

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(4) and 11B (1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 of SEBI (Collective Investment Schemes) Regulations, 1999

In respect of:

Noticee No.	Names of the Noticee	PAN
1.	Dairyland Plantations (India) Limited	AABCD3257E
2.	Mrs. Roshan D. Nariman	Not Available (Deceased)
3.	Ms. Taz N. Nariman	AHWPN6931E (Deceased)
4.	Ms. Jeroo Nariman	ABUPN7565J
5.	Mrs. Silloo R. Nariman	AAVPN0859K
6.	Mr. Urvaksh Naval Hoyvoy	AAMPH4731K
7.	Mrs. Shernaz Kershasp Irani	AADPI5276R
8.	Mrs. Meher Khushru Patel	ABXPP1655N
9.	Mrs. Rukhshana Meher Anklesaria	AHIPA7266M

In the matter of Dairyland Plantations (India) Limited

(The aforesaid entities are hereinafter individually referred to by their respective names/Noticee nos. and collectively as “Noticees”, unless the context specifies otherwise)

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an examination into the business activities being carried out by Dairyland Plantations (India) Limited (hereafter referred to as “**Company/DPL/Noticee no.1**”). The examination of the business activities of the Company revealed that the Company had launched a scheme named as **Green Gold Bonds scheme** (hereinafter referred to as “**Scheme**”) which apparently possessed the requisite ingredients of a collective investment scheme (hereinafter referred to as “**CIS**”). It was noticed that the said Scheme entailed a one-time payment of Rs. 5000 in lieu of a unit of 5 Teakwood trees with a holding period of 20 years and on maturity, the contributor/ investor had the option to get the teak trees or the realised sale proceeds thereof. The examination of the details of the scheme further revealed that the Company had mobilised approx. Rs. 1,00,82,000/- (Rs One Crore and Eighty-Two Thousand) from 1660 contributors/investors. It was observed that the Scheme was launched by the Company during the period from 1992 to 1996 and during the said period as well as subsequently thereafter during the operation of the Scheme, the Noticees no. 2 to 9 were its Directors and were responsible for the affairs of the management of the business of the Company. It was also noticed that the said Scheme was being carried on without obtaining registration from SEBI, in violation of provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and SEBI (Collective Investment Schemes) Regulations, 1999 (hereafter referred to as “**CIS Regulations**”).
2. It is noted that Section 12 (1B) of SEBI Act, which came into effect on January 25, 1995 prohibited a person from carrying out any CIS, unless he obtains registration from SEBI. However, the section permitted existing entity who were carrying out CIS activities prior to the commencement of the aforesaid provision to continue with the existing scheme till

Regulations governing CIS are promulgated. Subsequently a separate CIS Regulations of SEBI was enacted which came into force on October 15, 1999 in terms of which, all the existing CIS (prior to the commencement of CIS Regulations) were required to apply for registration or else, were required to wind up the existing CIS after making repayment to the contributors/investors and also were further required to file a Winding Up and Repayment report (hereinafter referred to as “WRR”) with SEBI in terms of the said CIS Regulations. Accordingly, various companies including the Noticee Company, which were running CIS schemes at the time of promulgation of the afore-stated CIS Regulations, were asked vide several letters and public notices, to abide by the provisions of the CIS Regulations and submit their compliance reports as mandated under the said Regulations. However, the Noticee Company neither obtained provisional registration, nor applied for registration of its CIS Scheme by the prescribed date of March 31, 2000, and did not even take necessary steps for winding up of the Scheme. Therefore, a Show Cause Notice dated May 12, 2000 (hereinafter referred to as “SCN”) was issued to the Company calling upon it to show cause as to why suitable directions shall not be issued against it for continuing with its CIS activities, in violations of the provisions of SEBI Act r/w the CIS Regulations.

3. In response to the said SCN, DPL vide letter dated May 7, 2001, signed by its Directors had submitted a WRR to SEBI informing that all investors in the said CIS scheme of the Company have been refunded back their investments in the scheme. However subsequently, SEBI received a complaint in April 2013 from an investor regarding non-repayment of her funds by the Company, hence, DPL was asked to provide proof of repayment to the said investor. At this stage, DPL and its Directors through letter dated December 9, 2013 submitted that the WRR dated May 07, 2001 referred to above was not

filed by them nor has been filed under any authorisation by the Company, and that the signatures of the Directors of the Company on the said WRR have been forged. It was also intimated that all the legal and finance related issues were being handled by the then statutory auditor who must have filed the said WRR on his own and not under any authorisation by any of the Directors. They however submitted copies of the letters dated May 19, 2000, September 14, 2000 and February 12, 2001 vide which they have claimed to have filed the WRR with SEBI, and have intimated that out of a total number of 1660 investors in the scheme, 33 (2%) did not agree to continue with the scheme, 66 (4%) could not be reached for want of their latest address, 1092 (66%) did not reply, and 469 (28%) agreed to continue with the scheme. The contents of the aforesaid communications addressed by the Company to SEBI are tabulated as follows: -

Letter Dated	Contents
May 19, 2000 [Referring to SEBI's letter dated May 12,2000]	a) Address of new Registered Office of the Company was intimated. b) In terms of regulation 73 of CIS Regulations, the Company has already communicated and received feedback from its investors regarding winding up of the scheme. It has enclosed few copies of letters addressed to investors and the replies received from them. c) Since only 2% of the investors have opted out of the scheme, so in terms of regulation 73(6) and 73(7), they will continue the scheme for remaining 98% of the investors.
September 14, 2000 [Referring to SEBI letter dated July 31,2000]	The Company has reiterated that they have filed a detailed report about winding up of their scheme and enclosed another WINDING & REPAYMENT REPORT as per the format .

February 12, 2001	a) Company stated that they have already submitted a WRR as per the format made available to them vide earlier correspondences of SEBI. b) In terms of their offer/scheme, they did not promise any staggered or intermittent returns, hence when they had to offer the scheme for termination, they had arrived at a fair releasable value as on current date (amount payable to investors was arrived at Rs. 17,00,000) c) Further, as more than 98% of investors have opted for continuation of scheme till its tenure (2012), they hope to fulfil their obligations on that date.
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4. It was observed that none of the aforesaid three letters supposedly addressed by the Company to SEBI are found to be in existence in the records of SEBI. Therefore, the veracity of these letters could not be checked. Instead the letter dated May 7, 2001 signed by the Directors of the company which is now dismissed by the Company as forged, is the only letter from the Company which is available in the records of SEBI. Confronted with the aforesaid circumstances, SEBI conducted an inspection of the activities of the Company and it was observed that the Company has not provided complete information pertaining to the repayment made to the investors viz: proof of despatch of Information Memorandum to all investors and copies of all the letters received from investors expressing their consent or dissent as the case may be, to continue with the Scheme etc. Further, the proof of submission of the WRR purportedly claimed to have been filed by the Company with SEBI vide the above mentioned three letters has not been filed as no such letters from the Company could be located in the records of SEBI. Therefore, a supplementary SCN was

issued to the Company and the Directors (Noticees no. 1 to 5) dated January 20, 2016, alleging that only 28% of the total investors had given positive consent to continue with the scheme, therefore the Noticees at the most could have continued the existing scheme only in respect of those investors who had given their positive consent and ought to have refunded money to the remaining investors as mandated under regulation 73(7) of the CIS Regulations. It was further alleged that the Noticees continued with the Scheme not only with the willing 28% of the investors but also with all other investors, without obtaining a certificate of registration hence, the said acts of the Noticees of continuing the Scheme *qua* all the investors are in violation of Section 12 (1B) of SEBI Act read with regulations 3, 5, 73 and 74 of CIS Regulations.

