

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER**

ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, in the matter of Sunplant Bio Energy Private Limited (PAN: AAPCS3390F) and its Directors, viz. Shri Awdhesh Kumar Singh (DIN: 00301404; PAN: AKQPS6527G), Shri Girija Shankar Kumar (DIN: 00355512; PAN: AKAPK2774R), Shri Sumanta Sinha (DIN: 03573218; PAN: ALBPS3314F), Shri Neeraj Pathak (DIN: 03561265; PAN: BAZPP2860B), Shri Sunil Kumar Jha (DIN: 03566733; PAN: AMHPJ3198H), Shri Subir Gupta (DIN: 07133112; PAN: BONPG5600Q) and Shri Padmalochan Nayak (DIN: 06966981; PAN: AHZPN2835J).

1. Securities and Exchange Board of India ("**SEBI**") received a letter dated March 12, 2013, from the Ministry of Corporate Affairs ("**MCA**") forwarding a copy of the letter dated February 20, 2013, from Shri Nishikant Dubey, Member of Parliament. In the aforesaid letter dated February 20, 2013, Shri Nishikant Dubey enclosed an Official Report of the Sub-Divisional Officer, Deoghar, which was forwarded to the Deputy Commissioner, Deoghar, wherein it was stated that Sunplant Bio Energy Private Limited ("**SBEPL**") was mobilizing funds from the public.
- 2.1 Thereafter, SEBI, vide letter dated April 19, 2013, advised SBEPL to furnish the following information within fifteen days from the date of receipt of the aforesaid letter *inter alia* in respect of schemes launched by that company, viz. –
 - i. Copy of the Memorandum and Articles of Association of the company;
 - ii. Audited Balance Sheet and Profit & Loss Account of the company for the last 3 years;
 - iii. Name, addresses and occupation of all the promoters/directors of the company;
 - iv. Names and details of the Key Managerial Personnel of the company;
 - v. (Other information), viz. –
 - a. A statement of mobilization and deployment of funds under various schemes duly certified by the Statutory Auditors of the company;
 - b. Terms and conditions of the schemes launched;
 - c. Structure of the schemes;
 - d. Details of the scheme(s) wise amount mobilized till date alongwith the number of investors under schemes,
 - e. Details of assured returns made in the scheme,

- f. Copies of Offer documents, application form, pamphlets, brochures of the scheme(s) launched;
- g. Sample copies of the registration letter and allotment letter issued to investors under the scheme(s).

2.2 SBEPL, vide letter dated May 4, 2013, sought further time for submission of the abovementioned information sought by SEBI. Thereafter, vide reply dated June 5, 2013, SBEPL, while enclosing the Memorandum and Articles of Association; copies of Audited Balance Sheet and Profit & Loss Account; Details regarding all the Promoters/Directors; Number and list of allottees, Brochure–cum–Application Forms, submitted:

"We do inform that we have not raised public fund from raising preference shares/debentures or by launching various schemes. We are only engaged in the Social Forestry & Bio–Fuel business by Jetropha Trees Plantations. ...

The company has planted the Nursery Trees, Jetropha cultivations only. ..."

2.3.1 Subsequent to an examination of the information submitted by SBEPL, SEBI vide letters dated March 14, 2014, sought further clarifications from the company and its Directors, viz. Shri Sunil Kumar Jha and Shri Sumanta Sinha, regarding certain entries in its Balance Sheet for the Financial Year 2011–12 and also the scheme launched by it i.e. *Sun Plant Bio Energy Social Forestry Mission*.

2.3.2 The letters address to SBEPL and Shri Sumanta Sinha were returned as undelivered with the remarks 'unclaimed' and 'left'. However, vide letter dated April 9, 2014, SBEPL sought time till April 29, 2014, to submit the information sought by SEBI.

2.3.3 As no reply was forthcoming, SEBI, vide reminder letter dated January 19, 2015, advised SBEPL to submit the information sought vide its earlier letter dated March 14, 2014. SBEPL, vide letter dated January 22, 2015, once again sought time till February 21, 2015, to provide the information sought by SEBI. Subsequently, a second reminder letter dated January 28, 2015, was issued by SEBI to SBEPL advising it to submit the aforesaid information. However, till now, no information has been submitted by SBEPL.

2.3.4 SEBI also sought information from SBEPL's Auditor vide letter dated February 26, 2015. The Auditor replied vide letter dated March 12, 2015, and *inter alia* submitted a *Sales Brochure* detailing SBEPL's social forestry program and also a Memorandum of Understanding ("MOU") dated January 30, 2012, entered into between SBEPL and West Bengal Wasteland Development Corporation ("WBWDC").

3. The material available on record i.e. correspondence exchanged between SEBI and SBEPL alongwith the documents contained therein; correspondence exchanged between SEBI and SBEPL's Auditor alongwith the documents contained therein and information obtained from the MCA website i.e. *MCA21 Portal*, have been perused. On an examination of the same, it is observed that –
- i. SBEPL (CIN: U24100WB2011PTC158737) was incorporated on February 10, 2011, having its office at RGM 172, Tegharia, VIP Road, Kolkata–700059, West Bengal, India.
 - ii. The past/present Directors of SBEPL are Shri Awdhesh Kumar Singh, Shri Girija Shankar Kumar, Shri Sumanta Sinha, Shri Neeraj Pathak, Shri Sunil Kumar Jha, Shri Subir Gupta and Shri Padmalochan Nayak.
 - iii. From the sample Brochure–cum–Application Forms provided by SBEPL vide its letter dated June 5, 2013, the following is noted –

Social Forestry Scheme

- a. SBEPL launched a scheme called “*Sunplant Social Forestry Mission*” (“***Social Forestry Scheme***”), described as a Joint Venture Programme of SBEPL and other Industrial Corporates in Technical Collaboration with WBWDC under the Department of Forests, Government of West Bengal.
- b. The *Application for Participation in the Sunplant Social Forestry Mission*, a document inviting subscription under the *Social Forestry Scheme*, states:

“I have come to know that Sunplant Bio Energy Pvt. Ltd. has undertaken a massive Social Forestry Project in its own lands with the help of West Bengal Wasteland Development Corporation (WBWDC) Ltd. under the Department of Forests, Govt. of West Bengal, who will act as the certification and accrediting agency to mitigate challenges of climate change. The trees planted by this project will generate lifesaving oxygen and fix carbon dioxide for the benefit of humanity and this will be my social obligation to be repaid to society. I shall not claim any benefits against such fixations of carbon but I understand I will benefit by other incidental benefits on planted trees. I would like Sunplant Bio Energy Pvt. Ltd. to plant trees on my behalf in the war against climate change. I want to become part of this mission and apply for plantation and maintenance of ... No. of trees on my behalf for which I am remitting ... ₹ ... against my participation in the Mission.”

- c. The terms and conditions governing the *Social Forestry Scheme* as contained in the Brochure–cum–Application Forms, are reproduced below –
- i. *“Any Person/HUF/Institution/Organisation interested in environment development mission, ecological balance and climate change mitigation may participate in Social Forestry Mission which is approved by WBWDC, under Department of Forests, Govt. of West Bengal for clarification and accreditation.*
 - ii. *For cost effective run of the mission, participation is available for a minimum set of five trees (one unit) at a cost of ₹1500/- (One Thousand Five Hundred Only). A participator, however, may subscribe for more sets by paying multiple of the said minimum amount on ‘first come first serve’ basis since our Social Forestry Project is available on limited opportunity base of 1000 acre land only at Jalpaiguri (W.B.). The land may be increased further, subject to its availability.*
 - iii. *Company has arranged land for this project at its own cost & is planting trees under certification, supervision and accreditation of WBWDC. Company is also allowing free access to WBWDC people in the project to perform respective assignment as decided.*
 - iv. *Company shall also arrange proper tagging and identification of distinctive number of plant and look after the maintenance and growth of trees as per technical knowhow provided by WBWDC. A participator shall also have liberty to join us in our maintenance job of trees or may visit the site to see the day and day growth and maintenance of the trees & may review, forward suggestion, if any.*
 - v. *After seven years, trees will be felled with the permission of Forests Dept. to give way for further plantation. This is because of using maximum oxygen generating span of trees. Now felled trees will be property of participators and on obtaining consent from them, company may arrange sale of wood of those trees on behalf of participator for reaching estimated value of ₹750/- per tree. The entire process may take maximum two months from the date of receipt of participator’s consent for sale.*
 - vi. *To cover the risk against adverse situation, company will bear all expenses in respect of the insurance of the planted trees as per insurance laws.*
 - vii. *Since all interested participants are partners in the mission, they will cooperate with us by their active association and adherence to the mission in case of any unforeseen situation, eventualities, enactment or any imposition of law by Govt. subject to healthy growth of trees to the satisfaction of each participator under technical knowhow from WBWDC.*
 - viii. *The participants between the age group of 10 to 70 years and owning 10 or more units will be covered under Accidental Insurance (JPA) benefit, being arranged with United Insurance Company Ltd. Such benefit will be effective after 45 days from the date of participation.”*

Bio–Fuel Scheme

- d. SBEPL also launched another scheme called “Sunplant Bio–Fuel Mission” (“**Bio–Fuel Scheme**”), described as *“a venture partnership with Sunplant Agro Ltd. with expertise in Jatropha Cultivation for having smooth supply of Jatropha Bio-fuel and making the same available to general mass through a flexible marketing plan. It is worth mentionable here, that Sunplant Agro Ltd. has signed a MOU with WBWDC an accrediting Agency, under Ministry of Forests, Government of West Bengal with potential for developing 50,000 acres of waste land for cultivation of Jatropha curcas and medicinal plant in PPP model. ... All citizens especially farmers and other users, therefore, should come forward to lend helping hand to organization like us to gain triple –E benefits like (a) Employment (b) Earnings and (c) Energy by way of wide scale Jatropha cultivation in quest of a new horizon for an exciting future ahead by empowering in foot level of people stretching their per capita income and should have a helping hand for economic growth through our flexible marketing plans.”*
- e. The terms and conditions governing the Bio–Fuel Scheme as contained in the Brochure–cum–Application Forms, are reproduced below –
- i. *“Any person/company / HUF interested in environment development may participate in our Bio-Fuel Mission by paying multiple of – (a) ₹500/- per month for a period of 10 months (or accumulated amount in the same period) may be paid in One Time Payment (OTP) basis at the start (For Table A). or; (b) ₹250/- per month for a period of 12 months (or accumulated amount in the same period) may be paid in One Time Payment (OTP) basis at the start (For Table B).*
 - ii. *Company will supply Bio Fuel from its different units against payment made by participant as shown in the Tables below. The quantity of Bio-fuel will be determined on the basis of prevailing market rate at the time of delivery.*
 - iii. *Company shall issue the Bio-Fuel Delivery Order within one month from the date of completion of payment option.*
 - iv. *In case of discontinued payment, participant will be entitled to take delivery of Bio-Fuel for paid amount after five years only.*
 - v. *In case participants don't feel the need of taking delivery of Bio-Fuel at the end of terms, the Company shall arrange to sale the same to others and payment will be made accordingly to the participant.*
 - vi. *Natural calamities/ unforeseen situation may cause interruption in delivery of Bio-Fuel. In such cases for each delayed month, extra Bio-Fuel will be given on calculating prevailing Bank interest.”*

FUEL STOCK REDEMPTION TABLE

TABLE (A)											
AMOUNT	DELIVERY OF BIO FUEL YEAR WISE WORTH OF RUPEES (AT END OF THE YEAR)										
	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year	6 th Year	7 th Year	8 th Year	9 th Year	10 th Year	Total
₹5000 (OTP) 8 Years Plan	Nil	Nil	1000	1000	1000	1000	1000	7000			12000
₹500 (*10 EMP) 8 Years Plan	Nil	Nil	Nil	1000	1000	1000	1000	7800			11800
₹5000 (OTP) 10 Years Plan	Nil	Nil	1000	1000	1000	1000	1000	1000	1000	7100	14100
₹500 (*10 EMP)	Nil	Nil	Nil	1000	1000	1000	1000	1000	1000	7900	13900
<i>OTP – One Time Payment</i> <i>EMP – Easy Monthly Payment</i>											

Table (B)					
AMOUNT (OTP) (FOR 12 MONTHS)	AMOUNT (EMP) (AT THE START)	DELIVERY OF BIO FUEL A WORTH OF RUPEES (AT END OF)			
250	3000	8 Year		10 Year	
		EMP	OTP	EMP	OTP
		8550	9750	12150	13975

- iv. From the Audited Financial Statements of SBEPL for the Financial Year 2011–12, it is observed that the amounts mobilized under the abovementioned *Schemes* have been recorded in the relevant Balance Sheet under the head '*Current Liabilities*'. The same is reproduced below:

Particulars	As on March 31, 2012 (₹ in Crores)
<i>Advances from Customers</i>	4.88

- v. From the abovementioned Balance Sheet, it is also observed that SBEPL transferred an amount of ₹26.36 Crores to 7 group companies, one of which was Sun–Plant Agro Limited (CIN: U01122WB1993PLC059523).

- 4.1.1 The aforementioned details of the *Social Forestry Scheme* and *Bio-Fuel Scheme* offered by SBEPL have to be considered in light of Section 11AA of the SEBI Act. The aforesaid Section 11AA, which provides for the conditions to determine whether a scheme or arrangement is a 'collective investment scheme', reads as follows:

"(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) or [sub-section (2A)] shall be a collective investment scheme.

[Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under the exemptions from CIS sub-section (3), involving a corpus amount of one hundred Crore rupees or more shall be deemed to be a collective investment scheme.]

(2) Any scheme or arrangement made or offered by any [person] under which,

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;

(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;

(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

(iv) The investors do not have day to day control over the management and operation of the scheme or arrangement."

Social Forestry Scheme

- 4.1.2 In the context of the abovementioned Section 11AA of the SEBI Act, the *Social Forestry Scheme* offered by SBEPL, is examined as under:

- i. ***The contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement.***
 - a. SBEPL has invited subscription from the public towards participation in the *Social Forestry Scheme*. Under the aforesaid *Scheme*, an investment may be made by an investor or *Participant* in lieu of units of social forestry, each unit comprising a minimum set of 5 trees. Subsequent to the receipt of a *Social Forestry Participation Certificate* by a *Participant* (evidencing an investment in the *Social Forestry Scheme* by such *Participant*), SBEPL will plant and maintain *Participant's* unit(s) i.e. set of trees, for a period of 7 years *i.e. for the entire duration or Validity of the Social Forestry Participation Certificate*. Upon completion of 7 years, the aforesaid unit(s) will be felled to give way for further plantation. The felled unit(s) will be the property of

the *Participant* and SBEPL may arrange for their sale upon receiving consent from the *Participant*. The aforesaid sale of unit(s) by SBEPL, on behalf of the *Participant*, will be for reaching the estimated value of ₹750 per tree. The aforesaid facts *prima facie* suggest that under the *Social Forestry Scheme*, SBEPL is only soliciting subscription for a common purpose of planting, maintaining and selling of unit(s) of trees with the promise of a return upon such sale of unit(s), after completion of the subscription period. In view of the aforesaid, it would appear that the contribution or investment received from the *Participant* is pooled and utilized for the purpose of the *Scheme*. I, therefore, find that the aforementioned *Scheme* satisfies the first condition stipulated in Section 11AA(2)(i) of the SEBI Act.

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.***

- a. As has been stated in the preceding paragraph, the contribution or investment made by a *Participant* under the *Social Forestry Scheme*, is utilized for the purpose of such *Scheme* i.e. planting, maintaining and selling of unit(s) of trees. A *Participant* investing in the *Social Forestry Scheme* is promised a return in the form of increased value of unit(s) through their subsequent sale by SBEPL (for reaching estimated value of ₹750 per tree). The mere promise of ‘estimated value’ higher than the amount invested shows that the investment/contributions were made by the *Participant* under the *Social Forestry Scheme* with a view to receive profits or increased returns. In addition, SBEPL offers *Accidental Insurance Coverage* as an additional facility to a *Participant*. In view of the aforesaid, I find that the aforementioned *Scheme* also satisfies the second condition stipulated in Section 11AA(2)(ii) of the SEBI Act.

iii. ***The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors.***

iv. ***The investors do not have day to day control over the management and operation of the scheme or arrangement.***

- a. The *Terms & Conditions* of the *Social Forestry Scheme* [reproduced at page 4, paragraph 3(iii)(c) from the Brochure–cum–Application Forms] *prima facie* reveal that the investment made by a *Participant* under such *Scheme* is managed on his behalf by SBEPL. In this context, reference may be made to the following clauses of the aforesaid *Terms & Conditions*, viz. –

- *“Company has arranged land for this project at its own cost & is planting trees under certification, supervision and accreditation of WBWDC. ...*
 - *After seven years, trees will be felled with the permission of Forests Dept. to give way for further plantation. ... Now felled trees will be property of participators and on obtaining consent from them, company may arrange sale of wood of those trees on behalf of participator for reaching estimated value of ₹750/- per tree. The entire process may take maximum two months from the date of receipt of participator’s consent for sale.”*
- b. It is pertinent to note that while the *Terms & Conditions* of the *Social Forestry Scheme*, as contained in the Brochure–cum–Application Forms, appear to indicate that the *Participant* has the *“liberty to join us (SBEPL) in our maintenance job of trees or may visit the site to see the day and day growth and maintenance of the trees & may review, forward suggestion, if any”*, the same is not permitted as per the *Terms & Conditions* contained in the *Social Forestry Participation Certificate*, which states that:
- “2. Company will do maintenance and look after growth of participant’s plants for a period of Seven Years as per technical knowledge provided by WBWDC.*
- 3. Participant shall have liberty to visit the plantation site to see the day to day growth and maintenance of trees.”*
- c. From the above, it is *prima facie* observed that a *Participant* also does not have any day–to–day control in respect of the *units(s) or set of trees* forming part of such *Scheme*.
- d. In view of the above, I find that the aforementioned *Scheme* offered by SBEPL also satisfies the conditions stipulated in Section 11AA(2)(iii)–(iv) of the SEBI Act.

Bio–Fuel Scheme

4.1.3 In the context of the abovementioned Section 11AA of the SEBI Act, the *Bio–Fuel Scheme* offered by SBEPL, is also examined as under:

- i. *The contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement.*

- a. SBEPL has launched the *Bio–Fuel Scheme*, inviting investment from the public towards participation in the purchase and delivery of bio–fuel under various subscription plans. The investment made by a *Participant* or investor is in the form of monetary payment in installments or lump–sum, in accordance with *Fuel Stock Redemption* plans [reproduced at page 6, paragraph 3(iii)(e)]. In lieu of investment in the *Bio–Fuel Scheme*, the *Participant* shall be entitled for delivery of bio–fuel, by SBEPL, within one month after receipt of full consideration i.e. upon completion of payment option either through installments or lump–sum payment. Further, where a *Participant* doesn’t take delivery of bio–fuel at the end of the investment plan, SBEPL shall arrange for sale of the same to others and payment will be made accordingly to such *Participant*. In view of the aforesaid, it would appear that the contribution or investment received from the ‘*Participant*’ is pooled and utilized for the purpose of the *Scheme*. I, therefore, find that the aforementioned *Scheme* satisfies the first condition stipulated in Section 11AA(2)(i) of the SEBI Act.
- 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.***
- a. As has been stated in the preceding paragraph, the contribution or investment made by a *Participant* under the *Bio–Fuel Scheme*, is utilized for the purpose of such scheme i.e. purchase and delivery of bio–fuel. A *Participant* investing in the aforesaid *Scheme* is promised a return in the form of increased value of bio–fuel. For example, under the *Fuel Stock Redemption One Time Payment* plan [reproduced at page 6, paragraph 3(iii)(e)], for an investment of ₹5000 over a period of 8 Years, the *Participant* is promised a return of ₹12000. On expiry of the aforesaid plan, the *Participant* has the right to either take delivery of bio–fuel or accept returns through sale of the same, by SBEPL. In view of the aforesaid, it is clear that the contribution or investment is made by the *Participant* under the *Bio–Fuel Scheme* with a view to receive profits or increased returns. I, therefore, find that the instant *Scheme* also satisfies the second condition stipulated in Section 11AA(2)(ii) of the SEBI Act.
- iii. ***The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors.***
- iv. ***The investors do not have day to day control over the management and operation of the scheme or arrangement.***

a. The *Terms & Conditions* as contained in the Brochure–cum–Application Forms, indicate that the *Participant* or investor does not manage the *Bio–Fuel Scheme*. Further, the *Participant* does not have any day–to–day control in respect of the product i.e. bio–fuel, forming part of such *Scheme*. In this context, reference may be made to the following clauses of the *Terms & Conditions*, viz. –

- “*Company will supply Bio Fuel from its different units against payment made by participant as shown in the Tables below. The quantity of Bio-fuel will be determined on the basis of prevailing market rate at the time of delivery.*
- *Company shall issue the Bio-Fuel Delivery Order within one month from the date of completion of payment option.*
- *In case participants don’t feel the need of taking delivery of Bio-Fuel at the end of terms, the Company shall arrange to sale the same to others and payment will be made accordingly to the participant.”*

b. In these facts and circumstance, I find that the aforementioned *Scheme* offered by SBEPL satisfies the conditions stipulated in Section 11AA(2)(iii)–(iv).

4.1.4 At this stage, it is relevant to refer to the observations of the Hon'ble Supreme Court of India in the matter of ***P.G.F Limited & Ors. vs. UOI & Anr. (MANU/SC/0247/2013)***, wherein it had observed that:

“... Sub-section (2) of Section 11AA, which defines a collective investment scheme disclose that it is not restricted to any particular commercial activity such as in a shop or any other commercial establishment or even agricultural operation or transportation or shipping or entertainment industry etc. The definition only seeks to ascertain and identify any scheme or arrangement, irrespective of the nature of business, which attracts investors to invest their funds at the instance of someone else who comes forward to promote such scheme or arrangement in any field and such scheme or arrangement provides for the various consequences to result there from. ...”

4.1.5 The features of the *Social Forestry Scheme* and *Bio–Fuel Scheme* offered by SBEPL, as discussed in the preceding paragraphs 4.1.1–4.1.3, have all the ingredients of a '*collective investment scheme*' as defined in Section 11AA of the SEBI Act. Such features when considered in light of the abovementioned observations of the Hon'ble Supreme Court of India, indicate that the activity of fund mobilization by SBEPL under such *Schemes* with a resultant promise of returns, *prima facie* falls within the ambit of '*collective investment scheme*' as defined under Section 11AA of the SEBI Act.

4.1.6 I note that in terms of Section 12(1B) of the SEBI Act, *"no person shall sponsor or cause to be sponsored or cause to be carried on a 'collective investment scheme' unless he obtains a certificate of registration from the Board in accordance with the regulations"*. Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 ("**CIS Regulations**") also prohibits any *'collective investment scheme'* activity without registration from SEBI. In my view, therefore, the launching/floating/sponsoring or causing to sponsor any *'collective investment scheme'* by any *'person'* without obtaining the certificate of registration in terms of the provisions of the CIS Regulations is in contravention of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. In this regard, it is observed from the Balance Sheet for the Financial Year 2011–12, that an amount of ₹4.88 Crores was mobilized under the *Social Forestry Scheme* and *Bio–Fuel Scheme*. The aforesaid *prima facie* indicates that SBEPL has been operating the aforesaid *Schemes*, which were in the nature of *'collective investment scheme'* as defined in Section 11AA of the SEBI Act, without obtaining any certificate of registration under the CIS Regulations.

4.1.7 I also find that the activity of illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to carry on any *'collective investment scheme'* by any person amounts to a fraudulent practice in terms of Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations**"). Considering the fact that no prior registration was obtained for the *Social Forestry Scheme* and *Bio–Fuel Scheme*, which were in the nature of *'collective investment scheme'*, I am of the view that SBEPL is illegally mobilizing funds from the public, which *prima facie* amounts to a fraudulent practice in terms of Regulation 4(2)(t) of the SEBI PFUTP Regulations, which reads as follows:

"Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any collective investment scheme by any person."

4.1.8 As has been stated earlier at paragraph 3(iv) of page 6, SBEPL transferred an amount of ₹26.36 Crores to 7 group companies, one of which was Sun–Plant Agro Limited (SBEPL transferred ₹12.11 Crores to Sun–Plant Agro Limited). In this context, it is pertinent to note that vide an Order dated May 3, 2011, SEBI had issued directions against Sun–Plant Agro Limited for violation of Section 11AA of the SEBI Act read with Regulation 3 of the CIS Regulations through operation of schemes, which were held to be *'collective investment scheme'*. Subsequently, vide Order dated December 30, 2013, SEBI had issued further directions against Sun–Plant Agro Limited for non–compliance with the Order dated May 3, 2011.

5. Protecting the interests of the investors is the first and foremost mandate of SEBI and therefore, SEBI has to take immediate steps to prevent activities if companies or persons defrauding the investors and damaging the orderly development of the securities market. In order to ensure that SBEPL and its Directors do not collect further funds under its *Schemes* and to safeguard the assets/property acquired by the said entities out of the funds of the investing public, until full facts and materials are brought and a final decision is taken in the matter, it becomes necessary for SEBI to take preventive action. In light of the same, I find no other alternative but to take recourse through an interim measure against SBEPL and its Directors, for preventing them from further carrying on with fund mobilising activity in the nature of '*collective investment scheme*', without obtaining registration from SEBI.

6. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11B and 11(4) of the SEBI Act read with the CIS Regulations and PFUTP Regulations, hereby direct Sunplant Bio Energy Private Limited (PAN: AAPCS3390F) and its past and present Directors, viz. Shri Awdhesh Kumar Singh (DIN: 00301404; PAN: AKQPS6527G), Shri Girija Shankar Kumar (DIN: 00355512; PAN: AKAPK2774R), Shri Sumanta Sinha (DIN: 03573218; PAN: ALBPS3314F), Shri Neeraj Pathak (DIN: 03561265; PAN: BAZPP2860B), Shri Sunil Kumar Jha (DIN: 03566733; PAN: AMHPJ3198H), Shri Subir Gupta (DIN: 07133112; PAN: BONPG5600Q) and Shri Padmalochan Nayak (DIN: 06966981; PAN: AHZPN2835J), –
 - a. Not to collect any fresh money from investors for its existing schemes;
 - b. Not to launch any new schemes/plans or float any new companies to raise fresh moneys;
 - c. Not to dispose of any of the properties or alienate the assets of the existing schemes;
 - d. Not to divert any funds raised from customers/investors, kept in bank account(s) and/or in the custody of the company;
 - e. To immediately submit the full inventory of the assets owned by SBEPL;
 - f. To furnish all the information sought by SEBI, vide letter dated March 14, 2014, including –
 - i. Scheme-wise amount mobilized since inception till date;
 - ii. Details of scheme-wise list of customers/investors;
 - iii. List of investors who have been refunded;
 - iv. Audited financial statements for last three years.

7. The above directions shall take effect immediately and shall be in force until further orders.

- 8.1 The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. correspondence exchanged between SEBI and SBEPL alongwith

the documents contained therein; correspondence exchanged between SEBI and SBEPL's Auditor alongwith the documents contained therein and information obtained from the *MCA 21 Portal*. In this context, SBEPL and its abovementioned Directors are advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act, Regulations 65 and 73 of the CIS Regulations, including the following, should not be taken/imposed against them:

- i. Directing them jointly and severally to refund money collected from the investors under the scheme(s) alongwith interest, if any, promised to investors therein;
- ii. Directing them to wind up such scheme(s);
- iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.

8.2 SBEPL and its abovementioned Directors, may, within 21 days from the date of receipt of this Order, file their replies, if any, to this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

9. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against SBEPL and its abovementioned Directors, in accordance with law.

Place: Mumbai
Date: December 9, 2015

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA