

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

ORDER

UNDER SECTION 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATIONS 65 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 1999 AGAINST M/S SAVE EARTH HERBS LTD.

1.0 BACKGROUND

- 1.1 M/s Save Earth Herbs Ltd.(hereinafter referred to as 'SEHL') is a company registered under the Companies Act, 1956 with its registered office located at 42/7 East Patel Nagar, New Delhi- 110008.
- 1.2 Securities and Exchange Board of India (hereinafter referred to as 'SEBI') received a complaint from S/Shri S Choudhury, N Roy, B Dutta, S Mondal, P Jadav, Pathak, Singh, Mishra (residents of Calcutta, Patna and Rourkela) on January 8, 2001, wherein it was inter-alia alleged that SEHL had been floated by another entity operating Collective Investment Scheme(s) (CIS) by the name of M/s Save Earth Plantations Ltd. (hereinafter referred to as 'SEPL'); that most of the directors of SEPL were on the Board of SEHL whose activities (as per SEHL's leaflets) were related to plantations; that SEHL was actually operating as an NBFC without doing any agricultural activities; that SEHL was spending more than 70% of its collections to develop its business and pay high commissions to the agents; that SEHL's projects actually

belonged to SEPL; that the registered and corporate offices of the two companies were the same and that some of SEHL's directors (Viz. Mr. A K Sinha and Mr. Saibal Paul) had siphoned off money from both the companies.

- 1.3 On a perusal of the aforesaid complaint, it appeared that SEHL was mobilizing funds under certain schemes which were in the nature of CIS as defined under section 11 AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act, 1992) and were therefore required to be registered and regulated in terms of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as the 'CIS Regulations'). Hence, vide letter dated January 18, 2001 SEBI called upon SEHL to explain why appropriate action should not be initiated against it in terms of the provisions of the SEBI Act, 1992 and the CIS Regulations in view of the fact that it was operating CIS without obtaining registration with SEBI. No response was received from SEHL to the said letter. However, vide letter dated May 22, 2001, SEHL informed SEBI of a change in its management.
- 1.4 Due to the linkages observed between SEHL and SEPL, a letter dated January 18, 2001 was also sent to SEPL calling upon them to explain their conduct. In response, SEPL vide letter dated February 24, 2001 categorically denied having any financial link with SEHL. Subsequently, vide a separate letter dated May 22, 2001 SEPL also intimated a change in its management.
- 1.5 SEBI continued to receive complaints against SEHL from various investors such as Ms. Chanda Bai from Jamshedpur (complaint dated February 2001), Smt. Dipti Roy (& Shri Pratap Kumar Roy) from Kolkatta (complaint dated June 22, 2002), Shri Ajoy Kumar Banerjee of

Kolkatta (complaint dated July 12, 2002) and Shri J C Nand from Delhi (complaints dated November 13, 2001 and March 11, 2005) etc. alleging non-payment by SEHL of the amounts due to the investors. Due to the linkages observed between SEHL and SEPL, the complaints against SEHL were clubbed with those received against SEPL.

1.6 SEBI took actions against SEPL due to its failure to comply with the provisions of the CIS Regulations and the SEBI Act, 1992. These actions included :-

(a) passing of an Order dated July 08, 2003 under Section 11B of the SEBI Act, 1992, whereby SEPL was directed to refund the money collected under its various schemes along with returns due to the investors as per the terms of offer within a period of one month from the date of the order;

(b) passing of an Order dated November 07, 2003 under Section 11B of the SEBI Act, 1992 thereby debarring SEPL's directors/ promoters/ managers/ person – in – charge of the business of its schemes from accessing the capital market for a period of five years;

(c) Initiation of criminal Prosecution proceedings against SEPL and its directors under section 24(1) of SEBI Act before Additional Session Judge, Delhi;

(d) Making reference to the Economic Offences Wing for filing of an FIR against SEPL;

(e) Making reference to the Department of Company Affairs to initiate winding up proceedings against SEPL and

(f) Making reference to the concerned State Government for initiation of appropriate action against SEPL.

1.7 Subsequently, SEBI received a complaint dated May 30, 2005 from an investor - Shri Uttam Kumar SenGupta (a resident of Kolkatta), regarding non- payment of the amount invested by him in the schemes operated by SEHL. From the facts of the case and the content of the complaint it appeared that, in violation of the provisions of the SEBI Act, 1992 and the CIS Regulations, SEHL continued to mobilize funds under various schemes which were in the nature of CIS.

