefit of the proviso to section 12 (1B) of the SEBI Act, 1992, was required to send specified information to SEBI within 21 days from the date of the PR. SEBI also issued a Public Notice (hereinafter referred to as 'PN') dated December 18, 1997, reiterating the provisions of Section 12 (1B) of the SEBI Act and directed the existing Collective Investment Schemes who wished to avail of the benefit of the proviso to the said Section 12 (1B) to submit specified information to SEBI by January 15, 1998.

4. Vide Order dated February 24, 1998, Chairman, SEBI, in exercise of the powers conferred under Section 11B read with the proviso to Section 12 (1B) of the SEBI Act directed that no existing Collective Investment Scheme could mobilize any money from the public or the investors under the existing schemes unless the instruments of such schemes carried a rating from one of the four approved Credit Rating Agencies.
5. PGFL did not file information/ details with SEBI regarding its Collective Investment Schemes pursuant to the aforesaid PR dated November 26, 1997 and PN dated December 18, 1997, issued by SEBI and continued to mobilize funds in violation of the directions issued by SEBI vide the said PR/ PN as well as Order dated February 24, 1998 issued by Chairman, SEBI.
6. SEBI vide letter April 20, 1998, advised the company to file the requisite details/ information in terms of the aforesaid PR/ PN dated November 26, 1997/ December 18, 1997. In response, PGFL vide letter dated May 2, 1998, informed SEBI that it was not issuing any instruments in the

nature of agro bonds.

7. Meanwhile, the Hon'ble High Court of Delhi vide interim orders dated October 7, 1998 and October 13, 1998, in the matter of Shri S.D. Bhattacharya & Others vs. SEBI & Ors. in CWP 3352/98, inter-alia directed that

"all plantation companies, agro companies and companies running Collective Investment Schemes shall be restrained from selling, disposing of and /or alienating their immovable properties or parting with the possession of the same. The directors of the companies are also interdicted from transferring their immovable properties in any manner whatsoever. They shall also not part with the possession thereof.

..... the companies shall not float any new scheme to raise further funds without the permission of the court.

..... in so far as the existing schemes are concerned, the companies shall strictly comply with the circular dated February 24, 1998.

8. Vide order dated October 13, 1998, the Hon'ble High Court also clarified and directed that the directions contained in its earlier Order dated October 7, 1998 would apply to plantation companies, agro companies and companies running CIS irrespective of whether they were mentioned in Civil Misc. Appln. Nos. 9639/98 and 101/98, in the list of companies presented before the Court.
9. PGFL continued to mobilize money in violation of the aforesaid orders dated October 7, 1998 and October 13, 1998 of the Hon'ble High Court of Delhi.
10. In view of the above, SEBI issued a Show Cause Notice (hereinafter

referred to as "SCN") dated December 24, 1998 to PGFL for mobilizing funds in contravention of the directions issued by SEBI vide PR dated November 26, 1997 and Order dated February 24, 1998. The directions issued by the Hon'ble High Court of Delhi vide orders dated October 7, 1998 and October 13, 1998 in respect of compliance with SEBI's directions as mentioned above, were also brought to the company's notice. In response, vide letters dated January 9, 1999, February 2, 1999 and March 8, 1999, the company claimed that it was unaware of the orders issued by the Hon'ble High Court of Delhi in the matter of S.D. Bhattacharya & Ors. vs. SEBI & Ors. and requested for copies of the same. Further, the company submitted that it would be able to reply to SEBI's SCN dated December 24, 1998 only on receipt of copies of the aforesaid orders. These were forwarded to the company vide letter dated March 11, 1999. However, PGFL failed to respond to SEBI's SCN dated December 24, 1998.

11. Pursuant to the directions issued by the Central Government vide PR dated November 26, 1997, SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as the 'CIS Regulations') were notified on October 15, 1999. As per the CIS Regulations, any person who immediately prior to the commencement of the CIS Regulations was operating a CIS was required to make an application to SEBI for grant of registration within a period of two months from the date of notification of the CIS Regulations.
12. Thereafter, vide PN dated December 10, 1999, SEBI intimated to all the existing CIS that in terms of Regulation 73 (1) of the CIS Regulations, in

case an existing CIS failed to make an application for registration with SEBI, it would be required to wind up the existing schemes and repay the investors. Further, it was also intimated that failure to comply with the provisions of the CIS Regulations would make the concerned existing Collective Investment Scheme liable for penal action under the provisions of the SEBI Act, 1992 and the CIS Regulations.

13. The regulatory requirements of sending an information memorandum, repayment and filing up of a detailed report as per SEBI's format were brought to the notice of existing CIS vide SEBI's PN dated February 22, 2000. SEBI, vide a further PN published on March 27, 2000, inter-alia drew the attention of investors/ existing CIS to the requirement that for those entities which had not made an application for grant of registration or were not desirous of obtaining provisional registration, the last date to make repayment pursuant to winding up was May 28, 2000.
14. Meanwhile, in the interest of investors and requests received from various entities, SEBI extended the last date for submitting an application for grant of registration by existing Collective Investment Schemes to March 31, 2000 which fact was intimated by SEBI vide PR and PN dated March 15, 2000 and March 27, 2000 respectively.
15. Despite issuing numerous PNs and PRs regarding the requirements of the CIS Regulations, PGFL neither applied for registration nor informed SEBI about the winding up of its schemes and repayment to the investors in terms of the provisions of the CIS Regulations.

16. Since, PGFL continued to mobilize funds under different schemes without obtaining registration with SEBI, it was noted that the company had prima facie violated the provisions of section 12 (1B) of the SEBI Act, 1992 and Regulation 5 (1) read with Regulation 68(1), 68(2), 73, 74 & 69 of the CIS Regulations. Therefore, vide SCN dated August 31, 2000, PGFL was called upon to show cause as to why appropriate action should not be initiated against it in terms of provisions of SEBI Act and the CIS Regulations. However, no response was received from PGFL to this SCN either.
17. In view of PGFL's non-compliance with the provisions of the CIS Regulations as well as SEBI's directions and its failure to submit any replies to SCNs dated December 24, 1998 and August 31, 2000, vide order dated February 20, 2002, the then Chairman, SEBI directed PGFL neither to collect any money from investors even under the existing schemes, nor to launch any new schemes without obtaining registration from SEBI. Further, the company was directed to refund the money collected under the scheme(s) with returns due to the investors as per the terms of the offer within a period of one month from the date of the order failing which further actions as detailed therein would follow.
18. PGFL preferred to challenge the aforesaid order by way of Civil Writ Petition No. 4620/2002 before the Hon'ble High Court of Punjab and Haryana at Chandigarh, wherein PGFL obtained an ex-parte interim stay vide order dated March 19, 2002 from the Hon'ble Court on the ground that SEBI had not taken cognizance of its responses to the SCN. On SEBI's submission that it was ready to give a hearing to the company

and to consider all the submissions which may be made by the company, the Hon'ble High Court was pleased to dispose of the writ petition vide its order dated April 29, 2002, with a direction to PGFL to file responses to the SCNs sent earlier by SEBI. SEBI was directed to grant a personal hearing, if sought by PGFL and then pass an order within 4 weeks after the conclusion of the hearing. The implementation of SEBI's order dated February 20, 2002 was kept in abeyance by the Hon'ble High Court, till such time.

