

## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

**Under Sections 11(1), 11(4) and 11B of Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999, in respect of Interim Order dated March 30, 2015 in the matter of Parivar Dairies and Allied Ltd. (PDAL) and PDA Foundation (PDAF)**

**In respect of:**

| <b>Sr. No.</b> | <b>Noticees</b>       | <b>PAN</b> |
|----------------|-----------------------|------------|
| 1.             | Rakesh Singh Narwaria | ACNPN0341E |
| 2.             | Girja Narwaria        | AFEPN2325L |
| 3.             | Phool Singh Rajput    | N.A.       |

*Entities in the Table above are hereinafter referred to collectively as “**the Noticees**” or “**Noticee directors/promoters**”*

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- SEBI had passed an Interim order cum Show Cause notice dated March 30, 2015 (hereinafter referred to as "**interim order**") against Parivar Dairies and Allied Ltd. ("**PDAL**" / "**the company**") and PDA Foundation ("**PDAF**") and their directors/promoters/trustees on the ground that the activities carried out by PDAL and PDAF fell within the parameters of a “collective investment scheme” as defined in section 11AA of the SEBI Act, 1992.
  - The examination of the case emanated from an order dated July 13, 2012 of the Hon'ble High Court of Madhya Pradesh (Gwalior Bench) in the matter of Dhamvir Singh and Anr. v. Union of India & Ors. [Writ Petition No. 3332 of 2010]. The District Administration of Gwalior has also concluded that the schemes floated by PDAL are in contravention of the Madhya Pradesh Protection of Interest of Depositors Act and has accordingly passed orders of attachment of properties of PDAL in Gwalior. The district administration has informed SEBI by way of letter dated August 25, 2017 that currently investors in PDAL schemes are being refunded through court commissioner appointed by the Special Judge Gwalior.

3. Pursuant to the interim order, written and oral submissions of the noticees to the interim order were considered and a final order was passed on October 10, 2017 (hereinafter referred to as "**the final order**"). The said final order stated SEBI's finding that PDAL and PDAF were related to each other and that the activities of PDAL and PDAF satisfied the elements of Section 11AA of the SEBI Act. The final order therefore concluded that PDAL and PDAF were engaged in operating collective investment schemes without any registration and accordingly *inter alia* directed PDAL, PDAF and their directors/ promoters/ trustees to wind up the schemes and to refund monies collected by them to the respective investors within a period of three months from the date of the order.
4. The final order however noted that three persons who were directors/ promoters in PDAL had not been included in the list of noticees to the interim order. It was noted that Noticee No. 1 and Noticee No 2 (spouse of Noticee No. 1) were subscribers to the Memorandum of Association ("**MoA**") of PDAL and jointly held four fifths of the number of equity shares issued by PDAL. In fact Noticee No. 2 herself held one fifth of the number of equity shares of PDAL. Noticee No. 1 also held directorship of the company for six years (i.e. from 2002 to 2008). Investor complaints received by SEBI also had specific references to Noticee No. 1. Noticee No. 3 was also noted to be a director of PDAL. For the aforesaid reasons, the three persons were directed, through the final order, to show cause why directions recorded against the noticees in the final order should not be issued against them as well. Interim directions were also passed against the said three persons. For the purpose of the said three persons, the final order also served as an 'interim order cum Show cause notice' (hereinafter referred to as "**SCN**").
5. Noticee No. 3 neither filed a reply to the SCN nor did he request for an opportunity of personal hearing. Noticee Nos. 1 and 2 filed their reply (*dated October 27, 2017*) to the SCN. The summary of their written submissions are as follows:
  - (i) CBI in its status report has not alleged any violation or wrong committed by PDAL or the noticees. It appears from the interim order that some inadmissible evidence was collected and interim order was passed against the concerned persons. There was no evidence against the noticees and consequently no proceedings were initiated against the noticees.

- (ii) On the same set of evidence, the interim order did not make any adverse finding against the noticees. Therefore, on the same set of facts or allegations no interim order could have been passed against the noticees.
- (iii) Once a person resigns from directorship of a company, he cannot be held liable or responsible for any act, omission, commission or wrong committed by the company post the resignation.
- (iv) The alleged statement of Basant Lal Sharma against Rakesh Singh Narwaria was based on enmity and are contrary to the real facts.
- (v) The noticees i.e. Rakesh Singh Narwaria, and his wife Smt. Grija Narwaria were admittedly subscribers to the MoA of the company and directors in the company i.e. Parivar Dairies and Allied Ltd. Rakesh Singh Narwaria resigned from Directorship of the company on 20.8.2008 and Girja Narwaria resigned on 10.11.2006 and on the date of resignations equity shares of PDAL were transferred to Basant Lal Sharma. In any case, any share holder and/or subscriber to the MoA of the company cannot be held liable or responsible for the affairs of the company.
- (vi) The noticees were never involved in any alleged fund mobilisation or in any omission, commission or wrong committed by PDAL.

**6.** An opportunity of personal hearing was also granted on December 15, 2017. Noticee Nos. 1 and 2 appeared for the personal hearing along with their representative - Mr. M.Z. Chaudhary, Advocate and made submissions. Summary of the noticees' submissions made during the course of the personal hearing are as follows:

- (i) The Hearing notice was received only one day before the hearing and therefore the advocate could not sufficiently prepare for the case.
- (ii) The noticees held shares in PDAL till 2011, after which they sold their shares. Currently, they have no shares in the company and are not associated with it. The company was being run by Basant Lal Sharma. The noticees had resigned as directors in 2008 and 2006, respectively.
- (iii) Earlier the noticees did not know they were made directors. Rakesh Narwaria claimed to have been an employee in the company but said that there was no

appointment letter. He also claimed he was not being paid any salary and therefore could not produce any salary slip to prove his employment with PDAL.

- (iv) The lawyer for the noticees said that the noticees were illiterate and uneducated.
- (v) The noticee confirmed that an FIR had been lodged against him and that he was out on bail currently.
- (vi) Lawyer for the noticees sought a copy of the complaints received against the noticees, so that he could suitably address the issues raised in the complaints.

**7.** Pursuant to the opportunity of personal hearing granted to them, Noticee Nos. 1 and 2 filed additional written reply which was received on January 15, 2018. The submissions made in the said additional reply are summarised as follows:

- (i) Noticee No. 1 formed Parivar Dairies and Allied Ltd and the company did lawful business. Due to personal reasons and other business pre-occupation, he resigned from the directorship of PDAL on 20.08.2008. Noticee No. 2 resigned from the Directorship of the aforesaid company on 11.06.2006. The said noticees submitted Form No. 32 to the R.O.C. which was duly accepted and from the date of the resignation, the noticees have no relation with the management, business or affairs of PDAL in any manner. During the period of their directorship, the company never committed any wrong nor violated any laws and did lawful business.
- (ii) Basant Lal Sharma, Chairman of PDAL who was a friend of the aforesaid noticees informed them that PDAL along with PDA foundation was going to organize Blood Donation camp on 15.12.2012 at Madurai. Being a pious function Noticee No. 1 agreed to join the said camp as a guest where Mr. Sharma distributed the awards.
- (iii) Noticee No. 1 formed other companies - Parivar Agri Business Pvt. Ltd., Parivar Pet Products Pvt. Ltd., Parivar Real Estate Developers Pvt. Ltd. and Precise Media, which are independent companies having no relation in any manner with PDAL and PDA Foundation. Rakesh Singh Narwaria is well known as Parivarshree resulting in the use of the word 'Parivar' in his aforesaid independent companies. The similarity of the name 'Parivar' cannot make the

aforesaid independent companies related to Parivar Dairies Allied Ltd. and PDA Foundation.

8. The only question that arises for consideration is whether the Noticees are liable for directions with respect to the violation of section 12(1B) and section 11AA of the SEBI Act read with the SEBI (Collective Investment Schemes) Regulations, 1999, based on the findings in the final order dated October 10, 2017.
9. The final order had, on the basis of material available on record and after considering submissions made by the noticees to the interim order, concluded that PDAL and PDAF were carrying on the illegal activity of unregistered collective investment schemes ("**CIS**"). Therefore the only issue that remains to be determined in this Order is whether the noticees are liable for undertaking the illegal activity of unregistered CIS. The principal argument made by Noticee Nos. 1 and 2 is that they had resigned from the directorship of PDAL in 2008 and 2006, respectively, and prior to which no violation of law had taken place. They claim to be not liable for any violation which may have taken place post resignation from directorship. They also submitted that they had sold shares of PDAL on the day they resigned from directorship of PDAL, leaving them with no connection to PDAL subsequently.
10. The argument above therefore hinges on the role of Noticee Nos. 1 and 2 in sponsoring/launching the collective investment scheme and the period during which the illegal collective investment scheme was carried on. As noted in the final order, Noticee Nos. 1 and 2 were signatories to the memorandum of association of PDAL. As per the MoA, out of a total of 50,000 shares forming part of the company's capital, Noticee No. 1 and Noticee No. 2 held 30,000 shares and 10,000 shares, respectively. Noticee No. 1 was also one of the first directors of PDAL and continued as such for a period of around 6 years, as per available records. In the case of Noticee No. 2, the written reply filed by the Noticee Nos. 1 and 2 admits to her directorship in PDAL till 11.06.2006. Further, her role in sponsoring or launching the illegal CIS is obvious from the number of shares she held in PDAL, as per the MoA. Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 ("CIS Regulations") prohibits any person other than a registered collective investment management company to carry on or sponsor or launch a collective investment scheme. Both Noticee Nos. 1 and 2

held substantial number of shares in the company. The interim order and the final order also concluded that at least as of March 31, 2008, PDAL had been engaged in mobilising funds illegally. The noticees have not made a plea supported by relevant evidence to contradict this finding of the final order. Consequently there is a distinct likelihood of the couple having exercised influence in the company which engaged in illegal money mobilisation. Therefore, the liability of Noticee No. 1 and Noticee No. 2, for having engaged in illegal unregistered CIS activity, does not stand absolved merely because they resigned from directorship in 2008 and 2006, respectively.

11. The statement of Basant Lal Sharma (*i.e. Noticee No. 3 in the final order*) and the complaints received against PDAL, PDAF and Noticee No.1 of this Order serve to corroborate the other material available on record. In fact one of the complaints received was forwarded to Noticee Nos. 1 and 2 on their request, post the opportunity of personal hearing granted to them, after masking the name of the complainant to protect his identity. I note that the contents of the complaint are not affected merely because the names of the complainants were removed. The complaints received and shared with Noticee No. 1 and 2 were elaborate in its description of the facts according to the complainant. In the complaint, photographs evidencing Noticee No.1's presence at events of PDAL/PDAF were provided in addition to copies of pamphlets of functions held by PDAL to promote its business activity. The only defence to these documents and photographs were that they pertained to a blood donation camp in Madurai which was attended by Noticee No. 1 since it was a "pious" function. The noticees have also adopted contrary stands in their oral and written submissions. Noticee No. 1 and his representative claimed, during the oral hearing, that he was illiterate, that he was made a director of PDAL only at the instance of Basant Lal Sharma (*Noticee No. 3 in the final order*) and that he was only engaged as an employee of PDAL. In his written submission, Noticee No. 1 admits to having formed other companies - Parivar Agri Business Pvt. Ltd., Parivar Pet Products Ltd, Parivar Real Estate Developers Pvt. Ltd. and Precise Media. From records available with SEBI, it is also known that Noticee No. 1 continues to a director on the board of these companies. Since Noticee No. 1 had claimed, during the personal hearing, to having been only an employee of PDAL, he was asked to provide documents supporting this including salary slip, letter of appointment etc. To this, he promptly replied that he was not being paid any salary. Such statements along with mutually contradictory and evasive submissions made by

Noticee No.1 only reinforce the assumption that he played a significant role and is liable under the SEBI Act and CIS Regulations for having sponsored, launched and carried on the CIS along with his spouse Noticee No. 2.

- 12.** As regards Noticee No.3, he has not made any submissions with respect to the findings in the final order with respect to his role in the illegal CIS. He has not answered the charge that being a director, he was liable for the activities of PDAL and he has not sought personal hearing to make his submissions. As per available records, Noticee No. 3 functioned as director from 11/07/2008 to 07/07/2009. His name also appears as a signatory to the MoA of PDAL holding 1000 shares out of a total of 50,000 shares forming part of the capital of the company. His role in illegally raising funds for the CIS and failure to ensure repayment to the investors of the scheme makes him also liable for directions in this Order. In the absence of any reply, I am inclined to rely on the available record and also hold Noticee No. 3 liable for having carried on the CIS and not having taken any steps to repay the investors.

## **DIRECTIONS**

- 13.** In view of the above, in the interest of investors and the securities market, I, in exercise of the powers conferred upon me under Sections 11(1), 11B and 11(4) thereof and regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby issue the following directions, to be read in continuation of and in addition to the directions stated in the final order dated October 10, 2017:

- (i) The noticee directors/promoters of Parivar Dairies and Allied Ltd. (PAN:N.A.) namely, Rakesh Singh Narwaria (PAN: ACNPN0341E), Girja Narwaria (PAN: AFEPN2325L) and Phool Singh Rajput (PAN: N.A.) are jointly and severally liable (*along with PDAL and its directors being noticees to the final order dated October 10, 2017*) to wind up the collective investment schemes and refund the monies collected by it under the schemes, with returns which are due to the investors as per the terms of offer within a period of one month from the date of this order. The refund shall be made through 'Bank Demand Draft' or 'Pay Order'. As directed in the final order dated October 10, 2017, upon completion of the refund as directed above, within a further period of seven days, the present directors of PDAL shall submit a winding up and repayment report (WRR), separately or jointly, to SEBI in accordance with the CIS regulations. The WRR

shall be supported by the proof of the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds along with a certification of such repayment from two independent Chartered Accountants. In the event of failure by PDAL or its directors, including the noticee directors/promoters to comply with the above directions for refund, SEBI shall initiate recovery proceedings under the SEBI Act. Since the assets of Parivar Dairies and Allied Ltd. within Gwalior district have been attached and refund of monies are currently being executed by the Court Commissioner appointed by Special Judge, the company and its directors including the noticee directors/promoters are directed hereby to deal with the scheme property, in accordance with the directions of the court commissioner appointed by the Special Judge and not in any other manner and ensure that the investors are being refunded out of such proceeds. As regards the refunds out of the properties of the scheme situated elsewhere, it is directed that the noticee directors/promoters shall not alienate, dispose off/otherwise deal with the property except for the purpose of repayment of the investors in the respective jurisdictions are effected and such proof of repayment shall be produced to SEBI.

- (ii) The noticee directors/promoters shall not alienate or dispose off or sell any of the assets of Parivar Dairies and Allied Ltd. and any other asset acquired out of funds of Parivar Dairies and Allied Ltd. except for the purpose of making refunds to its investors as directed above.
- (iii) The noticee directors/promoters shall with immediate effect be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly, till the directions for refund/repayment to investors are complete, as directed at sub-paragraph (i) above to the satisfaction of SEBI and WRR is submitted to SEBI and for a further period of four years from the date of completion of the refund, as directed above.
- (iv) The noticee directors/promoters, namely Rakesh Singh Narwaria, Girja Narwaria and Phool Singh Rajput shall be restrained from holding position as directors or

key managerial personnel of any listed company for a period of 4 years from the date of this Order.

**14.** A copy of this Order shall be forwarded to -

- (i) all the recognised stock exchanges and registered depositories for necessary compliance with the above directions;
- (ii) the Ministry of Corporate Affairs for information; and
- (iii) District Collector, Gwalior and Court Commissioner appointed by Special Judge, Gwalior.

**DATE: March 27, 2018**

**PLACE: Mumbai**

**G. MAHALINGAM**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**