2.0 SHOW CAUSE NOTICE:

2.1 In view of above, the fact that SEHL is a distinct company incorporated under the Companies Act, 1956 on June 26, 2000 i.e. after the notification of the CIS Regulation and the fact that SEHL was issuing unit certificates under schemes which appeared to be in nature of CIS under its own name to investors, without obtaining registration from SEBI as CIS, vide notice dated July 12, 2005, SEBI advised SEHL to show cause as to why appropriate action should not be initiated against it, its promoter/ directors/ persons – in- charge of its scheme(s), whose names are mentioned in the schedule annexed hereto in terms of the provisions of the SEBI Act, 1992 and the CIS Regulations.

3.0 REPLY OF SEHL:

3.1 In response to the show cause notice dated July 12, 2005, SEHL submitted its Reply vide letter dated January 12, 2006. SEHL in the said Reply submitted inter alia that:-

3.1.1 the show cause notice dated July 12, 2005 was received by it only on December 15, 2005.

3.1.2 it had never launched any scheme which falls within the purview of the Regulations.

- 3.1.3 it was accepting deposit from the investors against its fixed assets and that it had ceased to accept even these deposits after receiving SEBI's instruction.
- 3.1.4 it was in the process of repaying the investors and that a refund report would be submitted to SEBI.
- 3.2 Accordingly, SEBI vide letter dated April 03, 2006 sent to its registered office address at 42/7, East Patel Nagar, New Delhi- 110008, advised SEHL to submit copies of brochures/ other documents issued by it in connection with its various schemes as well as details of the mobilization and repayments done by SEHL under its various schemes as claimed in Reply dated January 12, 2006. However, the said letter was returned undelivered with the comment 'shifted'. SEBI, therefore, addressed a letter dated August 21, 2006 to the Registrar of Companies, NCT of Delhi & Haryana, New Delhi seeking information regarding SEHL including its latest address and names and addresses of its past and present directors.
- 3.3 Vide letter dated October 12, 2006, the Registrar of Companies, New Delhi, forwarded copies of the requested documents to SEBI. From the said documents it was observed that SEHL's address as per the records of the Registrar of Companies was the same as available on record with SEBI.
- 3.4 Due to the fact that SEHL did not respond to letter dated April 03, 2006, on the basis of information received from the Registrar of Companies, New Delhi, another letter dated November 14, 2006 was issued to SEHL and its directors whose names are mentioned in the schedule annexed hereto, through registered post.
- 3.5 The aforesaid letter dated November 14, 2006 was dispatched through

registered post to SEHL at its registered office at 42/7, East Patel Nagar, New Delhi- 110008 and SEHL's directors at the addresses provided by the Registrar of Companies, New Delhi, as contemplated under Section 51 of the Companies Act, 1956 (1 of 1956). With the exception of letter sent to one of directors of SEHL (i.e Shri Saibal Pal) which has neither returned undelivered nor been responded to, the remaining letters have all returned undelivered.

- 3.6 Further SEBI was also served on 27.11.2007 with a copy of Writ Petition being Writ Petition No. 7073 of 2007 filed in the High Court of Orissa, Cuttack by the investors in the schemes of SEHL from Rourkela region namely Laxman Tirkey, Philip Sanjat Tirkey, Krishna Kishan, Biranchi Tanudia, Padma Munda, Fulamani Munda, Basmati Sandil, Dhansingh Bhumil, Jagat Majhil, Biswanath Mundary, Masang Maghil and Chhabi Lakra. The Petitioners are seeking to assail the alleged illegal action of SEHL of exploitation, cheating as well as harassment caused to petitioners as well as several people from whom crores of Rupees were collected in the shape of investment in the SEHL with an assurance to pay back the money with attractive returns but ultimately failing to do so. It appears from the Writ Petition that the SEHL opened its branch at Rourkela and started collecting funds from the petitioners and several public by issuing offer documents of various schemes, shares certificates and other financial instrument with a promise to pay the matured amount after certain period of time. The petitioners have alleged that SEHL has collected funds to the tune of Rs. 6,81,78,000/- from the Rourkela region. The petitioners enclosed with the Writ Petition copy of share certificates and unit certificates under the heading SEHL PLAN- A2, B2, B4, B6, B7 etc. with completion of plan date such as 3.08.2007, 24.10.2007, 9.05.2007, 5.03.2007 etc.. The petitioners also attached a copy of letter dated 21.10.2006 written by Mr.

Saibal Pal, Director, SEHL stating that they are trying to solve the problem. However, SEHL did not pay the assured amount to the petitioner on maturity. The matter is still pending in the Hon'ble Court of Orissa.

3.7 I find that SEHL responded vide their letter dated January 12, 2006 to the Show Cause Notice (SCN) dated July 12, 2005 which was duly served upon SEHL at its registered office. Subsequently, SEBI issued another letter dated April 03, 2006 to SEHL at its registered office through courier seeking inter alia certain documents and clarifications in support of the submissions made in SEHL's reply dated January 12, 2006. However, the said letter dated April 03, 2006 returned undelivered with the comment 'shifted'. Thereafter, another letter dated November 14, 2006 was issued to SEHL at its registered office and SEHL's directors at the addresses obtained from the Registrar of Companies, New Delhi which (with the exception of one letter) also returned undelivered. However, from the copies of letter of SEHL dated 21.10.2006 and 26.11.2006 enclosed to Writ Petition No. 7073 of 2007 filed in the Orissa High Court, particular of which has been given in paragraph no. 3.6, shows the registered office address of SEHL as '42/7, East Patel Nagar, New Delhi- 110008' on which address letters were sent through registered post AD returned undelivered with the comment 'shifted'. Therefore it appears that SEHL is avoiding service of SEBI letters etc.

3.8 In view of these facts, I find that SEBI has duly served SCN dated July 12, 2005 and that SEHL has responded to the same vide its reply dated January 12, 2006. SEHL ought to have submitted documentary evidence, if any, in support of its contentions along with the said reply. However, no such documentary evidence was submitted by SEHL. I

find that SEBI issued a further letter dated April 03, 2006, advising SEHL to submit copies of brochures/ other documents issued by it in connection with its various schemes as well as the details of the mobilizations and repayments done under its various schemes. I find that said letter was issued to SEHL to give another opportunity to SEHL to submit documentary evidence etc. in support of its reply dated January 12, 2006. I also find that SEBI has taken all reasonable recourses to serve the letter dated November 14, 2006 upon SEHL and has complied with the requirements of the Companies Act, 1956 and the principles of natural justice in this regard. I find that SEHL was served with SCN dated July 12, 2005 and SEHL submitted reply dated January 12, 2006. However, SEHL has failed to submit any evidence in support of its contention in their reply. In the circumstances, I therefore, proceed with the matter based on the material available on record.

4.0 CONSIDERATION OF ISSUES AND FINDING:

- 4.1 I have taken into consideration complaints of investors, the SCN dated July 12, 2005, SEHL's reply dated January 12, 2006, SEBI's letter dated April 03, 2006, SEBI's letter dated November 14, 2006 and copies of the brochures of the schemes, sample maintenance contract, General Irrevocable Power of Attorney, certificates and receipts annexed to the investor complaints received by SEBI against SEHL.
- 4.2 I find that in terms of section 12 (1B) of the SEBI Act, 1992, " no person shall sponsor or cause to be sponsored or carry on or cause to be carried on any Collective Investment Scheme including mutual funds unless he obtains a certificate of registration from the Board in accordance with the Regulations."
- 4.3 I further find that the CIS Regulations came into force with effect from

October 15, 1999. As per Regulation 3 of the CIS Regulations, “no person other than a Collective Investment Management Company which has obtained a certificate under the Regulations shall carry on or sponsor or launch a collective investment scheme.” Further, Regulation 4 of the CIS Regulations specifies that “Any person proposing to carry any activity as a Collective Investment Management Company on or after the commencement of these Regulations shall make an application to the Board for the grant of registration in Form A.”

4.4 I also find that SEHL in its reply dated January 12, 2006 has not made any submissions in respect of the aforesaid provisions. On the contrary, in its reply dated January 12, 2006 SEHL has claimed that it was only accepting deposits against its fixed assets and had never launched any scheme which falls within the purview of the CIS Regulations. Therefore, it would be necessary to peruse the definition of CIS and analyze the features of the scheme(s) operated by SEHL vis-à-vis this definition to determine whether SEHL was infact operating CIS or not.

4.5 I find that CIS have been defined in Section 11AA of the SEBI Act, 1992, as follows:

"Collective Investment Scheme - (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) shall be a collective investment scheme.

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

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(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-do-day control over the management and operation of the scheme or arrangement."*

4.6 From an analysis of the features of the schemes operated by SEHL (as culled out from copies of the brochure of the scheme, sample maintenance contract, General Irrevocable Power of Attorney, copies of certificates and receipts annexed to investor complaints received by SEBI) vis-à-vis the definition of CIS as given under Section 11AA of the SEBI Act, 1992, the following conclusions can be drawn:

4.6.1 Section 11 AA (2) (i) of SEBI Act, 1992 - Pooling of Resources & their utilization solely for the purpose of the scheme:

The following features of SEHL's schemes clearly indicate a pooling of resources collected from the investors:

In para 4 of the Brochure issued by SEHL, it is stated that:

"The company has started cultivation of rare and high value various herbal and medicinal plants in the above mentioned farmhouses. There is tremendous demand of the herbal/ medicinal products both in India as well as in the global market."

In the first section of the Sample Maintenance Contract as given in the aforesaid Brochure it is stated that:

“.... AND WHEREAS the contractor has entered into similar agreements with the LAND OWNERS of the contiguous lands. AND WHEREAS the LAND OWNER agrees that the Contractor would be able to render effective services only because they have entered into similar agreements with owners of contiguous lands and the contractor has thus been able to spread the plantation over a vast extent of land situated contiguous. ”

In the second section of the Sample Maintenance Contract it is stated that:

“1. the LAND OWNER agrees that the quite essence of this agreement is the availability of a large extent of land contiguous to the land owned by the LAND OWNER more fully described in the schedule hereunder, with the contractor to grow Herbal and Medicinal products as the marginal hold of the is not sufficient to obtain optimum yield and for utilizing the infrastructure and technical expertise offered by the contractor.

.....

14. the LAND OWNER shall not put up any fence or compound wall in his land during the currency of his agreement.”

In the sample General Irrevocable Power of Attorney, it is stated that:

“7. That if the party wishes to hold the land and maintain the same by his/her own, he is free to keep it and also can get it registered on his own name on his/her own expenses and request to the company to replace the same plot with other plot within same area which will have a better road approaches and exposure since this allotted plot will be surrounded by other cultivated plots. ”

These schemes thus satisfy the first characteristic of a CIS as defined under Section 11AA(2)(i) of the SEBI Act, 1992.

4.6.2 Section 11 AA (2) (ii) of SEBI Act, 1992 : “Contributions made ... to receive the profits, income, produce or property” :

The following features of SEHL's schemes clearly indicate that investors contribute to (invest in) these schemes with a view to receive profits, income and property:

In para 2 of SEHL's Brochure it is stated that:

"We devote whole heartedly for the development of such land for the interest of our customers and provide reasonable returns to our deemed customers....."

In para 3 of the Brochure it is stated that:

"“Save Earth” has launched attractive and security based schemes (own a herbal / medicinal grove) which offer two plans to earn attractive and handsome secured agro income (which is exempted from income tax as per section 10(1) read with section 2 (1 A) of income tax Act, 1961 from developed agricultural farm houses which will be transferred to the investor by Power of Attorney (power to sell, if the company refuses to purchase the same)....."

In the second section of the Sample Maintenance Contract it is stated that:

"15. The Contractor may purchase the land from the land owner along with the herbal and medicinal trees grown at mutually acceptable price or nominate any person the purchase, in the event of the LAND OWNER willing to sell the land during the currency of the agreement."

In the third section of the Sample Maintenance Contract it is stated that:

"1. The maintenance contractor hereby agrees and assures that assured Agro benefits would be provided in terms of the arrangement/cumulative lease rental. "

In the sample General Irrevocable Power of Attorney it is stated that:

“10. That the company will secure a agro-return/cumulative lease rental of Rs Per quarter/per annum on a fixed time mutually agreed by both the parties in lieu of the area allotted to the party by the company against payment of the consideration amount. ”

Under the head ‘Frequently asked Questions’ in the Brochure, it is stated that:

“Q5. WHAT IS THE FUTURE OF THIS BUSINESS?

..... A survey published in THE ECONOMIC TIMES in mid 1998, analysts have shown the world trade of herbal oil and herbal products to be in the range of Rs. 55,000/- crores in Global Market. Demand of herbs and herbal products increase day by day @ 20% - 25%, as estimated by conservatives. The current figures are about Rs.65,000 crores – thereby showing a growth of more than 20%.

.....
.....

Q8 WHAT TYPE OF SECURITY DOES THE COMPANY PROVIDE AGAINST ITS EXISTING SCHEMES?

Security to the land holders is provided in the form of power of attorney in order to develop farm land where at the termination of the maintenance contract member has the option to:

- a) Claim refund of the Consideration amount*
- b) Register the land in his/ her name at his/ her own cost*

Q9 HOW LUCRATIVE ARE THESE SCHEMES VIS-À-VIS PUBLIC AND PRIVATE SECTORS?

Along with the handsome returns provided to the investors, the Company is providing Power of Attorney to the unit holders, thereby providing comprehensive security which make the schemes far more lucrative vis-à-vis public and private sector schemes. ”

In addition to the above, SEHL has also depicted various tables in its brochures which clearly show that substantial returns were being offered to the investors.

SEHL's schemes, therefore, satisfy the second characteristic of a CIS as defined under Section 11AA(2)(ii) of the SEBI Act, 1992.

4.6.3 Section 11 AA (2) (iii) of SEBI Act, 1992: Managed on behalf of investors:

The following features of SEHL's schemes are clearly indicative of management on behalf of investors:

In para 2 of SEHL's Brochure it is stated that:

".....We imply our expertise and use the land in standard way for the better cultivable position and production of agro based products and shall develop farm house/ land for customers."

In para 5 of the Brochure it is stated that:

"The company has already arranged technical know-how and marketing tie – up with several pioneer and Organisations of repute in order to develop and market the products through these reputed Organisations. "

In the Brochure under the head 'Other terms and conditions' Condition 7 states that:

"Normally, the company will transfer land in that particular zone where the applicant is residing subject to availability. However, the company may consider the option to other zone's Farm Land given by an applicant of 20 units or more on one application in Plan 'A' and 100 units or more in Plan 'B'."

Further Condition 8 under the head 'Other terms and conditions' of the aforesaid Brochure states that:

“The company, i.e. the contractor will enter upon by virtue of the agreement with the land owner for the development of the land as purchased by him.”

And as per Condition 9:

“If an applicant wishes for holding the farm land with him, after the expiry of the agreement and like to go for his own farming management, after the agreement period, he can request the company to change the location of the land area, for convenience in approach and other the company may convert the same, subject to availability.”

In the first section of the Sample Maintenance Contract it is stated that:

“..... AND WHEREAS the LAND OWNER offer to utilize the services of the contractor to cultivate the herbal and /or medicinal and to grow and maintain the same.

AND WHEREAS the Contractor accepted to render aforesaid services by employing their technical knowledge and available potential infrastructure to grow such products.....”

In the second section of the Sample Maintenance Contract it is stated that:

“.....

5. The contractor shall bear the charges for curing the land and bring up the level of the land if need be at their expenses.

6. The contractor may treat the land in order to make it fit for cultivation of herbal / aromatic and other farming.

7. The contractor shall engage their won staff, men, technical experts, required for the purpose of growing Herbal and Medicinal products and pay their remuneration.

8. the Contractor shall use such chemicals, fertilizer, pesticides, soil testing as they may deem necessary.

9. the contractor shall post their won security men as and when need arises.

10. the contractor shall bear the insurance charges and the premium shall be punctually paid.

11. the parties hereto agree that the cost incurred for the maintenance, growth and the upkeep to the farming shall be borne exclusively by the Contractor.

.....
.....

16. this LAND OWNER shall not pay any maintenance charges. The maintenance charges will be borne by the Contractor. “

In the third section of the Sample Maintenance Contract it is stated that:

“THE MAINTENANCE CONTRACTOR HEREBY AGREES:-

1. To take all necessary care and protect and grow the herbal and medicinal trees to the best possible yield.

2. To take crop insurance and any other safeguards provided by the insurance companies or Govt. Departments to protect the interest of the trees and the owner.

3. To inform the land owner from time to time about the progress made in the plantation and any other Govt. modification etc.
.....”

In the sample General Irrevocable Power of Attorney it is stated that:

“ 9. That the party in the meantime, authorize the company to appoint as a contractor to develop the land, arrange all infrastructural facility for cultivating Aromatic/Herbal and any other types of agro activities, make know-how agreement with any expert person or organization for cultivation, its look after or for the marketing arrangement and/or recovery of sale proceeds.

.....

14. That the party will have right to visit his location and Agro – activities on it time to time with due appointment with the company on his own cost. “

The schemes, therefore, satisfy the third characteristic of a CIS as defined under Section 11AA(2)(iii) of the SEBI Act, 1992.

4.6.4 Section 11 AA (2) (iv) of SEBI Act, 1992: no day-to-day control :

The following features of SEHL’s schemes are clearly indicative of no day to day control by the investors:

In the Brochure under the head ‘Other terms and conditions’ Condition 5 states that:

“If one can wish to sell the land area, the first right will be of the company to purchase the same against the consideration amount paid to the company, the Attorney will also have the power to get the land registered with concerning sub-registrar on his/her own expenses.”

Further as per Condition 6:

“The company will keep farming right for the duration agreed upon in the beginning and hence the additional Agro benefits will be paid till that date only and not beyond the date. During that period, company will arrange know-how, marketing and other infra-structural needful of its own.”

In the second section of the Sample Maintenance Contract it is stated that:

“2. The LAND OWNER hereby unequivocally permits the CONTRACTOR to enter upon into the land more fully described in the schedule hereunder and to grow herbs/aromatics therein.

3. the LAND OWNER agrees that CONTRACTOR shall have right of ingress and agrees into and upon the said property.

4. the LAND OWNER shall not interfere in any manner in the matter of growth of the farming.

.....
....

12. The LAND OWNER shall not sell, mortgage or encumber the land more fully described in the schedule hereunder without the previous written consent of the CONTRACTOR and in the event of any such transfer, the transferee shall become the owner of the said and subject to all the terms and conditions of this agreement.

13. The LAND OWNER shall not terminate this agreement for any reason whatsoever until the expiry of the agreement in terms of clauses 12 above as such a termination would affect the other LAND OWNER who have entered into such agreement. “

In the sample General Irrevocable Power of Attorney it is stated that:

“ 8. That if the party wishes to sell or transfer the said plot, the first claim will be of the company to purchase back the same on the consideration amount only, if he company refuses to purchase back due to any reason, then the option will go for others.

.....
.....

11. That the party will not interfere the decisions of the company regarding the planning of the cropping patterns, making know-how agreements, making marketing tie-ups or any other arrangements which effects the target/planning and out of the Agro proceeds. And hence, the entire management of the company. However, the Power of Attorney holder and company will sit together to decide day to day monitoring of the Farm House/or the Grove.

12. That the party will not claim for any other benefits other than the commitments of the company mentioned in clause no. 10.”

The schemes operated by SEHL, therefore, satisfy the fourth characteristic of a CIS as defined under Section 11AA(2)(iv) of the SEBI Act, 1992.

4.6.5. One of the features of the scheme is that “The unit holder at any point of time after expiry of 6 months can transfer his/her right and interest in units to any third party. Transfer fees shall be Rs. 75 per transfer/ change per unit.” From the above it is thus clear that SEHL was issuing the units to the unit holders i.e. investors and these units were transferable. As per Section 2(h) (ib) of Securities Contracts (Regulation) Act, 1956 the word ‘securities’ include units or any other instrument issued by any collective investment scheme to the investors in such schemes. The unit issued by SEHL could be transferred by unit holders containing his rights and interest in the unit to the third party after expiry of 6 months from the allotment of the unit. These units were financial instruments and are transferable similar to other tradable securities such as securities of CIS and therefore will come within the definition of securities under Section 2 (h) (ib) of Securities Contracts (Regulation) Act, 1956.

4.7 From the aforesaid analysis and the complaints of the investors, brochure of scheme etc. it is clear that the schemes operated by SEHL possess all the characteristics of a CIS as defined under Section 11AA of the SEBI Act, 1992. Further, the unit issued to the unit holders/ investors / complainants was transferable. As per the scheme the unit holder could transfer his right and interest in the unit to any third party. Thus, there is no doubt that units of SEHL are unit of CIS which come under the definition of securities under Section 2(h) (ib) of Securities Contracts (Regulation) Act, 1956.

- 4.8 I, therefore, hold that SEHL was operating CIS and reject its contentions of never having launched any scheme which falls within the purview of the CIS Regulations.
- 4.9 I also find that in the matter of PGF Ltd & Others Vs Union of India & Others [2005 (124) CC 201] the Hon'ble High Court of Punjab and Haryana held that 'on an analysis of the activities of the PGFL (as have been projected by it), it is clear that the PGFL satisfies all 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.' Further in the matter of *Paramount Bio-tech Industries Limited Vs. Union of India* [2004 (120) CC 18] the Hon'ble Allahabad High Court held at paragraph 106 and 107 of the judgement that 'SEBI started receiving a deluge of complaints from across the country informing that the cheques issued by the plantation companies were bouncing, and the companies were not responding to the letters. Sometimes, they were requesting for surrender of the cheques in return for which fresh cheques or promissory notes would be issued. Often sale deeds were executed in the individual names of the directors and their relatives. A huge amount was given by these companies to the sister concern as interest free loan. In our opinion, all these facts clearly show that the plantation companies were duping the investors and were diverting their funds, which called for strong regulatory measures. Hence, the action taken by the SEBI, in our opinion, was fully justified and reasonable. In fact, it was the duty of the SEBI to take such strong steps to protect the investors, and it would have failed in its duty had it not.'

- 4.10 I find that the CIS Regulations were notified in the official gazette on October 15, 1999. I further, find that SEHL has mobilized funds from the public at least since August 2000 as is evident from the copies of the certificates annexed to the complaints of Shri Ajoy Kumar Banerjee dated July 12, 2002, Shri J C Nand dated March 11, 2005 and Smt. Dipti Roy (& Pratap Kumar) dated June 22, 2002.
- 4.11 From the fact of the date of incorporation of the Company being June 26, 2000 and mobilization of funds by SEHL from investors atleast since August 2000, it is clear that SEHL was operating CIS much after the notification of the CIS Regulations which come into force on October 15, 1999.

Section 12 (1B) of the SEBI Act, 1992 provides that *“No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investments schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations.”*

Regulation 3 of CIS Regulations provides that *“No person other than a collective Investment Management Company which has obtained a certificate under these regulations shall carry on or sponsor or launch a collective investment scheme.”*

I find that SEHL has neither filed any information with SEBI about its activities, schemes, operations and offer documents of the scheme, nor has it applied for registration under the CIS Regulations as required under Section 12(1B) of the SEBI Act, 1992. I find that SEHL has not claimed that they have filed such information with SEBI in their reply

dated January 12, 2006. On the contrary in its reply SEHL claimed that it was not operating CIS, which is not acceptable in view of the conclusions of my findings detailed at paragraphs at paragraphs 4.6, 4.7 and 4.8 above. I, therefore, hold that SEHL was mobilizing funds from the public without obtaining registration with SEBI and without filing offer documents with SEBI, in violation of the provisions of the Section 12 (1B) of SEBI Act, 1992 and Regulation 3 of the CIS Regulations.

- 4.12 I also find that, as per Regulation 65 of the CIS Regulations, SEBI may issue directions in the interest of the securities market and the investors, inter-alia, requiring the person concerned to refund any money or the assets to the concerned investors along with the requisite interest or otherwise, collected under the CIS scheme. Thus as SEHL has not filed an application for registration under the CIS Regulations and has violated the provisions of the SEBI Act, 1992 and the said CIS Regulations, it is therefore required to refund the money to the investors in terms of the provisions of Regulation 65 of the CIS Regulations. I find that SEHL in its reply dated January 12, 2006 has stated that it has ceased to accept money from the investors after getting SEBI's instructions (i.e. after the receipt of SCN dated July 12, 2005); that it was in process of refunding the money collected under its various schemes back to the investors and that it would file a 'Refund Report' with SEBI in this regard. However, I find that till date no such 'Refund Report' has been filed by SEHL with SEBI. Further, no documentary proof in support of SEHL's claims of repayment was furnished and is found to be available on record. I find that SEBI has received several investor complaints against SEHL for non- refund of money invested by them in SEHL's schemes which include a complaint received in February 2001 from Ms. Chanda Bai, complaint dated June 22, 2002 from Smt. Dipti Roy (& Shri Pratap Kumar Roy), complaint dated July

12, 2002 from Shri Ajoy Kumar Banerjee, complaints dated November 13, 2001 and March 11, 2005 from Shri J C Nand and complaint dated May 30, 2005 from Shri Uttam Kumar SenGupta.

5.0 ORDER

5.1 It is clear from the aforesaid findings and conclusion that SEHL was operating CIS without obtaining registration from SEBI and has thus failed to comply with the requirements of the SEBI Act, 1992 and the CIS Regulations. SEHL has also failed to refund money or assets to investors along with requisite interest as required under Regulation 65 of CIS Regulation. For the violation of the provisions of the SEBI Act, 1992 and the CIS Regulations, SEHL and its directors are liable for action under Section 11B of SEBI Act, 1992 read with Regulation 65 of the CIS Regulations.

5.2 Therefore, in exercise of the powers conferred upon me under Section 19 read with, Section 11, 11B of the SEBI Act, 1992 and Regulation 65 of the CIS Regulations, I, hereby direct M/s Save Earth Herbs Limited and their directors to:

5.2.1 Refrain from collecting any money from investors under its existing schemes with immediate effect;

5.2.2 Refrain from launching any new collective investment scheme(s);

5.2.3 Refund the money collected under its existing collective investment scheme(s) with returns which are due to the investors as per the terms of the offer and alongwith requisite interest (which should not be less than the bank interest) for delay, if any, within a period of one month from the date of this order failing which further actions would follow including:

5.2.3.1 Initiation of prosecution proceedings under Section 24 read with Section 27 of the SEBI Act, 1992 against SEHL / its promoters /directors/managers/ persons-in-charge of the business of its scheme (s) also, whose names are mentioned in the schedule annexed hereto for failure to obey the above directions.

5.2.3.2 Debarring SEHL/ its promoters/ directors/ managers/ persons-in-charge of the business of its scheme(s), whose names are mentioned in the schedule annexed hereto from operating in accessing the capital market for a period of 5 years.

5.2.3.3 Reference to the state government/local police to register civil/criminal cases against SEHL/ its promoters /directors/managers/ persons-in-charge of the business of its scheme (s), whose names are mentioned in the schedule annexed hereto, for apparent offences of fraud, cheating, criminal breach of trust and misappropriation of public funds.

5.2.3.4 Reference to the Ministry of Corporate Affairs for initiating winding up proceedings against SEHL.

Place: MUMBAI

T.C. NAIR

Date: September 22, 2008

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Annexure 'A'

Names of the Directors / promoters/ managers and other persons in charge of the business. (see paragraph 2.1 and 3.4 of the order)

i)

Details of Directors of M/s. Save Earth Herbs Ltd.

S.No.	Name of the Directors	Period of Directorship	
		From	To
1.	Sh. Akhileshwar Kumar Sinha S/o Late Sh. S. Narain 11710/3, Sat Nagar, Karol Bagh New Delhi.	Since incorporation (Date of incorporation of the Company – 26.06.2000)	Continuing
2.	Sh. Sanjay Kumar Mishra S/o Sh. B.K. Mishra 29/141, West Patel Nagar New Delhi – 110 008. Alternate addresses: Vill. & Post Purshootumpur Saharsha, Bihar 183, M.I.G, Patel Nagar New Delhi – 110 008	Since incorporation (Date of incorporation of the Company – 26.06.2000)	Continuing
3.	Sh. Sankar Mondal S/o Late G. Mondal 79, Amrit Lal Mukherjee Road Arbinda Nagar Calcutta – 700 063. Alternate address: 73, Amrit Lal Mukherjee Road Arbinda Nagar Calcutta – 700 063.	Since incorporation (Date of incorporation of the Company – 26.06.2000)	Continuing
4.	Sh. Dipak Kumar Basu Mallick S/o Late N.G. Basu Mallick 133/1, B.B. Chatterjee Road Calcutta – 700 042.	Since incorporation (Date of incorporation of the Company – 26.06.2000)	Continuing
5.	Sh. Santosh Kumar Srivastava S/o Late Nagendra Prasad Road No. 3, Gardani Bagh Patna – 800 001.	Since incorporation (Date of incorporation of the Company – 26.06.2000)	1.2.2001
6.	Sh. Saibal Pal	1.2.2001	Continuing

	S/o Sh C R Pal Block No. J, Flat No. 4, S.M. Nagar Housing Estate P.O. Sarkar Pool, Dist. 24 PGS(s) West Bengal – 743 382.		
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Details of Promoters of M/s. Save Earth Herbs Ltd. as per the MOA

S.No.	Name of the Promoters
1.	Sh. Akhileshwar Kumar Sinha S/o Late Sh. S. Narain 11710/3, Sat Nagar, Karol Bagh New Delhi.
2.	Sh. Sanjay Kumar Mishra S/o Sh. R.K. Mishra 29/141, West Patel Nagar New Delhi – 110 008.
3.	Sh. Sankar Mondal S/o Late G. Mondal 79, Amrit Lal Mukherjee Road Arbinda Nagar Calcutta – 700 063.
4.	Sh. Dipak Kumar Basu Mallik S/o Late N.G. Basu Mallick 133/1, B.B. Chatterjee Road Calcutta – 700 042.
5.	Sh. Santosh Kumar Srivastava S/o Late Nagendra Prasad Road No. 3, Gardani Bagh Patna – 800 001.
6.	Shri K Sai Ram S/o K Channayya H.No. B/ 261 – Sec – 21 Rourkela, Orissa
7.	Shri Rajiv Dutta S/o Late S.B. Dutta 49-A, GTB Enclave Delhi – 110 091.