19. Pursuant to the aforesaid directions of the Hon'ble High Court of Punjab and Haryana, several opportunities for personal hearing were granted to PGFL. These hearings took place on July 27, 2002, August 31, 2002 and November 11, 2002 before the then Chairman, SEBI. Personal hearings were also scheduled on July 12, 2002, September 25, 2002, October 11, 2002 and October 16, 2002, which were adjourned on the requests made on behalf of PGFL. The company filed several written submissions vide its letters dated May 20, 2002, June 29, 2002, July 25, 2002, August 28, 2002, August 31, 2002, September 13, 2002, September 21, 2002, November 11, 2002 and November 12, 2002.
20. The then Chairman, SEBI, after considering the replies of PGFL, the oral submissions of the company and the material available on record, passed an order dated December 6, 2002, wherein he observed that the schemes floated by PGFL fell squarely within the definition of Collective Investment Schemes as defined under section 11AA of the SEBI Act. He also observed that PGFL as an existing Collective Investment Scheme was required to obtain registration from SEBI for continuing its existing

schemes and also to launch new schemes. As the company had not applied for registration it was required to wind up its scheme(s) and repay the investors in terms of Regulation 74 of the CIS Regulations, strictly in the manner specified under Regulation 73 of the said Regulations. Vide this order PGFL was directed:

“neither to collect any money from investors nor to launch any new schemes and further direct PGFL to refund the money collected under the scheme(s) with returns which is due to investors as per the terms of the offer within a period of one month from the date of the this order failing which SEBI may initiate actions as deemed fit against PGFL as available under the SEBI Act, 1992 and the SEBI (Collective Investment Scheme) Regulations, 1999.”

21. Being aggrieved by the SEBI's order dated December 6, 2002, PGFL filed another Writ Petition No. 188/2003 before the Hon'ble High Court of Punjab and Haryana. During the proceedings in the said matter, the learned counsel for PGFL made detailed submissions regarding the company's schemes i.e. both Joint Venture Schemes as well as the schemes statedly pertaining to sale, purchase and development of agricultural land.
22. During the hearings in the matter before the Hon'ble High Court, the learned counsel for PGFL informed the Court that the company had taken a decision to disband all schemes other than its operations relating to the business connected with the sale and purchase of agricultural land and/ or sale and development of agricultural land. In view of this, the Hon'ble High Court of Punjab and Haryana, inter-alia, passed the following order on May 28, 2004:

“Learned counsel for the petitioners, during the course of arguments unilaterally offered to pay back all deposits to the investors enrolled under the schemes except the schemes other than the existing business of sale and purchase and development of land. In view of the above, we grant liberty to the petitioners to make the aforesaid refund, as expeditiously as possible and preferably before the next date of hearing. The petitioners shall also tender a status report supported by an affidavit in the aforesaid context on the next date of hearing, with a copy in advance to the counsel for the respondents.”

23. While dismissing the Writ Petition vide order dated July 26, 2004, the Hon’ble High Court of Punjab and Haryana, inter alia held that:

“..... on the analysis of the activity of the PGFL, (as have been projected by it), it is clear that PGFL satisfies all the characteristics/ ingredients of a “collective investment scheme”, expressed, in section 11AA(2) of the SEBI Act. The PGFL is, therefore, a “collective investment scheme” for the purposes of the SEBI Act.

..... There is no legal infirmity in the impugned order of the Board dated December 6, 2002.”

24. Further, specifically in respect of the company’s schemes statedly relating to sale, purchase and development of agricultural land, the Hon’ble High Court vide aforesaid order held that:

“..... the agreement to sale (Annexure P.6) and the sample sale deed (annexure P.7) relied upon to demonstrate that the sole activity of the PGFL, is sale and purchase of agricultural land and/ or sale and development of agricultural land, is a sham and a mere paper transaction. The said activity of the sale and purchase of agriculture land and/ or development of

agriculture land, projected by the PGFL, in our view, is with the aim and object of screening its real activities."

25. As regards the company's offer to repay investors under all schemes except the scheme statedly pertaining to sale, purchase and development of agricultural land, the Hon'ble High Court in its aforesaid order held that:

"..... It would be pertinent to mention that the learned counsel for the petitioners during the course of hearing of the instant case on May 28, 2004, unilaterally offered, to pay back all deposits, to the investors enrolled under all scheme except the scheme pertaining to the sale and purchase of the agricultural land and/ or sale and development of agricultural land, (which alone remained the subject matter of consideration during the course of deliberations in the instant case. Through Civil Misc. Application No. 11405 of 2004, the steps taken by the petitioners, to fulfill the undertaking recorded on May 28, 2004, were placed on record of this case. The details placed on record revealed that much still remains to be done in furtherance of the statement made on May 28, 2004. In the aforesaid circumstances, it will be just and appropriate to direct PGFL to complete the aforesaid exercise within a further period of two months whereafter, it shall handover entire documentation relating to the refunds made, including the undisbursed funds to the Board. The Board shall than complete the remaining exercise of disbursement of funds, in accordance with law."

26. Pursuant to the dismissal of the said petition and in light of the finding of the Hon'ble High Court of Punjab and Haryana that there was no legal infirmity in SEBI's order dated December 6, 2002, PGFL was required to comply with the directions issued by SEBI vide the said order. PGFL was, therefore, liable to repay all the investors under its schemes statedly relating to sale, purchase and development of

agricultural land within one month from the date of the Hon'ble High Court's Order dated July 26, 2004 as this was the time frame for repayment granted by the then Chairman, SEBI vide Order dated December 6, 2002. However, as regards the company's Joint Venture schemes, in view of the Hon'ble High Court's specific directions, the company was liable to repay the investors under these schemes within two months of the Court's order dated July 26, 2004.

27. Subsequently, PGFL filed a Special Leave Petition (hereinafter referred to as 'SLP') No. 19748/2004 on August 23, 2004, before the Hon'ble Supreme Court of India challenging the aforesaid order of the Hon'ble High Court of Punjab and Haryana. Upon hearing the SLP on October 1, 2004, the Hon'ble Supreme Court was pleased to grant leave and extended the time for repayment to investors under the Joint Venture Schemes by a period of 10 weeks. The Hon'ble Supreme Court while granting the extension of the time also observed as under:

"... No orders on the stay at present.

We, however, clarify that the above not mean that the Petitioners can stall proceedings under the Securities and Exchange Board of India Act, 1992 (SEBI Act, 1992)."

28. The Hon'ble Supreme Court of India while hearing the SLP, preferred not to interfere with the findings of the order dated July 26, 2004, passed by the Hon'ble High Court of Punjab and Haryana which upheld SEBI's order dated December 6, 2002. Taking into consideration this fact and the fact that the company had failed to submit any information regarding the status of compliance with the SEBI's order dated

December 6, 2002, a SCN dated November 19, 2004 was issued to PGFL advising to explain why appropriate directions/ actions should not be passed/ initiated against it and its promoters/ directors/ persons in charge of its scheme(s), including restraining them from accessing the securities market and prohibiting them from buying, selling and dealing in securities, for non-compliance of SEBI order dated December 6, 2002.

29. PGFL vide its letter dated November 30, 2004, sought additional time to file detailed submissions. Thereafter, vide letter dated December 15, 2004, PGFL filed its reply to SEBI's SCN dated November 19, 2004 wherein besides requesting for a personal hearing, the company *inter-alia* submitted as under:

- i. The observations of the Hon'ble Supreme Court contained in order dated October 1, 2004 should not be misconstrued to imply that SEBI may take any action against the company in complete disregard of the proceedings pending before the Hon'ble Supreme Court with regard to the issues which are sub-judice.
- ii. The company is exclusively dealing with sale, purchase and development of agricultural land with effect from January 31, 2000 and that the company does not offer any assured returns to the customers who purchase agricultural land from the company under a composite agreement for Sale and Development. Similarly, the company does not issue any bonds or units or any other securities tradable in the securities market.
- iii. With respect to akin and identical activity of sale, purchase and development of agricultural land, in the case of PACL India Ltd.

& Ors. Vs. UOI & Anr., the Hon'ble High Court of Rajasthan vide order dated November 28, 2003 has construed that such activity/business does not fall within the purview of the CIS Regulations or the SEBI Act, 1992. Though SEBI has preferred an Appeal before the Hon'ble Supreme Court of India against the said order, the order itself continues to be in operation.

- iv. In view of divergent opinions of the High Court of Punjab and Haryana and the High Court of Rajasthan regarding the nature of the company's schemes, no action should be taken against the company till the issue is finally decided by the Hon'ble Supreme Court of India.
 - v. No new schemes have been launched by the company pursuant to SEBI's order dated December 6, 2002.
 - vi. Consequent to the order dated July 26, 2004 of the Hon'ble High Court of Punjab and Haryana, with effect from August 1, 2004, the company has ceased its business of sale, purchase and development of the land till the final disposal of the matter pending before the Hon'ble Supreme Court of India.
 - vii. The allegation contained in the SCN to the effect that PGFL was liable to repay investors in the schemes relating to sale, purchase and development of agricultural land within a period of one month, is incorrect.
30. Thereafter, PGFL filed an application before the Hon'ble Supreme Court of India dated December 17, 2004 which was listed as IA No. 2 of 2004 with CA No. 6572 of 2004, seeking stay of the aforesaid SEBI order dated December 06, 2002. PGFL also prayed for grant of further time of 8

weeks to repay its Joint Venture investors and apprised the Hon'ble Supreme Court that out of the total refundable amount of Rs. 148 crore (approx.), the Rs. 129.85 crore (approx) had been refunded as on December 11, 2004. A statutory auditor's certificate dated December 16, 2004 confirming the said repayment from June 01, 2004 to December 11, 2004 was annexed to the interim application. The Hon'ble Supreme Court preferred to dispose of the said IA vide its order dated May 08, 2006, as the same was not pressed by PGFL.

31. An opportunity for hearing was granted to PGFL before the then Whole Time Member, SEBI on August 29, 2005, wherein the company submitted that it had already complied with SEBI's order dated December 6, 2002 and undertook to file information regarding all its schemes in the prescribed format in support of its contentions. In view of the company's submissions and in line with the directions issued to the company during the hearing, SEBI vide its letter dated September 22, 2005, advised PGFL to submit a Winding Up and Repayment Report (hereinafter referred to as the 'WRR') in the prescribed format along with a confirmation from its statutory auditors to the effect that pursuant to the directions issued vide SEBI's order dated December 06, 2002, neither had the company collected any money from investors nor had it launched any new schemes. Further, the company was apprised that in order to verify the authenticity of its claims regarding repayment, an independent audit would be conducted by SEBI appointed auditors the expenses of which would have to be borne by the company itself.

32. Instead of filing requisite information in terms of SEBI's letter dated September 22, 2005, vide letter dated October 7, 2005, PGFL contended that the contents of SEBI's letter were at variance with the deliberations and discussions held during the personal hearing on August 29, 2005. The company also stated that it would submit the reply/information sought by SEBI only on receipt of a copy of the 'Minutes of the Proceedings' of the hearing.
33. Therefore, SEBI vide letter dated October 24, 2005, a copy of the record of the proceedings of the hearing held on August 29, 2005 were forwarded to the company along with the relevant formats of the WRR and the confirmation required from its statutory auditors to the effect that pursuant to the directions issued vide SEBI's order dated December 06, 2002, neither had the company collected any money from investors nor had it launched any new schemes. The company was advised to submit the same within two weeks from the date of receipt of the letter. However, PGFL failed to submit the required information. Therefore, vide letter dated November 28, 2005, the company was granted a final opportunity to submit the relevant information.
34. In the meanwhile, a Rejoinder Affidavit was filed by PGFL before the Hon'ble Supreme Court of India on November 28, 2005, annexing therewith a copy of its auditor's certificate dated May 4, 2005 which certified payment of Rs. 148.54 crore to the investors under the company's Joint Venture Schemes, including accrued yield thereon during the period June 1, 2004 to April 30, 2005. The company also filed an auditor's certificate dated August 12, 2005, certifying repayments of

Rs. 942.47 crore between October 1, 2001 and April 30, 2005 as well as a certificate dated October 08, 2005 to the effect that PGFL had not purchased new Joint Venture land during the last five years period ending September 30, 2005.

35. SEBI received a letter dated December 14, 2005, from PGFL, wherein the company had made detailed submissions regarding its schemes allegedly pertaining to sale, purchase and development of land, repayments made under the company's Joint Venture Schemes and compliance with SEBI's order dated December 06, 2002. The company also forwarded legal opinions from Shri G.B Patnaik, Former Chief Justice of India and Shri G.T. Nanavati, former Judge, Supreme Court of India regarding the inadvisability of filing a WRR with SEBI. In addition, with respect to its contentions regarding repayments to the investors under its Joint Venture Schemes, PGFL submitted copies of statutory auditors' certificates dated December 16, 2004, May 4, 2005 and August 12, 2005, which had already been submitted by the company in its filings before various Courts.
36. PGFL was granted a further opportunity of hearing before the then WTM on January 30, 2006. During this hearing, the company made several submissions regarding its difficulties in submitting the information in the prescribed WRR format, but expressed willingness to submit duly audited information regarding the mobilizations/ repayments done under its schemes including, *inter-alia*, details such as list of investors, total proceeds, bank receipts, bank accounts, mode of repayments, sources of repayments and any other information/

documents in support of the company's statement that all requirements under order dated December 6, 2002 issued by Chairman, SEBI have been complied with. The company also expressed willingness to furnish any information required by SEBI for clarification thereafter. However, subsequent to the conclusion of the said hearing, the company representative verbally expressed his disagreement with the recorded proceedings of the said hearing and submitted that it would not be possible for the company to submit the requisite information.

37. Thereafter, due to change in competent authority, PGFL was granted an opportunity of personal hearing before me on April 21, 2006. During this hearing the company's representatives made various written and verbal submissions reiterating PGFL's earlier contentions regarding the nature and non-applicability of the directions issued vide SEBI order dated December 6, 2002 to its schemes statedly pertaining to sale, purchase and development of agricultural land, pendency of proceedings before the Hon'ble Supreme Court of India, winding up of the Joint Venture Schemes and repayment to investors under these schemes, compliance with SEBI's order dated December 6, 2002 and inability to file information in the prescribed WRR format.
38. In view of PGFL's submissions during the hearing on April 21, 2006, vide letter dated June 21, 2006, SEBI inter-alia advised the company to file WRR in the revised format for its Joint Venture Schemes since the company had claimed that these schemes had already been wound up. As regards PGFL's schemes statedly related to sale, purchase and development of agricultural land, as an interim measure, the company

was advised to furnish certain duly audited information regarding mobilization and repayments made under these schemes in a format of its choice.

39. In response, vide letter dated July 6, 2006, PGFL inter-alia controverted the correctness of SEBI's letter dated June 21, 2006 and requested for a copy of the order passed by the Whole Time Member pursuant to which the directions contained in SEBI's letter dated June 21, 2006 were communicated to the company.
40. It was thought fit to grant another opportunity of personal hearing to PGFL before me on July 13, 2006, when the company once again expressed reservations in submitting information in the format provided by SEBI even with respect to its Joint Venture Schemes. Therefore, in respect of PGFL's Joint Venture Schemes, it was decided in the hearing that the company would be required to submit within three weeks, bank statements duly certified by an authorized representative of the Bank regarding the amounts placed by it with the banks for disbursement to its investors as per the undertaking given to the High Court of Punjab and Haryana and, the amounts disbursed towards repayment to investors from the said accounts vis-à-vis mobilizations and the balances as on date. PGFL also agreed to submit duly certified information to SEBI, regarding the total disbursements made to all the Joint Venture investors vis-à-vis funds mobilized within three months from the date of hearing. As regards PGFL's schemes statedly pertaining to sale, purchase and development of agricultural land, the company was given the liberty to the extent of furnishing information as per

SEBI's letter dated June 21, 2006 in the format of their choice. Accordingly, the said directions were communicated by SEBI to the company vide letters dated July 20, 2006 and August 01, 2006.

41. In response to the above, vide letter dated August 24, 2006 PGFL submitted certificates dated August 08, 2006 from its bankers (HDFC Bank & IDBI Bank) and statutory auditors regarding repayments aggregating to Rs. 148.54 crore, made to investors under its Joint Venture Schemes in line with the undertaking furnished before the Hon'ble High Court of Punjab and Haryana. Vide the said letter the company also submitted a request for another opportunity for personal hearing.
42. Vide letters dated September 18, 2006 and October 6, 2006, SEBI sought certain clarifications from the company regarding the aforesaid certificates and the requirement of filing information pertaining to schemes statedly related to sale, purchase and development of land. In response, vide letter dated October 10, 2006, the company submitted *inter-alia* that complete proof of payment of Rs.148.54 crore had already been furnished to SEBI and that it was in the process of compiling complete investor – wise details of repayments totaling Rs. 5.35 crore for which a statutory auditors certificate (instead of a Bankers' certificate) had been submitted by it. However, the company failed to make any reference to its schemes statedly related to sale, purchase and development of agricultural land in the said letter.
43. SEBI vide letter dated October 30, 2006, advised PGFL, *inter-alia*, to

submit detailed information in terms of SEBI's letters dated July 20, 2006 and August 01, 2006. Vide letter dated November 14, 2006, PGFL disputed the requirement of submitting information with respect to its schemes statedly pertaining to sale, purchase and development of agricultural land. Further, instead of submitting Bankers' Certificates, the company submitted a statutory auditors' certificate dated November 13, 2006 regarding details of certain repayments made to its Joint Venture investors as well as details of some payments that were made in cash.

44. At PGFL's request vide its letter dated August 24, 2006, another opportunity of personal hearing was granted to the company on November 24, 2006 wherein the company's representatives sought additional time for submitting detailed information in terms of SEBI letter dated July 20, 2006 regarding repayments totaling Rs. 942.47 crore to investors under PGFL's Joint Venture Schemes. Further, the company's representatives also stated that without prejudice to the matter pending before the Hon'ble Supreme Court of India and subject to the prior approval of the appropriate authorities, it would be possible to submit duly audited information regarding the its schemes statedly pertaining to sale, purchase and development of agricultural land.
45. Therefore, SEBI vide its letter dated December 8, 2006, advised the company to submit the following information/documents:
 - i. Complete investor wise information regarding the repayments totaling to Rs.942.47 crore vis-à-vis mobilizations done under its Joint Venture Schemes in the prescribed format.

- ii. Bankers' Certificates for the balance amount of repayments under its Joint Venture schemes (out of Rs.942.47 crore) for which such certificates had not been furnished so far to SEBI and which the company claimed to have repaid in compliance with SEBI Chairman's Order dated December 6, 2002.
 - iii. Certain duly audited information in respect of its schemes statedly pertaining to sale, purchase and development of agricultural land and a written confirmation regarding its intention to furnish the same.
46. PGFL Vide letter dated December 22, 2006, sought additional time to submit the written confirmation regarding its intention to file information in respect of its second set of schemes statedly pertaining to sale, purchase and development of agricultural land. SEBI vide letter dated January 10, 2007 acceded to the company's request for additional time and advised the company to immediately submit Bankers' certificates as sought vide letter dated December 8, 2006.
47. Meanwhile, vide letters dated December 13, 2006, SEBI advised PGFL's bankers - HDFC Bank (hereinafter referred to as 'HDFC') and IDBI Bank (hereinafter referred to as 'IDBI') to verify the certificates dated August 8, 2006 issued by them in respect of repayments totaling Rs.143 crore (approx.) apparently made by the company to its Joint Venture investors and to furnish detailed statements of account regarding the alleged disbursements made by PGFL from its bank accounts, in respect of which the certificates were issued by the Banks.

48. Further, on December 29, 2006, SEBI received a complaint against PGFL from an investor namely Shri Darshan Singh, wherein it had been stated that the company had failed to refund the amount invested by him and that on approaching PGFL's office he was told that PACL India Ltd. (instead of PGFL) would be returning the amount due to him only on maturity of his investments. Vide letter dated January 17, 2007 a copy of the complaint was forwarded to PGFL for redressal. However, despite reminders dated March 5, 2007 and May 7, 2007, no communication has been received from the company on this issue till date.
49. PGFL vide letter dated January 12, 2007, disputed the requirement of submitting Bankers' certificates for the balance amount of repayments made under its Joint Venture schemes (out of Rs. 942.47 crore) for which such certificates had not been furnished to SEBI. As regards the submission of information in respect of its second set of schemes statedly pertaining to sale, purchase and development of agricultural land, PGFL requested for a confirmation from SEBI to the effect that the information, if furnished by the company, would be without prejudice to its rights and contentions in various pending legal proceedings.
50. SEBI vide letter dated March 22, 2007, once again, advised PGFL to submit Bankers' Certificates for the balance repayments (totaling Rs. 793.93 crore) allegedly made to investors under its Joint Venture Schemes, for which such certificates had not been submitted to SEBI. Further, as regards the company's request for a written confirmation from SEBI for the purpose of protecting its rights in the ongoing legal proceedings, PGFL was informed that it was bound to submit

information sought by SEBI without any pre-conditions and that in the event of its' failure to do so, SEBI would be empowered to draw adverse inferences.

51. PGFL vide letter dated April 12, 2007, controverted the correctness of SEBI's letter dated March 22, 2007 in respect of submission of Bankers' Certificates for the balance amount of repayments (out of Rs. 942.47 crore) allegedly made to investors under its Joint Venture Schemes, for which such certificates had not been submitted to SEBI and reiterated its earlier request regarding a written confirmation from SEBI that any information submitted by it regarding its second set of schemes statedly pertaining to sale, purchase and development of agricultural land would be without prejudice to its rights in various legal proceedings. PGFL also requested for another opportunity of personal hearing before Whole Time Member, SEBI.
52. Meanwhile, in response to SEBI's letters dated December 13, 2006, HDFC vide letter dated December 23, 2006, submitted that it was in the process of retrieving the requisite information. On the other hand vide letters dated December 28, 2006 and January 4, 2007, IDBI submitted certain information, which was found to be incomplete. Additionally, IDBI was requested for certain clarifications on the submissions made by it. In response vide letters dated January 31, 2007 and February 2, 2007, HDFC and IDBI respectively submitted information regarding PGFL's bank accounts. Several discrepancies were noted by SEBI in the information submitted by both banks which were brought to their notice vide letters dated March 20, 2007. Thereafter SEBI followed up with the

bankers in this regard.

53. Acceding to PGFL's request as indicated in its letter dated April 12, 2007, a personal hearing was granted to the company on July 6, 2007 before me. As per the decisions taken during the hearing, SEBI vide letter dated July 24, 2007 advised the company:
- i. to submit the remaining information regarding repayments to its Joint Venture Investors.
 - ii. to submit Bankers' certificates in terms of letter dated December 08, 2006.
 - iii. to submit detailed information regarding its second set of schemes statedly pertaining to sale, purchase and development of agricultural land as sought by SEBI vide letter dated December 8, 2006, without any pre-conditions.
 - iv. that the authenticity of the information submitted by it would be verified by means of an independent audit conducted by SEBI appointed auditors, the cost of which shall be borne by the company itself and that the process of appointment of auditors was underway.
54. PGFL vide its letters dated August 6, 2007 and August 9, 2007, once again, disputed the requirement of submission of Bankers' certificates in respect of its Joint Venture Schemes and information pertaining to its second set of schemes statedly in the nature of sale, purchase and development of agricultural land. Further, vide letter dated August 9, 2007, the company submitted that though it was agreeable to assist the SEBI appointed auditor in ascertaining information from the concerned

banks regarding repayments made to its Joint Venture investors, it would not allow the auditor to either visit/carry out inspection/audit in the company's premises or to have access to the company's records. The company also expressed reservations regarding the requirement of the cost of the independent audit being borne by it and stated that during the hearing they presumed that the cost of the audit would be borne by SEBI. In its letter dated August 9, 2007, PGFL once again requested for another opportunity of hearing.

55. Only after issuing several correspondences regarding submission of detailed information in respect of the repayments made under the company's Joint Venture Schemes, did PGFL submit certain information vide letters dated March 2, 2007, April 4, 2007, April 20, 2007, May 11, 2007, June 8, 2007, July 5, 2007 and August 6, 2007.
56. Thereafter, SEBI received a complaint against the company from an investor, Shri Santosh Kumar Sharma, on November 27, 2007 which was sent to the company for redressal vide letter dated January 2, 2008. However, no response has been received from the company till date. SEBI also received a complaint from Shri Beant Singh on September 14, 2007, wherein it was alleged that the company was resorting to threatening investors who complained against them. This complaint was not forwarded to the company since Shri Singh did not indicate any specific grievance regarding his investment (if any).

CONSIDERATION OF ISSUES AND FINDINGS

57. I have carefully considered the SCN issued by SEBI, all the replies thereto of PGFL, the submissions made by PGFL during the personal hearings before me and the written submissions made thereafter as well as all the material available on record. I note that PGFL was operating two kinds of schemes, firstly, Joint Venture Schemes and secondly, Schemes allegedly pertaining to sale, purchase and development of agricultural land.

58. I observe that PGFL has been given enough time and opportunity to submit information regarding both schemes. I observe, however, that instead of furnishing the complete requisite information, PGFL has been unnecessarily prolonging the proceedings by using dilatory tactics. I, therefore, find that the principles of natural justice have been complied with in the instant matter. I am hence proceeding on the basis of the material available on record and for the sake of convenience, am dealing with the above schemes one by one.

59. JOINT VENTURE SCHEMES

59.1. At the outset, I note that there is no dispute regarding the nature of PGFL's Joint Venture Schemes. The same have been admitted to be Collective Investment Schemes by the company in as much as the company has submitted that these schemes were closed in February 2000 when the Securities Laws (Amendment) Act, 1999 came into force. Hence, the only issue regarding Joint Venture Schemes is whether the

company has repaid the entire amount mobilized under the said schemes including installments collected from the existing investors, as well as the returns as per the original offer to all the investors.

59.2. I note that as regards these Joint Venture Schemes, PGFL has submitted certain information and certificates in support of its contention that it has made repayments allegedly totaling Rs. 942.47 crore to the investors under these schemes, which include the amount of Rs. 815.23 crore admittedly mobilized by the company under its Joint Venture Schemes till June 2002 and the accrued returns thereon.

59.3. In this regard, I have perused the statutory auditor's certificate dated August 12, 2005 submitted by the company to the effect that it has made repayment of Rs. 942.47 crore to its 'Joint Venturers' including accrued yield thereon during the period October 1, 2001 to April 30, 2005 under various schemes. However, after perusing the aforesaid certificate, I observe that neither does the said certificate state the details of the total amount mobilized by PGFL under its Joint Venture Schemes till date nor does it state that the amount of Rs. 942.47 crore allegedly paid by the company to the investors under its Joint Venture includes the amount of Rs. 815.23 crore mobilized by the company till June 2002. The certificate also does not indicate any details of the principal and the return components of the repayments made to the investors in terms of the offer of the scheme.

59.4. I further note that Rs. 815.23 crore was the admitted mobilization by PGFL only as on June 2002. As per the company's own submissions

during the personal hearings as well as its submissions before various Courts, PGFL continued to accept subscriptions from existing investors under its Joint Venture Schemes till June 2004. This is corroborated by the fact that the auditor's report annexed to the company's financial statements for the year ending September 30, 2004 clearly states that the company continued to accept subscriptions during the year for units that were sold prior to February 2000. I, therefore, find that the company has continued to mobilize funds under its Joint Venture Schemes even after SEBI order dated December 6, 2002, which amounts to a contravention of the directions issued by Chairman, SEBI vide the said order.

- 59.5. In light of the foregoing facts, an inference can be drawn that while submitting the figure for the total amount mobilized under its Joint Venture Schemes, PGFL has not taken into account the amount mobilized from the existing investors under these Schemes between June 2002 and June 2004. It would, therefore, be natural to also infer that the amount actually mobilized by the company under its Joint Venture Schemes far exceeds Rs.815.23 crore and that PGFL's liability towards the investors under these Schemes exceeds Rs. 942.47 crore. Infact, if PGFL's submissions that it had wound up its Joint Venture Schemes in February 2000 and had initiated the process of repayment to investors under these Schemes with effect from October 1, 2001 are to be considered, it is difficult to understand why the company would continue to accept subscriptions till June 2004 from the same set of investors that it seeks to repay.

59.6. I note that the payment of Rs. 942.47 crore certified by PGFL's statutory auditors includes the payment of Rs. 148.54 crore allegedly made by the company to the investors under its Joint Venture Schemes in compliance with the undertaking furnished by it before the Hon'ble High Court of Punjab and Haryana. On being specifically asked by SEBI, the company submitted certificates from its bankers namely IDBI and HDFC and also from its own statutory auditor to confirm this repayment made in compliance with the undertaking furnished before the Hon'ble High Court.

59.7. In order to analyze the information contained in the above certificates from the bankers namely HDFC and IDBI as submitted by PGFL, SEBI took up the matter with the bankers. It was then revealed that the account opened by PGFL with IDBI was merely in the nature of current account and not a 'special purpose account' for making repayment to Joint Venture customers' as stated in its certificate dated August 8, 2006. It was also found from the PGFL account statement being maintained with IDBI that certain inter-account transactions were carried out by the company. Upon, further inquiry with IDBI, it was observed that a cheque book containing cheque leaves which were payable at par across all IDBI branches were issued to PGFL and demand drafts prepared on the company's request were handed over to PGFL as per the normal practice. No other details except the names and locations of the persons to whom payments were made by IDBI through the said account, were available with IDBI.

59.8. I, therefore, observe that the bank could not in any way have had

knowledge regarding these payees being PGFL's 'Joint Venture customers'. If IDBI could not have had any knowledge about the payees to whom cheques/ drafts were being issued from the account maintained by PGFL with the bank itself, it stands to reason that it could not in anyway have knowledge that the amounts credited to the accounts maintained by the company with other banks by way of inter-account transactions, were used to repay its Joint Venture Schemes' investors.

59.9. I also observe that the date of the last debit transaction reflected in PGFL's account statement of IDBI is December 22, 2006. As cheques/ demand drafts are normally valid for a period of six months unless specified otherwise, it would not be unreasonable to assume that for a valid instrument to have been encashed on December 22, 2006, it would have been issued/ re-issued by the company, at the very latest, on June 22, 2006. I note that PGFL on the other hand, claims to have completed repayments to the investors under its Joint Venture Schemes by April 30, 2005.

59.10. I have considered that for the purpose of issuing the certificate dated August 8, 2006, IDBI had taken into account all the drafts issued by it on the company's account. However, I note that mere issuance of demand drafts cannot be construed as completion of payments to the investors since only on drawing up a reconciliation statement, it can be ascertained whether all the instruments have infact been encashed. And more so, I find that the bank has unable to produce these before SEBI despite various opportunities.

59.11. Upon inquiry made by SEBI with HDFC, it was revealed that they did not have any details other than the name and location of the persons to whom payments were made through this account. It has been further observed that the figure of Rs. 84.27 crore indicated as the total amount credited to the company's account in the certificate dated August 8, 2006 issued by HDFC, was in-fact the figure as on August 8, 2006 and not as on April 30, 2005 as indicated in the certificate. With respect to the aforesaid discrepancy and claimed repayments through Demand Drafts/ Cheques payable at par, HDFC has not been able to furnish necessary re-conciliation. It is further observed that the account opened by PGFL was apparently in the nature of a current account and not a 'special purpose account for making repayment to Joint Venture customers' as had been stated by the bank in its certificate dated August 8, 2006. I, therefore, observe that the bank could not in any way have had knowledge regarding these payees being PGFL's 'Joint Venture customers'. As in the case of IDBI, I observe that HDFC also could not have had any knowledge that the payees to whom cheques/ drafts were being issued were infact PGFL's 'Joint Venture customers'

59.12. In light of the observations detailed in the foregoing paragraphs and the inquiries made with the company's bankers namely IDBI and HDFC, I find that the bankers' certificates dated August 8, 2006 submitted by the company in support of its contention of having completed repayments to the investors under its Joint Venture Schemes in terms of the undertaking furnished by it before the Hon'ble High Court of Punjab and Haryana, are unacceptable.

59.13. As regards the detailed information sought from PGFL regarding repayments totaling Rs.942.47 crore allegedly made to the investors under its Joint Venture Schemes, I note that the company submitted certain information vide letters dated March 2, 2007, April 4, 2007, April 20, 2007, May 11, 2007, June 8, 2007, July 5, 2007 and August 6, 2007, which is being analysed in the subsequent paragraphs.

59.14. SEBI carried out an analysis of the data submitted by the company vide the aforesaid letters on a limited sample and random basis, which revealed various discrepancies and irregularities. For instance, in the data submitted by the company vide letter dated August 6, 2007 it is observed that multiple payments by cash/ cheque have been indicated against the following person(s):

S.No.	Name of the investor	Address of the investor	Number of payments to the investor as indicated in the sample data
1	Abdul Wahab Hussain	Mumbaicold Storage, B-36, Road No. 22, Wagle Estate, Thane-604	32
2	Abdul Wahab Hussain	Block No. 9/290, Kopri Colony, Thane (East)- 3	32
3	Miss Tulsi Basher	Mumbaicold Storage, B-36, Road No. 22, Wagle Estate, Thane-604	66
4	Vankatrao Laxmanrao Deshmukh	Block No. 9/290, Kopri Colony, Thane(East)- 3	133
5	Miss Trupti Sadanand Vichare	Shri Niwas Bldg, 2 nd Floor, R.No.37, Chapsi Bhimjki Marg, Mazgaon, Mumbai -10	34

S.No.	Name of the investor	Address of the investor	Number of payments to the investor as indicated in the sample data
6	Ms Priyanka P Periera	House No.29, Kolbad, Thane-400601	66

59.15. I also note from the aforesaid analysis that different addresses have been mentioned against the same name, that of Abdul Wahab Hussain and that the addresses of investors appear to be the same in the case of Abdul Wahab Hussain, Miss Tulsi Bashera and Vankatrao Laxmanrao Deshmukh. However, what is peculiar is that despite multiple payments being indicated against all the aforesaid investors, only in one case and against one payment entry at Serial Number 274936, against the name of Abdul Wahab Hussain (Serial Number 2 above) has the amount and date of the initial deposit by the investor been indicated. In none of the other cases, despite there being numerous payments against the same investor, have the dates and amounts of the initial deposit justifying these payments been mentioned by the company.

59.16. I observe that the above are not isolated instances. There exist many more entries against which there is no information either regarding the date of deposit or the amount deposited by the investor. A few of these of these are illustrated below:

S.No.	S.No. of the entry in the data provided by the company	Name of the investor
1.	247875	Sh.Nasurddin Khan
2.	247877	Kalalo Bee
3.	247878	Ganpat Lal Sonlanki

S.No.	S.No. of the entry in the data provided by the company	Name of the investor
4.	247882	Shankar Lal
5.	247892	Bhawani Prasad Sahu
6.	247900	Ku. Ritu Soni
7.	259658	Mr. Bayarappa
8.	259659	Mrs K S Sheelarani
9.	259660	Mrs Urvashi G
10.	259661	Mrs P Nagarathnamma
11.	259662	Mrs Sharada
12.	259663	Mr Dharmaraj K R
13.	259664	Mrs Chitra Y G
14.	259665	Mr Aswathanarayana M V
15.	259666	Mr S H Ganesh

59.17. I also observe that there exist certain cases, for instance that of Smt Sunder Bai (S.No.248625), Mrs. S Suganthi (S.No.263610), Mr. D Sivaraman (S.No.266182), Mr. M Dhatchanamoorthy (S.No. 263606) among several others, where no interest seems to have been repaid to the investor. On the other hand there also exist cases where the amount repaid to the investor far exceeds the amount deposited and neither the amount deposited nor the tenure of deposit justify the amount allegedly repaid to the investor. A few of such entries are listed below:

S.No. of the entry in the company's data	Name of investor	Amount deposited (in Rs.)	Amount Repaid (in Rs.)	Date of Deposit	Date of Repayment
275652	Mr Balkrishna D Jagtap	2500/-	25161	March 6, 2002	March 31, 2002
275733	Mr Deepak Ashok Mishra	1377/-	11600	March 6, 2002	March 31, 2002
276263	Mr Suresh Shukla	650/-	17811	March 6, 2002	March 31, 2002
275764	Mr Gangaram Bhaga Ghewade	8100/-	42100	March 6, 2002	March 31, 2002

S.No. of the entry in the company's data	Name of investor	Amount deposited (in Rs.)	Amount Repaid (in Rs.)	Date of Deposit	Date of Repayment
278675	Mrs N Vasantha	6600/-	9916	February 26, 2002	February 28, 2002
284296	Hasanbhai Vazirbhai Polara	6600/-	10000/-	February 26, 2002	March 28, 2002
275516	Miss Manisha Ramchandra Anuse	2520/-	35608/-	March 6, 2002	March 31, 2002
275561	Mohd Shalauddin Ansari	230/-	33000/-	March 6, 2002	March 31, 2002

59.18. I note that several entries in the data provided by the company relate to cases where cheques issued to investors have returned. However, neither the name of the investor nor the address is mentioned against these entries making it impossible to verify the payment made to the concerned investor, if any.

59.19. As regards the objections and conditions/ restrictions sought to be imposed by the company on the independent audit proposed by SEBI, the same are untenable and unacceptable. The proposed audit was to be conducted for Joint Venture Schemes, which are admittedly Collective Investment Schemes as per PGFL's own admission and are therefore within the regulatory purview of SEBI. Generally, the independent auditors would be verifying the claims of the company vis-a vis the bankers' certificates and the information submitted by the company itself. However, if the situation so demands, the auditors would have the right to seek feed back, documents and information pertaining to the

investments made under the schemes, to verify the claims/ details from the company. Therefore, I am of the view that the condition that the independent auditors proposed to be appointed by SEBI would neither visit nor carry out inspection or audit in the company premises and shall not have access to the company's records, sought to be imposed by PGFL, is not acceptable and goes against the spirit of the allegedly bonafide intentions of the company in making the refunds under its Joint Venture Schemes.

59.20. In view of the aforesaid discrepancies and irregularities observed in the data submitted by PGFL and the company's refusal to get the veracity of its submissions regarding the repayments verified by an independent auditor as proposed by SEBI, I find that the entire exercise of submission of data regarding repayments totaling Rs.942.47 crore allegedly made by PGFL to the investors under its Joint Venture Schemes becomes merely academic in nature and fails to lend any support to the company's claims regarding repayment.

59.21. Moreover, the non-acceptability of certificates issued by banks such as IDBI and HDFC for an amount of only Rs.143 crore (approximately), in support of PGFL's contention of having completed repayments in terms of the undertaking furnished to the Hon'ble High Court of Punjab and Haryana raises doubts as to the acceptability of the company's remaining submissions/ certificates most of which have been certified by its own statutory auditor.

59.22. I therefore find no benefit in placing any reliance either on the

certificates submitted by PGFL which were issued by IDBI and HDFC, the certificates issued by the company's own statutory auditors regarding full repayment to Joint Venture investors, or, the data submitted by the company in respect of these repayments. I have noted the company's failure to respond to the investor grievances forwarded to it as well as its initial reluctance to file the information in the specified format. I have also noted PGFL's subsequent refusal to get the authenticity of its claims regarding the repayment verified by way of an independent audit as proposed by SEBI, the need for which becomes acute in light of the irregularities observed in the bankers' certificates and data regarding repayment submitted by the company till date. This conduct of PGFL serves only to create serious misgivings about the submissions made by it before SEBI, all the more, since in the instant case a regulator (SEBI) is seeking compliance of its own order which was upheld by the Hon'ble High Court of Punjab and Haryana. In this respect, I am of the view that if PGFL had already made the repayments as contended by it, then verification of the information submitted by it would only have substantiated the company's case instead of prejudicing it as has been claimed.

59.23. The facts and observations detailed in the foregoing paragraphs lead me to the only conclusion that, PGFL's claims regarding completion of repayment to the investors under its Joint Venture Schemes are false and cannot be accepted.

59.24. Taking into consideration all the findings recorded above, I am of the considered view that PGFL has not complied with the directions issued

by then Chairman, SEBI under section 11(B) of the SEBI Act, 1992 read with Regulation 65, 69, 73 and 74 of the CIS Regulations, vide order dated December 6, 2002, in respect of collection of funds from investors under its Joint Venture Schemes and refund of the money collected under these schemes to the investors along with the returns due as per the terms of the offer.

60. SCHEMES PERTAINING TO SALE, PURCHASE AND DEVELOPMENT OF AGRICULTURAL LAND

60.1. In so far as PGFL's second set of schemes allegedly pertaining to sale, purchase, and development of agricultural land are concerned, the company has submitted, *inter-alia*, that it had entered into irrevocable transactions with its customers by transferring the land in question and the same cannot now be reversed by the company. I note that the company has been making this submission repeatedly. In fact even in the SLP and the Rejoinder filed by the company before the Hon'ble Supreme Court, the company has made identical averments which have been countered by SEBI. Considering this, I am of the view that the real issue here is not whether PGFL can repay the investors under its second set of schemes since these schemes are allegedly irrevocable transactions of sale and purchase. In the context of SEBI Act and CIS Regulations what is important is whether the schemes are CIS or not.

60.2. After a detailed analysis of the company's transactions under its second set of schemes, in his order dated December 6, 2002 Chairman, SEBI has concluded that the company's schemes fall squarely within the

definition of a Collective Investment Scheme as defined under section 11AA of the SEBI Act, 1992. Again, after a detailed analysis of the nature of these schemes allegedly pertaining to sale, purchase and development of agricultural land on the basis of the documents submitted by the company itself during the Court proceedings, the Hon'ble High Court of Punjab and Haryana concluded that these schemes were in fact Collective Investment Schemes.

60.3. PGFL has submitted that consequent to the order dated July 26, 2004 of Hon'ble High Court of Punjab and Haryana, with effect from August 1, 2004, it ceased to undertake any new business allegedly pertaining to sale, purchase and development of agricultural land till the final disposal of the SLP by the Hon'ble Supreme Court. The company has thus contended that it has complied with the directions issued by SEBI, Chairman vide his order dated December 6, 2002, in so far as they require the company neither to collect any money from investors nor to launch any new schemes. The company has submitted that the nature of these schemes is under consideration by the Hon'ble Supreme Court of India and hence compliance of Chairman, SEBI's order dated December 6, 2002, in so far as it relates to refund of the money collected under the second set of schemes along with returns due to the investors in terms of the offer, will make the SLP of the company infructuous and will irreparably prejudice the interest of the company.

60.4. After considering the submissions of the company, I find that the company has on its own submitted that it has stopped fresh mobilizations under the schemes allegedly pertaining to sale, purchase

and development of agricultural land, pending disposal of the SLP by the Hon'ble Supreme Court. Despite such submissions and various communications from SEBI, the company has failed to file any details regarding the total number of subscribers, their names, total funds mobilized under the schemes, estimated realizable value payable to the investors etc. In my view, furnishing of details as asked for in respect of PGFL's schemes allegedly pertaining to sale, purchase and development of agricultural land, would not have prejudiced the interest of the company but would, in fact, have improved its credibility.

60.5. It is a matter of record that Chairman, SEBI's findings vide Order dated December 6, 2002 that PGFL's schemes allegedly pertaining to sale, purchase and development of agricultural are in fact Collective Investment Schemes have already been upheld by the Hon'ble High Court of Punjab and Haryana vide its order dated July 26, 2004. Further, the Hon'ble Supreme Court has also not granted any stay on the operation of either the aforesaid SEBI order dated December 6, 2002 or the Hon'ble High Court of Punjab and Haryana order. On the contrary, the Hon'ble Supreme Court vide its order dated October 1, 2004 has further clarified that granting of leave in the SLP filed by the company would not mean that the petitioners (PGFL) can stall the proceedings which are going under the SEBI Act. In view of this, I find that there is no bar against SEBI from proceeding against the company as per the provisions of the SEBI Act. SEBI has full regard for the judicial set up and shall abide by the findings of the Apex Court.

60.6. Apart from the above, I have observed that in all the correspondence addressed by PGFL to SEBI, the company has used a standard

paragraph at the end with regard to the above schemes, by mentioning that “this is without prejudice to the company’s rights in the matter pending before the Supreme Court of India and other Courts”. It is surprising and difficult to comprehend as to what stops the company from submitting all the required information with respect to its schemes allegedly pertaining to sale, purchase and development of agricultural land to SEBI with the aforesaid condition, if it so desires. I am of the view that PGFL neither requires any confirmation or certificate from SEBI nor is SEBI bound to give one, to the effect that the information if submitted by it would be without prejudice to its rights in the ongoing legal proceedings.

60.7. Further, in the event the company’s submissions that its second set of schemes pertain to sale, purchase and development of agricultural land were factually correct, submission of the information sought by SEBI regarding these schemes would only have supported the company’s stand and not prejudiced its rights in any way. I observe that, PGFL has not submitted any information regarding these schemes despite being given numerous opportunities vide several letters. Instead, I understand that PGFL is unnecessarily applying dilatory tactics to avoid furnishing the information altogether.

60.8. After perusing the past record of the company, it is apparent that from the very beginning, PGFL has been neglecting and refusing to furnish the desired information, and avoiding acceptance of SEBI’s jurisdiction over its second set of schemes allegedly pertaining to sale, purchase and development of agricultural land.

60.9. Taking into consideration all the findings recorded above, I am of the considered view that PGFL has not complied with the directions issued by then Chairman, SEBI under section 11(B) of the SEBI Act, 1992 read with Regulation 65, 69, 73 and 74 of the CIS Regulations, vide order dated December 6, 2002, in respect of collection of funds from investors under its scheme of sale, purchase and development of agricultural land and refund of the money collected under these schemes to the investors along with the returns due as per the terms of the offer.

CONCLUSION

61. In view of the above, I find that by failing to repay the entire amount mobilized under its Joint Venture Schemes, even after the extension of the time frame within which it was required to do so, on various occasions by the various Courts, PGFL has failed to comply with the directions issued by SEBI vide order dated December 6, 2002. In respect of the company's second set of schemes allegedly pertaining to sale, purchase and development of agricultural land, I conclude that PGFL has not taken even a single step to refund the monies in non-compliance and violation of SEBI's order dated December 6, 2002.

62. PGFL has mobilized huge sums of money from hundreds of innocent investors and has till date not been able to repay them all. I have observed the dilatory tactics adopted by PGFL as well as non-cooperation in expediting the conclusion of the proceedings before me.

63. The conduct of PGFL has thus been detrimental to the investors at large. Therefore, after taking into account all the events, facts and circumstances of the case, I hold PGFL guilty of non compliance of SEBI order dated December 06, 2002 and violation of provisions of Section 12 (1B) of SEBI Act, 1992 and Regulation 5 (1) read with Regulation 68 (1), 68 (2), 69, 73 and 74 of the CIS Regulations with respect to all its Collective Investment Schemes, including those allegedly pertaining to sale, purchase and development of agricultural land, and has made itself liable for consequential directions of debarment in terms of SCN dated November 19, 2004.

64. **ORDER**

64.1 Therefore, I, in exercise of the powers conferred upon me under Section 11B and Section 19 of the SEBI Act, 1992 read with Regulation 65 of the SEBI (Collective Investment Scheme) Regulations, 1999 hereby restrain the company, PGF Ltd., its promoters, its directors and its persons-in-charge of the business (the names of whom are collectively described in the Annexure 1 of this order) of all its schemes from accessing the securities market either directly or indirectly and also prohibit them from buying, selling or otherwise dealing in securities, in any manner whatsoever, for a period of ten years. This order does not preclude PGF Ltd. from making repayment to the genuine investors.

It is further clarified that this order should be read in continuation of the order dated of December 6, 2002 of SEBI passed in respect of aforesaid entities.

64.2 In case, a person, whose name is mentioned in the enclosed Annexure, was not responsible for the conduct of the business of the company and is aggrieved by this order, he may apply in writing, within 15 days, from the date of the order, with all the supporting documents, to SEBI for deletion of his name. This is without prejudice to SEBI's right to take any other action as it may deem fit, against PGFL.

64.3 This order shall come in force with immediate effect.

PLACE: MUMBAI

DATE: 17.9.2008

**T. C. NAIR
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**

Annexure-1

S.No.	Name & Details	Designation
I	Directors	
1	Nirmal S Bhangoo S/o Shri Gurdial Singh Village Attari, Bet.P.O.Bela Distt. Ropar <i>Also at:</i> K No 2138, Phase VII, SAS Nagar, Mohali, Distt Ropar Punjab	CMD
2	Balbir Singh VPO Samaspur, Distt Ludhiana, The Samrala,Punjab	Director
3	Avtar Singh Mavi H.No. 84, Village Barodi, Tehsil Kharar Ropar, Punjab <i>Also at:</i> Vill Barodi, Khasra No 105, Khewat No. 16, Khatoni No 18	Director
4	Gurjant Singh Vill Khabra, PO Singhbhawantpur, Distt Ropar, Punjab	Director
5	Harchand Singh Village Jhandiali, PO Sirhand, Distt. Fatehgarh Sahib, Punjab	Director

6	Basawa Singh	Director
II	Promoters	
7	Rakesh Kant Sayal S/o Shri Amrit Lal Sayal H.No. 574, Sector 8, Panchkula	Promoter Director
8	Praveen Gupta S/o Shri Rattan Lal Gupta VPO Bela, Distt. Ropar	Promoter Director
9	Vishwanath Attri S/o Shri Kashmiri Lal Near Bus Stand Morinda Distt. Ropar	Promoter Director
10	Vidya Sagar Puri S/o Late Shri Amarnath Puri 580/8, Netcha Bandan Street Kapurthala	Promoter Director
11	Nirmal Singh Bhangoo S/o Shri Gurdial Singh Village Attari, Bet.P.O.Bela Distt. Ropar	Promoter Director
12	Nirmal Singh Chahal S/o Bachan Singh VPO Dumna, Distt. Ropar	Promoter Director
13	Jugal Kishore Mahajan S/o Shri Parmanand Bxxx51-136, Khazanchian Street Kapurthala	Promoter Director
14	Ashok Kumar Vig S/o Sub.Chunni Lal Vig (Retd.) R/o Bxxx/51/197, Moh. Kanpura Court Road, Kapurthala	Promoter Director

III	Managers / Persons in charge	
15	Prem Seth H.No. 202, Bhera Enclave, Paschim Vihar, New Delhi Also at : B2/189, Paschim Vihar, New Delhi. And: E-34, New Multan Nagar, Surya Enclave, New Delhi	Company Secretary-cum-Sr. Manager (Finance)/ AGM (Finance & Accounts)
16	RC Joshi	Chief Executive (Gen. Admn)
17	Mathew Alexander	Sr. Manager (Finance)
18	S K Gaur FK – 29, Shastri Nagar Delhi	Company Secretary
19	S Bhattacharya	General Manager
20	Mahendra Patwa	DGM, Finance
21	BK Kalia	President