5. Under the circumstances, the Noticees were called upon to show cause as to why suitable directions under Sections 11B of the SEBI Act read with Regulation 65 of the CIS Regulations should not be issued against them. Later on, on verification from the records of MCA about the particulars of Directors who served for the Company, it was observed that some of the Directors who served for the Company during the relevant period of fund mobilisation and during subsequent refund obligation, had not been included in the previous SCN. Therefore, another SCN dated December 12, 2019 was issued to the remaining Directors (Noticees no. 6 to 9) seeking their reply as to why suitable directions ought not to be issued against them for the unauthorised and illegal continuation of such scheme as well as for failure on their part to refund to the investors, in defiance of the prescribed provisions under CIS Regulation.

6. Pursuant to receipt of the SCN, the Noticees have filed a written reply dated March 21, 2016 followed by several more correspondences dated September 4, 2017, November 3,

2017, December 25, 2017, September 28, 2018, January 8, 2019, April 5, 2019 and May 17, 2019 furnishing therein the information pertaining to repayment purportedly made to the investors. Since, the explanations offered by the Noticees were found unsatisfactory and not supported by any adequate evidence to substantiate their arguments so advanced in the written replies, in the interest of natural justice the Noticees were provided with an opportunity of Personal hearing and were heard by me on January 29, 2020 through their Authorised Representative who appeared on behalf of all the Noticees.

7. In the course of personal hearing, the Authorised Representative emphasized on the fact that the Noticees have made all efforts to refund the investors their money and have also successfully repaid majority of investors about which he undertook to submit an updated repayment status with supporting evidence after the hearing. Accordingly, the Noticees have subsequently submitted an additional written submission dated February 11, 2020 forwarding therewith an Auditor's Certificate in support of their claim of having repaid by them to the investors. The explanations offered and arguments advanced by the Noticees through their Personal hearing as well as their written replies have been perused and considered. A tabular chart containing all the correspondences and submissions made by the Noticees as noted above, is presented below:

Letter Dated	Summary of submissions
March 21, 2016	a) The Company had conveyed its inability to apply for registration to SEBI vide its letter dated December 16, 1999 and sought some more time for making an application for registration but, subsequently, decided to wind up the scheme and sent the requisite Information

	Memorandum in terms of regulation 73 of CIS Regulations to all the investors vide letter dated April 10, 2000, seeking their approval/dissent for continuation of the Scheme. b) The Company has stated to have replied to the SCN dated May 12, 2000 vide its letter dated May 19, 2000 informing the status of investors' response stating that only 2% of the bond holders had opted out of the scheme, and when those 2% bond holders were called upon to surrender the bond, only 6 bond holders surrendered the bond and have been repaid as per the terms of the bond. Copy of bank statement in evidence of repayments to the 6 bond holders was enclosed. c) The Company has provided a WRR in the prescribed format vide letter dated September 14, 2000 in response to SEBI letter dated July 31, 2000 and clarified compliance vide letter dated February 12, 2001. Copies of the letters bearing acknowledgement of SEBI were enclosed and were stated to have been provided during inspection conducted by SEBI. d) WRR dated May 07, 2001 was not filed by them and it is suspected that the then auditor of the Company must have filed it on his own accord and hence, a complaint in this regard has been filed by the Company against him. Copy of the complaint was enclosed. e) It is unreasonable to demand proof of dispatch of Information Memorandum to all investors and consent letters received from investors to continue with the Scheme after 15 years, considering the matter relates to a scheme floated in the year 1992 and consent to carry on the scheme related to 2001. The Company has always co-
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	operated with SEBI during inspection and provided all documents as required by SEBI from time to time. f) CIS Regulations provided an option vide regulation 74, whereby a scheme was not required to be registered with SEBI and can wind up the same as per regulation 73, and the Company has complied with regulation 73(6) and (7) and continued without winding up and no new money was taken from anyone. As per the regulation 73, the threshold set up by SEBI was 25% and since more than 98% of the bond holders had provided their consent to continue with the Scheme, it was not wound up. Therefore, the allegation of not obtaining registration from SEBI and subsequent violation of CIS Regulations, do not apply. g) As of now, the Company is in the process of discharging its obligations under the Scheme and holders are choosing between getting timber from the trees and getting sale proceeds from the trees. Trees have been counted and numbered and tender process under the independent oversight of external professionals have been carried out. h) They are responding on the basis of available records, as relevant persons who were then with the Company are not available and the records pertain to the year 1996 when business was not very digitised. Noticee no. 2 (Mrs. Roshan Nariman) has expired on May 27, 2015.
September 4, 2017	The Company has sought bank details of all investors and have started making repayments.
November 3, 2017	The Company provided details of repayments made by them through RTGS, pay orders and cheques and copies of letters issued to banks to initiate payment to investors, list of bond holders, copies of pay orders and proof of delivery and copies of bank

	statements etc. were enclosed. Company has also enclosed a letter as submitted with the Department of Forests seeking permission to cut trees.
December 25, 2017	Submitted a CA certificate confirming details and status of repayments made by the Company to the investors.
September 28, 2018	a) Submitted that no funds were raised after 1996 and further, provided updates/clarification regarding the status of refunds made to investors. b) The Company has returned an amount of Rs. 5000/- per bond to bondholders. As per the terms of the bond, the Company had to pay the realised sale proceeds of 5 teak trees or provide 5 teak trees, and since the bondholders had generally opted for the realised sale proceeds, the Company had remitted to their accounts Rs. 800 (value of 5 teak trees) along with ex-gratia Rs. 4200. c) The Company has redressed the complaint received by SEBI against them and copy of complainant's letter withdrawing her complaint is enclosed.
January 8, 2019/ May 17, 2019	Provided updates/clarifications on the repayments being made to investors and that payments could not be made to some investors who are untraceable.
April 5, 2019	Submitted an Auditors certificate dated April 4, 2019 to bring on record the amounts repaid by the Company to investors and the outstanding payments yet to be made.
February 11, 2020	a) The SCNs have been issued belatedly and acute delays and latches in initiating the proceedings are wholly unsustainable.

	b) Enclosed CA certificate dated February 11, 2020 confirming the updated position and status on repayments made by the Company. c) Directors have made all efforts to track down investors who remain to be paid and are willing to deposit the remaining amount of Rs. 22,80,000 with SEBI in an escrow or fixed deposit for repayment to those investors and in case no bondholders resurface for a period of 7 years, remaining amounts would be appropriated to investor fund.
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8. After considering the SCN and supplementary notices issued to the Noticees and replies received from them both oral and written, I note that the Noticees have not disputed the fact that the Company was operating a scheme of CIS in terms of definition under Section 11 AA of SEBI Act. There are also no two opinions that the said Scheme was continued without obtaining a registration from SEBI. It is however the case of the Noticees that they have been carrying on the Scheme under a *bona fide* belief that since they had received positive consent from some of the investors (constituting 28% of the total number of investors), they were authorised to carry on the said Scheme and no registration was required from SEBI for carrying out the said Scheme even though it comprised all the investors including those from whom no positive response was received. Therefore, the only issue for consideration here is:

Whether the Noticees (Company and its Directors) have violated provisions of SEBI Act and CIS Regulations as alleged in the SCN?

9. Before I proceed to examine the afore stated issue and decide as to whether or not, in the facts of the matter, the aforesaid violations as alleged in the SCN stand established, it would be proper to reproduce hereunder, the relevant provisions of SEBI Act and CIS Regulations alleged to have been violated by the Noticees in the instant matter and the same are reproduced as under for the sake of convenience and ready reference:

SEBI Act

12(1B) No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations:

Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30.

CIS Regulations

No Person Other than Collective Investment Management Company to Launch scheme

3. 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

Application by existing Collective Investment Schemes.

5. (1) Any person who immediately prior to the commencement of these regulations was operating a scheme, shall subject to the provisions of Chapter IX of these regulations make an application to the Board for the grant of a certificate within a period of two months from such date.

(2) An application under sub-regulation (1) shall contain such particulars as are specified in Form A and shall be treated as an application made in pursuance of regulation 4 and dealt with accordingly

Manner of repayment and winding up

73. (1) An existing collective investment scheme which:(a) has failed to make an application for registration to the Board; or (b) has not been granted provisional registration by the Board; or (c) having obtained provisional registration fails to comply with the provisions of regulation 71; shall wind up the existing scheme.

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

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

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

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

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

(7) The investors who give positive consent under sub-regulation (6), shall continue with the scheme at their risk and responsibility: Provided that if the positive consent to continue with the scheme, is received from only twenty-five per cent or less of the total number of existing investors, the scheme shall be wound up.

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

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

Existing scheme not desirous of obtaining registration to repay.

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

10. Keeping the afore-stated regulatory provisions in the context, I will now deal with the contentions raised by the Noticees. At the outset, the Noticees have first submitted that the SCNs have been belatedly issued for alleged violations that occurred around 17-19 years ago, and they do not have access to the old records to effectively defend themselves. The Noticees have emphasised that there are several judicial pronouncements available in terms of which such delay and latches in initiating proceedings will be considered untenable. In this regard, I note that the present proceedings have been triggered by a complaint received from an investor in 2013 regarding non-receipt of her invested amount from the Company. Hence, to protect the interest of investor SEBI is statutorily mandated to enquire into the

complaint no matter how old was the scheme in question at that point in time. Therefore, the delay alleged by the Noticees is not justified. As stated in the beginning, SEBI was in receipt of a WRR from the Company in the year 2001 declaring that full repayment has been made to all the investors. SEBI had not heard anything about the said scheme from the Noticees after that. However, it is only after the above mentioned complaint was sent to the Noticees in the year 2013 for their response that the Noticees have come out with their version stating that the aforesaid WRR submitted to SEBI in the year 2001 was forged, which was bound to raise further suspicions and queries about the antecedents of the said CIS scheme being operated by the Noticees. Therefore, as a natural consequence, further probe into the matter was required which necessitated seeking more & more information from the Company and verification of the information so received from the Company and other sources. Under the circumstances, the time taken for completion of examination of the matter and issuing the SCNs in the year 2016 cannot subject the proceedings to suffer from accusations of unjust delay. Had the Noticees repaid the invested amounts to all the investors in time or continued with the CIS scheme after obtaining due registration from SEBI in compliance with the CIS Regulations, there would not have arisen any occasion for any investor to file any complaint against the Company after so many years. However, the Noticees have apparently not been able to produce any credible evidence to support their claim of having filed a WRR with SEBI as per the extant CIS Regulations while at the same time they have preferred to continue the said CIS scheme unabatedly without seeking registration for the said CIS scheme from SEBI. In my view, the submission of the Noticees taking the plea of delay or laches has no merit, as those who seek equity must come with clean hands.

11. The submission made by the Noticees that the WRR filed before SEBI in May 2001 was forged and without any authorisation also does not inspire much confidence since no explanation has been offered to justify as to why the auditor of the Company would have filed a forged and fabricated WRR when the company decided to proceed to continue with the scheme. There is also no justifiable explanation offered by the Company as to why the Scheme was continued with all the 1660 investors on board, without having the positive consent of all the investors and without obtaining necessary registration from SEBI. I note that the Noticees have contended that there were some disagreements between the Directors and the erstwhile CA of the Company who is suspected to have forged the WRR dated May 7, 2001, however it is beyond my comprehension as to why someone will file a forged WRR in May 2001 when according to the Company, it had already filed a WRR with SEBI in September 2000 itself. The contradictory statements made by the Company further gets confounded when I find that the Company on the one hand, claims to have filed a WRR in September 2000 and yet, has decided to continue with scheme along with 98% of the contributors even though it had not received positive consents from all the investors comprising the said 98% of the contributors. Strangely enough as I have pointed out earlier, except for the letter dated May 7, 2001 vide which the so called forged WRR was filed with SEBI, none of the other letters referred to above and claimed to have been submitted by the Company on various dates in the year of 2000-01 is available in the records of SEBI. Although the Noticees have produced the copies of various letters addressed by the Company and the acknowledgements stamps thereon in support of their claim of filing those letters with SEBI during the year 2000-01 the contents of which have been highlighted in earlier paragraphs, when seen in the backdrop of a complaint received by SEBI from an investor in the year 2013 alleging that the Company had promised handsome

returns on the teak-wood trees but she had not yet received the matured amount on her investment till then, I find that none of the aforesaid submissions, (apart from they are not available in the records of SEBI), has been able to clear the air surrounding their contradictory as well as confusing stand, as to whether the Company has actually filed any WRR at all and if they have filed, then why did they later on decide to continue with the scheme that too, without obtaining positive consent from all the investors and also without obtaining registration under the extant CIS Regulations of SEBI. I can't overlook and ignore the fact that under the instant proceedings, the primary and most pertinent charge against the Noticees pertain to the continuing a scheme under a CIS without seeking necessary registrations from SEBI.

12. Admittedly, the Noticees have not repaid the money mobilised under the scheme to all the contributors and many of the contributors are yet to be repaid their invested amount with the returns as promised in the Scheme offer document. In such circumstances, it would not be justified to grant exoneration to the Noticees from the charges merely on a technical ground of delay in initiating action, more particularly when, the delay if any, has been largely occasioned on account of the conduct of Noticees themselves. Without prejudice to the above factual observation, I find that no provision under SEBI Act, prescribes any time limitation for taking cognizance of any alleged breach of provisions of SEBI Act, and rules and regulations made thereunder. Notwithstanding the above, it is not disputed that the instant proceedings are in continuation of the SCN issued in year 2000. Whether a delay in a particular case is justified or not depends on the facts and circumstances of that case. The said legal position has been endorsed by Hon'ble SAT in *Ravi Mohan & Ors. v. SEBI* (SAT

Appeal No. 97 of 2014 decided on 16.12.2015) wherein, it has been observed by Hon'ble SAT that :

“.....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice.....”

13. The Noticees have contended that the Company had admittedly conveyed its inability to apply for registration to SEBI vide its letter dated December 16, 1999 and sought some more time for making an application for registration but, subsequently, decided to wind up the scheme and sent the requisite Information Memorandum in terms of Regulation 73 of CIS Regulations to all the investors vide letter dated April 10, 2000, seeking their approval/dissent for continuation of the Scheme. The Company has also stated to have replied to the SCN dated May 12, 2000 vide its letter dated May 19, 2000 informing the status of investors' response and also had filed a detailed WRR as per the prescribed format vide letters dated September 14, 2000 and February 12, 2001 in response to SEBI's letter dated July 31, 2000. As pointed out earlier, although the Company has submitted copies of the aforesaid correspondences with SEBI bearing acknowledgement stamp of SEBI thereon to support their claim of having filed a WRR with SEBI in time, given the fact that the aforesaid correspondences are not available on SEBI's records, the verification of the actual

receipt of these letters by SEBI remains unascertainable and inconclusive. Nevertheless, even assuming for a moment that the Noticees have indeed filed the afore stated letters with SEBI informing that they had decided to wind up the scheme and had sent the requisite Information Memorandum to the investors and have later on replied to the SCN dated May 12, 2000 as well as have submitted a WRR as per prescribed format as claimed by them, the question still begs for an answer is why and under what circumstances the Noticees retracted from their stand to wind up and decided to continue operating the scheme without obtaining positive consent from contributors and necessary registration from SEBI.

14. The Noticees have answered the above question by stating that they have continued with the Scheme in terms of Regulation 73 and 74 of CIS Regulations without registration or winding up of the scheme. According to them, since no additional money has been mobilised for the scheme, there has been no violation of CIS Regulations committed by them. It is their submission that *only 2% of the investors have opted out of the Scheme, hence they have continued the Scheme for remaining 98% of the investors*. The Noticees have submitted that since more than 98% of the investors have **consented** to continue with the Scheme, therefore they have not wound it up and preferred to continue with the Scheme. As per the Noticees, the details of the investors' responses to the information memorandum circulated by them amongst all the investors are as under:

Total no. of Investors	'No' replies	Address Not found	'Yes' replies	Not Replied
1660	33	66	469	1092
100%	2%	4%	28%	66%

15. The Noticees have thus asserted that since positive consent from investors to continue with the Scheme at their risk and responsibility has been received from more than 25% of the total no. of existing investors, the Scheme was continued and efforts were made to repay all the 33 investors who had opted to remain out of the Scheme. It has been submitted that even qua those investors who opted to quit the Scheme (which were 33) repayment was made only to 6 as the remaining 27 were not traceable. I can observe from the contention of the Noticees that since only 2% of the investors had decided to opt out of the scheme, it has been suo moto presumed that the remaining 98% of the investors were positive about the scheme although in reality, explicit consents were received only from 28% of the Investors. However, considering the fact that more than 25% of the investors had expressed their positive consent, the Noticees presumed that they had the authority and permission under the law to carry on the existing Scheme even qua all the remaining investors including those who could not be reached out and also those who had preferred not to respond to the information memorandum, and that too without obtaining registration of the Scheme under the CIS Regulations, from SEBI. The argument advanced by the Noticees is that except for the 33 investors, who had opted out of the Scheme, the remaining investors had either expressed to be part of the Scheme or had not responded to the Information Memorandum. Therefore, those who had preferred not to respond to the Information Memorandum were also deemed to have given their implied consents to remain part of the Scheme by choosing not to reply or respond. The submissions of Noticees are further fraught with contradictions, since it has been submitted that 33 contributors had opted to remain out of the scheme, it implied that they company had successfully contacted those 33 investors/contributors. However, the Noticees have stated that they have been able to repay only 06 contributors as the remaining contributors out of the said 33 were not

traceable, which further raises an improbable situation. It is not known, how the remaining 27 contributors, became non traceable suddenly after expressing their intention to leave the scheme. The company has also not submitted any documents to support the said claim of non-traceability. Strangely, though the company had mobilised from 1660 contributors/investors, it did not possess the details in respect of 1/3 of the such contributors.

16. At this juncture, it would be relevant to quickly recall the regulatory framework prescribed for registration and winding up of a CIS under the aforesaid CIS Regulations, step-wise as follows and find out whether and to what extent the Noticees have complied with the said regulations:

- a) No person other than a Collective Investment Management Company can run a *scheme* falling in the definition of CIS and that too, only after obtaining registration from SEBI [Reg.3]. It applies to the Noticee company as well.
- b) Any person who was operating a CIS prior to the commencement of CIS regulation (as in the instant case) has to apply to SEBI for registration of the said scheme [Reg.5]. However admittedly, the Noticee company has not applied for registration of their scheme that was undisputedly a CIS.
- c) In case the aforesaid person at (b) above has failed to apply for registration of the scheme, then the said person shall wind up the scheme [Reg 73(1)]. In view of the failure of the Noticee Company to seek registration from SEBI, the Company was bound to wind up the scheme.
- d) Regulation 73 (2) to 73(9) prescribe various steps to be followed for winding up the scheme leading up to submission of winding up report to SEBI. With regard to the compliance to these sub-regulations, the explanations offered by the Noticees from

time to time present a contradictory, confusing and legally untenable stand. Going by their submissions, the Noticees had decided to wind up the scheme, hence did not apply for registration to SEBI. They had issued Information Memorandum to the Investors soliciting their positive consents to continue with the scheme. Although none of the submissions/letters of the Noticees spell out as to whether the Company had satisfied all the directives contained in each of the sub-regulations from 73(2) to 73(6) while sending Information Memorandums (IMs) to the Investors, considering the fact that some Noticees had given positive consent for continuing with the scheme in terms of sub-regulation 73(6) in response to the said IMs, give me adequate comfort and I am willing to grant benefit of doubt to the Noticees that they might have issued the IMs in the manner and following the timelines that has been instructed in the afore-stated sub-regulations pertaining to issue of IMs. Similarly, sub-regulation 73(7) may be taken as providing the Noticees an enabler or opportunity to continue with the scheme since as per their claim, more than 25% of the investors (in this case 28%) have conveyed their positive consent to continue with the scheme in response to the IMs issued to the Investors. However, at this point the question that needs to be answered is whether after obtaining positive consent from 28% (i.e more than 25%) of the investors, were the Noticees automatically authorized to run the scheme without having to apply for registration from SEBI? To my mind the answer to this question is certainly 'NO', since after getting positive consent from more than 25% of investors, entities including the Noticees get a chance to continue the scheme, but they can do so only after obtaining registration from SEBI under Regulation-5 or else, they have to wind up the scheme in terms of Regulation-73 of CIS regulations.

Another question arises as whether, even after the Noticees decided to continue the scheme in view of positive consent received from more than 25% of investors, could they have continued the said scheme even for those investors who have not given their positive consent or have not responded to the IMs? In my view, the answer to this question is also “NO” since Regulation 73(7) provides that *‘the investors who give positive consent under sub-regulation (6), shall continue with the scheme at their risk and responsibility*, which means those who express their positive consent under Reg.-73(6) take the onerous burden of agreeing to the scheme at their personal risk & responsibility. Therefore, the scheme cannot be operated for those investors who have not given their express positive consent to take risk & responsibility for their consent to continue with the scheme. Under the circumstances, the Noticees have grossly erred on two counts, viz: by not obtaining SEBI’s registration before they decided to continue with the scheme and also by continuing the said scheme even qua those Investors who had not conveyed their positive consent to continue with the scheme. Moving on to compliance with Regulation-73(8) which prescribes for repayment to all the investors within 3 months of the date of IM and Regulation- 73(9) which required the Noticees to submit a WRR after completion of the winding up proceeds as prescribed in Regulation-73(2) to 73(8), it is now clear that the Noticees have not repaid the Investors even till date, so the question of repaying within 3 months of date of IM does not arise. In view of the same, the Noticees have made their non-compliances further manifest by staking a claim that they had submitted a WRR in the prescribed format vide their letters of May/September 2000, since without completion of all the steps involved in the winding up process as spelt out in Regulation 73(2) to (8)

including completion of payment, any WRR filed by the Noticees as per their claim, does not have any *locus standi* in the eyes of law. Therefore, compliances by the Noticees to the winding up process as prescribed under Regulation 73 remains incomplete apart from their non-compliance with the statutory requirement of obtaining registration of the scheme from SEBI, as pointed out above.

- e) Moving on to regulation-74 which has been invoked by the Noticees in their defense, if the person operating a CIS is not interested to get even a provisional registration of the scheme, then the said person shall **formulate a scheme of repayment** to the investors and repay them in the manner prescribed under Regulation-73 as indicated above. The aforesaid discussions clearly suggest that the Noticees were not desirous to obtain any registration, not even a provisional registration from SEBI and have erroneously stood by their interpretation that they did not have to obtain registration for the scheme from SEBI. In that case, the Noticees should have explained before me the scheme they have formulated, if any, for making repayment to all the investors so as to take the benefit of provisions of Regulation-74 of CIS Regulations. However, none of the submissions nor the records before me give any indication of a scheme whatsoever, having been formulated by the Noticees to repay the investors in a systematic manner in accordance with Regulation-73 so as to avoid the necessity for getting the scheme registered by SEBI. The Noticees have only narrated in their submissions various efforts made by them to repay the investors and have submitted an auditor's certificate in support of the repayments so made till date, but have not disclosed in their submissions if they had at all formulated any scheme for completing repayment to all the investors, when they decided to continue with the scheme

without obtaining registration of the scheme from SEBI. Thus, the Noticees are again, found to be non-compliant with the regulatory requirement prescribed under Regulation-74 of CIS Regulations.

17. The foregoing discussions clearly bring home the point that the Noticees have sought refuge under a convenient but untenable interpretation of the CIS Regulations only to justify their unauthorised acts of continuing with a Scheme which was required to be registered under the SEBI [CIS] Regulations before taking a decision to continue with the scheme. As pointed out earlier, the Noticees have on the one hand, in response to the letters issued by SEBI, stated that they had taken steps to wind up the existing Scheme, whereas at the same time have tried to take shelter under the provisions of regulations 73, albeit wrongfully, to justify their act of continuing with existing Scheme without any registration. A comprehensive reading of all the provisions under Regulation 73 of CIS Regulations would unambiguously reveal that, if the number of investors who give positive consent to continue in the Scheme constitutes 25% or more of the total investors, then such Scheme may continue *qua* only those investors till the completion of the Scheme only after obtaining registration from SEBI in terms of Regulation-5 of the CIS Regulation, else it will have to be wound up as per the provisions of Regulation 73(1) of the CIS Regulations. Therefore, even after obtaining the consent from twenty-eight percent or more of the total number of existing investors, Noticees ought to have first applied for and obtained registration from SEBI before continuing with the Scheme, that too only for those 28% investors who have conveyed their positive consent to continue with the scheme at their risk and responsibility as intended under Regulation-73(6) & (7) of the CIS Regulations.

18. On a conjoint reading of the provisions of CIS Regulations read with Section 12 (1B) of SEBI Act, it is clear that registration of the CIS scheme has been mandated under the primary and substantive law i.e. under the provision of SEBI Act. Having gone through the provisions of CIS Regulations, I find there is no provision either in the SEBI Act or in the CIS Regulations, which provides for exemption from the indispensable requirement of registration of a scheme. In the absence of any provision specifically providing for exemption, it would not be appropriate and tenable to accept the interpretation adopted by the Noticees that provisions of CIS Regulations exempted their scheme from the mandatory registrations. It is noted that Section 12 (1B) of SEBI Act provides in an unambiguous term, for registrations of a CIS scheme to keep it alive and operating. Provisions under CIS Regulations provide the mode and manner of seeking registration, conduct and operation of scheme in terms of and compliance with the provisions of CIS Regulations and also the procedures & circumstances under which a CIS scheme has to be wound up. In the event of failure to seek registration of a CIS scheme, the only option available under the law is to wind up the scheme as mandated under Regulation-73(1) and file Winding up and Repayment Report (WRR) after having paid to the contributors of scheme. It is also a settled position that while interpreting provisions of law, efforts should be made to give meaning to each and every word used by the legislature and in the process while resorting to harmonious rule of interpretation, the rule which prevents the mischief shall be given preference to those which foster the mischief. Provisions of SEBI Act read with CIS Regulations mandate for registration of a scheme launched as a CIS which is an essential pre-condition to validly operate a Collective Investment Scheme (CIS) and failure to seek registration would *ipso facto* result in winding up of the scheme else, it will be treated as

an illegal CIS and will invite regulatory enforcement action under the applicable provisions of law.

19. In this regard, after perusing the provisions prescribed under regulation 5 and 73 read with 74 of CIS Regulations, it is apparent that the regulations not only provide for mandatory registration of all the new schemes launched as a CIS so as to regulate such schemes but also mandates registrations and regulation of those CIS schemes as well, which were in existence at the time of commencement of the CIS regulations. Under the circumstances, the submissions of Noticees justifying their action of continuing with the scheme without obtaining registration from SEBI does not hold any water. Interestingly as pointed out earlier, Noticees have submitted two mutually exclusive anomalous submissions at the same time. While submitting that they had decided to wind up the Scheme for which they had supposedly filed a WRR with SEBI in September 2000 itself, the Noticees have also at the same time argued in defence of their action of continuing with the scheme even after acknowledging that 66 % of the contributors have not responded to the IMs sent by the Company and have not given any tacit response in favour of continuance of the Scheme. The glaring anomalies in the submissions made by the Company vide its reply dated March 21, 2016 is visible when on the one hand it argues that CIS Regulations provided an option vide regulation 74, whereby a scheme is not required to be registered with SEBI and such scheme shall be wound up in terms of regulation 73, and on the other hand the Company has claimed to have complied with the provisions of regulation 73(6) and (7) hence, has continued with the Scheme without winding it up. I have already discussed and observed in the preceding paragraphs that the Noticees have neither complied with the regulation-73(6) & 73(7) completely nor have even taken steps to comply with the requirements

prescribed under regulation-74 of CIS Regulations. Further, in terms of regulation 74 of CIS Regulations, admittedly the Company had not even applied for provisional registration, hence, the option statutorily chosen by the Company was to wind up the scheme and file WRR with SEBI in terms of the CIS Regulations.

20. Further, undeniably, Noticees have continued with the Scheme without obtaining registration and have failed to pay to more than 1/3rd of the contributors even after 7 years from the year of maturity of the Scheme, i.e.2012. In any case, the percentage of investors expressing their intention to be part of the Scheme at their own risk and responsibility formed only 28% of the total number of investors under the Scheme hence, admittedly, 72% of the total investors had not given any express positive consent to remain part of the existing Scheme of the Company. Therefore, the Company could at the best have continued the Scheme *qua* those 469 investors only after obtaining registration of the scheme from SEBI. It is fallacious on the part of the Noticees to assume that by obtaining the positive consent of about ¼ of the total investors, the interest of the remaining ¾ of total number of investors can be permitted to be prejudiced or ignored and taken for granted by the Noticees.

21. The very fact that “positive” consent is mandated in the Regulations shows that even if some investors of a CIS scheme have expressed their positive consents to assume risk for continuing in the said Scheme, the said risk cannot be forced upon the majority of the investors by a minority number of investors who have given their positive consent. Silence or no response on the part of investors cannot be implied as acceptance or positive consent unless specifically provided for in the Regulations and definitely not when the Regulations clearly states that positive act or consent (and not implied consent) is required for

continuation of an existing CIS scheme. Any contrary interpretation would be inimical to the interest of investors who do not agree to continue with the Scheme or may not have responded to the IMs for some reasons, such as non-receipt of communication and otherwise may have opposed to their continuation in the Scheme in future. The Hon'ble Supreme Court, in the matter of *SEBI v. Rakhi Trading Pvt. Ltd.*, (2018) 13 SCC 753 has appreciated that "*The SEBI Act, 1992 was enacted to protect the interest of the investors in securities.*" The very intent behind the CIS Regulations is to protect the investors against such schemes that are rampantly being carried out in different parts of the country to take advantage of innocent public investors without effective regulatory intervention and therefore, going by the literal, beneficial or mischief rule of interpretation, I do not find any other interpretation that can be assigned to the legislative intent behind the aforesaid provisions of CIS Regulation. Under the circumstances, I find no merit in the explanations offered by the Noticees to justify their acts of continuation of the scheme *qua* all the investors, more so when the Company has not even submitted supporting documents to substantiate that it had actually sent the Information Memorandum to all the investors and had actually received the positive consent from 28% (469) investors.

22. There is no dispute at all over the fact that the Scheme launched by the Company was clearly a CIS in terms of the provisions of Section 11AA of SEBI Act dealing with the definition of a 'CIS', hence ought to have been continued only after complying with the relevant regulations of CIS Regulations. In their submissions before me, the Noticees have also not advanced any argument on the merit of the allegations against them for running a CIS, and have rather prayed for being treated leniently for the efforts taken so far by them to refund the investors. However, the Company has not furnished any document to show

that the investors were provided with teak wood trees or sales proceeds of 5 teak-wood trees as promised to them rather, the evidences furnished by the Noticees in their submissions only talk about refund of cash to some investors against the contributions made by them. As per the CA certificate submitted by the Company, 1255 out of 1660 investors have supposedly been repaid a total amount worth of Rs.78,02,000.

23. The Noticees have pleaded that they never had any ill intent to cheat the investors or to do away with their invested money. To buttress their submissions, Noticees have submitted in the course of personal hearing before me that they are still committed and are undertaking to take all possible steps to repay all the investors. The Noticees have claimed to have repaid 1255 out 1660 investors and their inability to repay the rest (405) of the investors was primarily because of lack of proper address and in some cases refunds made through RTGS returned due to incorrect bank details of the contributors. There are about 15 investors who are insisting on getting timber/teak-wood trees instead of realisable sale value for which, the Company is in process of obtaining approval from the Forest Department for cutting of the trees, the delay for which is not in their control. Admittedly the Scheme launched by Noticees being a CIS, the governing CIS Regulations of SEBI put an onerous duty on the Noticees to repay/refund the invested amounts with applicable profits to the contributors/investors. As already noted above, the Scheme envisaged a long term investment for a period of 20 years and as on date, it is already more than 27 years since the Scheme was launched. Had the Company actually decided to wind up the scheme in the year 2000 for which the Noticees have claimed to have filed a WRR with SEBI, the Company should have refunded the contributions to all the contributors in the year 2000 itself when all the contributors were actively engaged with the scheme. Further, even if I

assume for a moment, that the Company in its own wisdom decided to continue with the scheme without obtaining registration from SEBI because of its own invalid interpretation of the extant law as highlighted earlier, it should have diligently repaid all its contributors either in the form of teak-wood trees or sale value thereof (as per the terms of the scheme) by formulating a concrete actionable scheme as required under Regulation-74 and intimated to SEBI about its intentions to repay all the Investors in terms of the said scheme in a given time bound manner. If that was not done at the time and the Noticees decided to continue with the scheme without obtaining registration from SEBI, the Noticees, at least to demonstrate their genuine intention to repay all the investors of the scheme, should have taken all possible proactive measures to swiftly repay all the investors immediately after the scheme period of 20 years were over. In their letter dated February 12, 2001 (claimed to have been filed with SEBI) the Company had stated that *as more than 98% of investors have opted for continuation of scheme till its tenure (2012), they hope to fulfil their obligations when the scheme reaches normal closure in 2012*. It shows that the Company had consciously decided to continue the scheme for its entire tenure of 20 years till 2012 hence, it was duty bound to take all steps to refund the matured amounts to all the 98% of the investors as per the terms of the scheme at the end of the tenure of the scheme. Although the Company has expressed its inability to repay all the contributors on account of non-traceability of the contributors/investors, I find that almost 7 years have elapsed after the end of scheme period but a large no. of the contributors is yet to be refunded their dues. It was a basic duty of the Company to update the addresses and contact details of its investors in its records on a regular basis since it was under an unavoidable obligation to refund them their dues after the closure of the scheme in the year 2012. The above acts are further expected from the Noticees, particularly considering the admitted experience of the

company that in the year 2000-2001, it had claimed to have failed to repay 27 out of 33 investors/contributors on account of lack of address or non-traceability. It reinforces the suspicion that the Company was never serious about to keep a track of its investors although it took a bold decision as far back as in the year 2000 to continue with the scheme despite the fact that its communication to 66% of the investors remained un-answered and 4% of investors could not be contacted at all. I cannot be oblivious to the fact that one of the main objects of the instant proceedings is to ensure repayment to the contributors/investors of the Scheme in which, the efforts taken by the Company so far are still found to be wanting, hence, I find it appropriate that Company be directed suitably and firmly to pursue urgent more steps vigorously to ensure repayment to all the contributors/investors as per the terms of the scheme.

24. In my findings and observations about the Scheme of the Company articulated in the preceding paragraphs, I have held that the Company, by continuing the existing CIS for all the investors, a majority of whom had not even responded to the Company's communication and had not expressed their consent in favour of continuing in the Scheme, and also without obtaining registration from SEBI under the CIS Regulations, is in violation of the provisions of SEBI Act and CIS Regulations as alleged in the SCN. Therefore, the Company and its Directors are under a compelling statutory obligation to make repayment to the satisfaction of all the investors of the Scheme. I find that all the Noticee Directors held directorship in the Company during the relevant period of fund mobilisation and/or subsequent refund obligations, hence are equally liable for the violations alleged in the SCN. The details of the present and past Directors of the Company including the dates of their appointment/cessation of tenure etc., are indicated as under:

S.No	Directors name	Date of appointment	Date of cessation
1.	Mrs. Roshan D. Nariman	April 1, 2000	May 27, 2015 (Deceased)
2.	Ms. Taz N. Nariman	September 1, 1998	October 10, 2019 (Deceased)
3.	Ms. Jeroo Nariman	May 29, 1992	Till date
4.	Mrs. Silloo R. Nariman	April 1, 2000	Till date
5.	Mr. Urvaksh Naval Hoyvoy	May 29, 1992	Till date
6.	Mrs. Shernaz Kershasp Irani	January 1, 1996	December 15, 2017
7.	Mrs. Meher Khushru Patel	July 1, 1992	December 17, 2017
8.	Mrs. Rukhshana Meher Anklesaria	September 7, 1996	December 22, 2017

25. It is observed that the persons named at serial nos. 3-5 of the above table are also Directors at present (Noticees no. 4, 5 and 6) and they continue to be responsible for the affairs and management of DPL. The persons named at serial nos. 6-8 of the table above are the past Directors of DPL (Noticees no. 7, 8 and 9) and Noticees no.2 and 3 (persons named at serial no. 1 & 2) were directors of the DPL till they expired on May 27, 2015 and October 10, 2019 respectively. It is observed from the records (viz: mainly from the Company's Balance Sheets and the Auditors Certificate) that the mobilisation of money through the fund raising activities of the subject scheme have been mostly carried out during the period 1992-1996. All the persons named in the above table were occupying the posts of Director for different durations and were therefore responsible for all the actions of DPL during their respective periods of tenure, when the Company was mobilising contributions and also was continuing with the scheme without seeking SEBI registration and were also responsible

for the failure on the part of the Company to repay the matured amounts on the said contributions mobilised from the investors under the Scheme that was operated as a CIS right from the beginning. Therefore, all the Directors (i.e. Noticee nos. 2 to 9) who were in charge of and were responsible for the day to day affairs of the Company as Directors when the CIS was illegally being carried on by the Company and those who failed to ensure repayment to the contributors upon maturity of their investments, have to be held equally accountable for all the acts of breaches and violations committed by the Company in operating the said CIS. Based on the materials available on record, I find that the Noticee Company had collected at least Rs. 1,00,82,000 /-(One Crore Eighty Two Thousand only) which has to be refunded to the investors along with the incremental return thereon, as may be the case, in terms of the scheme offer documents. In this case I find that the investors were promised under the terms of the scheme, to receive at the end of their investment period of 20 years, five Teak-wood trees or an amount equal to the sale value of the said five teak-wood trees, as per the option to be exercised by the investors.

26. Moving on to the efforts made by the Noticees to issue refunds to the investors, the Noticees have submitted vide written reply dated September 4, 2017 that they have sought bank account details from all the investors, and have made RTGS payments wherever the RTGS details were provided by investors, and alternatively if the RTGS details were not available, pay orders have been sent to the known addresses of the investors. Some investors have visited their office and collected their cheques while some investors are insisting on the timber instead of sale value, whereas the remaining investors could not be located due to change in their addresses etc. It has been submitted that some of the pay orders have also returned back undelivered due to incorrect address of the investors etc. It has been

submitted that other than those investors who cannot be traced and who are insisting on receiving Teakwood trees/ timber (405 out of 1660 investors), amounts of all other investors have been disbursed. It has also been pleaded that the Company and Noticee Directors claimed to have on their own, made several efforts for repayments to investors and to support their claim, the Noticees have submitted Auditor's certificate dated April 4, 2019 and February 11, 2020, to substantiate the details of amount so refunded. The details of repayments claimed to have been made to the investors as per the Auditors certificate are as under:

Scheme	Amount mobilised (Total no. of Investors)	Amount Repaid (Total no. of Investors)	Mode of repayment	Amount due to Investors (Total no. of Investors)	Reasons for not having refunded
Green Gold Bonds		34,82,000 (560)	Cheque	3,30,000 (57)	RTGS return- bank details not proper
		24,51,000 (350)	Pay Order	17,98,000 (322)	DD return-address not proper
		18,69,000 (345)	RTGS	75,000 (15)	Certificate holders insist on timber
				77,000 (9)	Addresses not proper
				(2)	Details not known
	Rs. 1,00,82,000 (1660)	Rs. 78,02,000 (1255)		Rs. 22,80,000 (405)	

27. It is seen from the aforesaid table that the Company has made claim for repayments worth of Rs. 78,02,000 to 1255 investors through cheque/pay order/RTGS while amount outstanding to be refunded is approx. Rs. 22,80,000 pertaining to 405 remaining investors. However, from the aforesaid amounts so refunded by the company as per the Auditor's certificate, it is not discernible if the investors have been refunded as per the terms of the scheme, i.e. an amount equivalent to sale proceeds of 5 Teak-wood trees. In their letter dated

September 28, 2018, the Noticees have stated that “*the Company has returned an amount of Rs. 5000/- per bond to bondholders. As per the terms of the bond, the Company had to pay the realised sale proceeds of 5 teak trees or provide 5 teak trees, and since the bondholders had generally opted for the realised sale proceeds, the Company had remitted to their accounts Rs. 800 (value of 5 teak trees) along with ex-gratia Rs. 4200*”. I find the SCN has not cast any aspersions on the amount of money so refunded by the company as stated in the Auditor’s certificate, and there is no grievance available on record from any of the payee investors disputing the amount of refunds received by them from the Company. Therefore, in the light of the aforesaid clarification offered by the Noticees, it may be reasonable on my part, not to delve into the appropriateness of the amounts refunded by the company in terms of the offer documents of the scheme.

28. I find the Company has furnished copies of bank account statements, list of Green Gold Bond holders along with the details of refunds, copies of cheques and pay orders along with proof of delivery including invoice of courier company, letters to investors confirming RTGS payments, etc. to substantiate the repayments so far made to the investors. The Company has submitted that it has not been able to make the remaining repayments due to incorrect RTGS bank details or incorrect addresses of investors, etc. It is also noted that some investors have opted for the Teakwood timber instead of cash refunds for which the Company has made application to the authorities seeking permission for cutting of the trees. The Company has also submitted that even though 33 persons had expressed their disapproval for continuing in the CIS, only 6 of them have surrendered their bonds who have been repaid by the company in support of which bank statements have been produced to show the refund made to those 6 investors. They have also filed a police complaint dated

December 21, 2013 against the Statutory Auditor for filing unauthorised and fabricated WRR with SEBI in May 2001 as stated in the beginning of this order.

29. The perusal of Auditors Certificate along with bank account statements demonstrate that the Noticees have made some sincere efforts to locate the investors and make repayments to them. They have also expressed their willingness to keep the funds remaining to be paid to the investors (who could not be traced) in a separate escrow account so as to ensure repayments to them in future from the said account and any amounts that remains idle in the said account may be used for transferring to an Investors protection fund
30. The Noticees have however submitted that they are not able to provide some documents pertaining to their efforts to solicit positive consents from the contributors such as, proof of despatch of information memorandum to all the investors etc. as the matter relates to a scheme floated in the year of 1996 when records were being maintained manually and the relevant dealing persons working in the Company at that time are not available at present. However, in the absence of such evidences, it is not possible to verify if at all 28% of the contributors had given their positive consent to continue with the scheme, as has been claimed by the Noticees. The Noticees have also stated that they have not mobilised any further amount after 1996. On this point, I find that the available records do not suggest anything to the contrary. The Company has also admittedly, resolved the investor complaint received by SEBI in 2013 and has stated that there is no other investor complaints pending against it. It has been submitted that the Noticees are running the Company only to repay all the investors. Since the Company has no other business activity, the Noticees intend to

wind up the Company once all the investors of Green Gold Bond Scheme are paid back their money and the Company has no intentions to raise any future funds from the public.

31. Keeping the deliberations and my observations about the actions of the Noticees in the matter of carrying on the Gold Green Bond Scheme as an unregistered CIS and continuing the said CIS illegally in violation of the provisions of the CIS Regulations without seeking registration from SEBI as have been pointed out at length in the foregoing paragraphs of this order, I have no hesitation in holding that the Noticees have grossly flouted the provisions and are liable for violation of SEBI Act and CIS Regulations. The Noticees have also seriously erred in not making prompt and proactive attempts to repay the amounts to those investors who categorically refused to continue with the scheme in the year 2000 and have also grossly neglected in their duties in updating their scheme records with the latest addresses and contact details of the investors due to which the Company has not been able to repay all the investors even after a period of more than 7 years from the end of 20 years of operation of the scheme. Notwithstanding the aforesaid shortcomings, it is also noteworthy that the Noticees have, over the recent years, taken steps to refund the amounts to the contributors/investors and to that extent, their actions and conduct can be said to have been towards serving the interest of their investors. The Noticees have redressed the grievance of the investor who had filed a complaint to SEBI in the year 2013 and apart from making refunds to majority of the investors, are also committed to repay the dues to the remaining investors at the earliest. In view of the above and having considered the overall balance of convenience in the matter, I find it fit to dispose of the present proceedings with the following directions.

32. In view of the above discussions and my concluding observations, in exercise of powers conferred upon me under Sections 11(1), 11(4), and 11B (1) read with Section 19 of the Securities and Exchange Board of India Act, 1992 and regulation 65 of CIS Regulations, in order to protect the interest of investors and the integrity of the Securities Market and considering the facts of the case and to meet the ends of justice, I hereby issue the following directions:

- a) The Noticee Company shall, **within a month from the date of issue of this order**, cause to effect a newspaper publication in one national daily in English and in Hindi each, and in a local daily with wide circulation in each of the States wherein the investors reside, mentioning in bold letters the name of the Scheme i.e **‘Green Gold Bonds Scheme’** in the said News Papers and inviting complaints/claims from any investor in respect of the said Green Gold Scheme from contributors/investors that are still outstanding. The newspaper publications shall also contain an advisory, informing the investors to forward a copy of their complaints/claims, with the superscription “*Complaints/Claims in the Matter of Dairyland Plantations (India) Ltd.*”, to SEBI at the following address:

**The Division Chief, IMD-CIS Division
SEBI
SEBI Bhawan, Plot no. C-4A, G Block
Bandra Kurla Complex, Bandra East
Mumbai-400051**

E-mail : cis@sebi.gov.in

- b) A period of one month from the date of the advertisement shall be provided to contributors/investors for submitting any claim/complaint as stated aforesaid.

- c) The Company shall furnish to SEBI the details of the investors viz; name of the investors, amount invested, year of investment, address and other material information etc., within a period of 15 days from the date of this order.
- d) An interest bearing escrow account shall be opened by the Noticee Company in a nationalised public sector bank and the entire outstanding amount payable to the investors under the above stated Scheme shall be transferred/deposited to this escrow account **within one month from the date of this order.**
- e) The Company shall wind up its existing CIS and refund the money collected by the Company under the Scheme to the contributors/investors which are due to them strictly as per the terms of offer of the scheme. Those investors who want to opt for repayment in the form of 5 Teak-wood trees and not in cash, the Noticees shall refund them in the form of Teak-wood Trees on a best efforts basis but in the event the repayments cannot be made in the form of Teak-wood trees for want of permission/authorisation to cut the trees or any other genuine hardships, those investors shall also be repaid their dues in cash as per the terms of the scheme. All the monetary refunds to the contributors/investors shall be made through 'Bank Demand Draft' or 'Pay Order' (both of which shall be crossed as "Non-Transferable") or through any other appropriate banking channels such as NEFT or RTGS with appropriate audit trail.
- f) The present incumbent Directors (Noticees no. 4 to 6) shall ensure that the aforesaid directions are complied with.
- g) Noticee Company and present incumbent Directors shall submit to SEBI a final Winding Up and Repayment Report (WRR) in the prescribed format for the purpose along with information on the claims so received, contributors/

investors so refunded and other details of escrow account duly supported by list of all contributors/investors, their contact details, details of investments and corresponding refunds made to the investors, bank account statements of the Company indicating refunds so made to the investors and receipts taken from the investors acknowledging such refunds along with a consolidated statement of such repayments having been made, duly certified by two Independent Chartered Accountants, **within a period of six (06) months** from the date of this Order.

- h) Any amount remaining balance in the aforesaid escrow account after making repayment to contributors/investors, shall be transferred to Investor Protection and Education Fund established under the SEBI (Investor Protection and Education Fund) Regulations, 2009 after a lapse of 1 year from the date of this order.
- i) All the Noticee Directors along with the Company (Noticee No.1) except for the Noticee no. 2 and 3 (against whom the proceedings stand abated on account of death), are restrained from accessing the Securities Market including by issuing prospectus, offer document or advertisement soliciting money from the public and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, for a period of one (01) year with effect from the date of filing of WRR to SEBI. It is clarified that during the period of restraint, the existing holding of securities of the Noticees including units of mutual funds, shall remain frozen.

- j) In the event the Noticee Company and the present Directors fail to carry out the directions issued at sub-paragraph (a) to (h) above or any complaint is received hereinafter suggesting that the Company has failed to pay all the dues to the investors, the Noticee Company and its Directors (Noticees no. 4, 6, 7, 8 and 9) shall be jointly and severally liable to refund to the contributors/ investors such amounts in the manner provided under the direction in sub-para (e) above within a period of 03 months from the end of the six (06) months as directed under sub-para (g) above.
- k) The Noticee Company and its present Directors shall not divert any funds raised from public at large and shall not alienate or dispose of or sell any of the assets of the Company except for the purpose of making refund to its investors as directed above.
- l) The Noticee Company and Director Noticees no. 4, 6, 7, 8 and 9 shall provide inventory of details of all their assets (movable and immovable) within a period of one (01) month from the date of this order.

33. The Order shall come into force with the immediate effect.

34. A copy of this order shall be forwarded to the Noticees, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

DATE: JUNE 05 , 2020

PLACE: MUMBAI

S. K. MOHANTY

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA