National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/55789	Date: February 27, 2023
Circular Ref. No: 52/2023	

To All NSE Members,

Sub: **SEBI Order in the Matter of Gaekwad Plantations Limited**

SEBI vide its Order No. WTM/ASB/WRO/WRO/24158/2022-23 dated February 27, 2023 has hereby debarred the following entities from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever for a period of five (5) years from the date of the SEBI Order or till the expiry of five (5) years from the date of compliance of directions in paragraphs 6.1(a) and 6.1.(e) of the order, whichever is later.

Sr. no.	Name of the entity	PAN
1	Gaekwad Plantations Limited	AAACG7786L
2	Yashodhan Digvijaysinh Gaekwad	AESPG6472Q
3	Siddharth Digvijaysinh Gaekwad	AKIPG2660A
4	Kamleshkumar Patel	BEZPP1001G

The order comes into force with immediate effect.

The detailed order is available on SEBI website (http://www.sebi.gov.in).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page under "Home-Regulation-Members-Action against Members-Regulatory Actions".

Members are advised to take note of the above and ensure compliance.

National Stock Exchange of India

In case of any further queries, members are requested to contact the following officials:

Mr. Harshal Vaidya (Extension: 23335), Mr. Sandesh Sawant (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Sandesh Sawant
Senior Manager

ANNEXURE: SEBI Order in the Matter of Gaekwad Plantations Limited

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11 (4) and 11B (1) of the Securities and Exchange Board of India Act, 1992

In respect of –

S. No.	Noticee	PAN
1.	Gaekwad Plantations Limited	AAACG7786L
2.	Yashodhan Digvijaysinh Gaekwad	AESPG6472Q
3.	Siddharth Digvijaysinh Gaekwad	AKIPG2660A
4.	Kamleshkumar Patel	BEZPP1001G

(*The aforesaid entities are hereinafter referred to by their respective names / Noticee numbers and collectively as the "Noticees")*

In the Matter of Gaekwad Plantations Limited

1. Background –

1.1. The present matter emanates from certain complaints received by SEBI in 2010, through Link Intime India Pvt. Ltd. (a SEBI registered Registrar and Transfer Agent) with respect to the Teak Sapling Scheme of Gaekwad Plantations Ltd. ("**GPL**"/ the "**Company**"). By way of the said complaints, investors had expressed their grievances regarding non-payment of dues to them. The origin of this sapling scheme, however, goes back much before

2010. It shall be, therefore, instructive to place a narrative of the events preceding the receipt of complaints in 2010: -

Table – 1

Sl. No.	**Date**	**Event**
a.	November 18, 1997	Press release issued by the Central Government informing that schemes through which instruments such as Agro Bonds, Plantation Bonds, etc. were being issued by entities would be treated as Collective Investment Schemes ("**CISs**") coming under the provisions of the SEBI Act, 1992.
b.	November 26, 1997	Press release issued by SEBI advising entities which had existing schemes to file the details of their schemes with SEBI.
c.	December 18, 1997	Public Notice issued by SEBI *inter alia* informing that – i. the entities issuing agro bonds, plantation bonds had to be regulated through an appropriate regulatory framework and the schemes by way of which such instruments were being issued would be treated as CISs; ii. the provisions of Section 12(1B) of the SEBI Act, 1992 ("**SEBI Act**") prohibited collective investment schemes including mutual funds from sponsoring any new scheme till the regulations were notified; and iii. the proviso to Section 12 (1 B) allowed existing CISs to continue with their operations provided they submitted the information/documents as detailed in the said public notice.

d.	October 15, 1999	Notification of the SEBI (Collective Investment Schemes) Regulations, 1999 ("**CIS Regulations**").
e.	December 10, 1999	Letter addressed by SEBI to GPL, whereby the options available to an existing CIS, pursuant to the notification of the CIS Regulations, were spelt out.
f.	December 29, 1999	Letter addressed by SEBI to GPL, intimating that an Information Memorandum in terms of Regulation 73 (2) of the CIS Regulations was required to be sent to the investors within a period of 2 months from the date of receipt of the said letter.
g.	May 12, 2000	Show-cause Notice issued to the Noticees asking them as to why action should not be initiated against them. A period of 15 days, from the date of the said letter, was provided to the Noticees to file their replies.
h.	December 7, 2000	SEBI passed an Order in respect of 523 entities, including GPL, stating therein that they were liable to refund to the investors the money collected under the schemes, with such returns as offered, within a period of one month from the date of the order (the "**SEBI Order**"). In case of failure in complying with the above direction the said Order recorded that following action would follow: "*1. Initiation of prosecution under section 24 of the SEBI Act, 1992 which prescribes imprisonment for a term which may extend to one year, or with fine, or with both against you/promoters/directors/ managers/persons in charge of the business of your scheme.*

		2. You/promoters/directors/ managers/persons in charge of the business of your scheme would be debarred from operating in the capital market for a period of 5 years. *3. Writing to the state governments/local police to register civil/criminal cases against you for apparent offences of fraud, cheating, criminal breach of trust and misappropriation of public funds.* *4. Writing to the Department of Company Affairs to initiate the process of winding up of your company.*"
i.	February 12, 2001	Letter received from GPL informing of the repayment to all its investors, accompanied with the 'Winding up and Repayment Report' dated January 26, 2001 ("**WRR 1**") and a certificate dated February 10, 2001 of their statutory auditors, M/s. Atul Parikh & Co., Chartered Accountants. The said letter also stated that a floppy disk had been provided which contained the details of repayment made to the investors.

1.2. As may be seen from the above, the SEBI Order had directed GPL to issue refunds to all its investors. Pursuant to the said Order, GPL had filed WRR 1 informing that it had made repayments to all its investors. The matter considered closed, was however, revived with the receipt of complaints from investors in 2010. Consequent to the receipt of such complaints, clarification/explanation was sought from GPL and an examination of the matter ensued.

1.3. Based on the findings of the examination carried out by SEBI, a Show-cause Notice dated June 23, 2021 was issued to the Noticees ("**SCN 1**"). Subsequently, a supplementary Show-cause Notice dated April 28, 2022 was also issued to the Noticees ("**SCN 2**"). Both the Show-cause Notices are hereinafter collectively referred to as the **SCN**.

1.4. It is in this background that the present proceeding, which is to consider the allegations made in the SCN, is before me.

2. The Show-cause Notice

2.1. As stated above, the SCN has been issued to the Noticees based on the findings of the examination carried out by SEBI. The SCN has alleged that the Noticees had not complied with the direction contained in the SEBI Order. Additionally, it has also been alleged that GPL had failed to pay the promised returns to the investors. In this respect, it has been alleged in the SCN that the Noticees had violated Regulations 5(1), 68(1), 68 (2), 73 and 74 of the CIS Regulations.

2.2. Accordingly, the SCN has called upon the Noticees to show cause as to why suitable directions under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 for debarment and refund of money to the investors should not be issued against them.

3. Service of SCN, Personal Hearing and Replies –

3.1. The SCN along with the annexures has been served on the Noticees. Subsequent to the issuance of the SCN, the Noticees have replied to the allegations in the SCN vide letters dated August 02, 2022, July 27, 2022 and August 09, 2021, and provided clarifications by way of letters dated May 20, 2022, March 30, 2022, February 04, 2022 and August 13, 2021.

3.2. An opportunity of personal hearing was also provided to the Noticees on July 27, 2022. Mr. Nitin Parikh and Mr. Arpit Shah, authorised representatives, along with Siddharthsinh Digvijaysinh Gaekwad (Noticee 3) entered appearance on behalf of all the Noticees at the said hearing and made oral submissions. A brief of the submissions made by the Noticees before me at the personal hearing and through their written replies are summarised hereunder:

a. The SCN issued to the Noticees on June 23, 2021, with respect to the non-compliance of directions contained in the SEBI Order dated December 07, 2000, was bad in law as the same had been issued after the elapse of more than 21 years. In view of the same, the Noticees be discharged from the present proceeding.

b. The SCN issued to the Noticees contemplates direction under Section 11 B. The powers under Section 11 B could be exercised only by the Board. Though, the Board had powers to delegate, no evidence had been provided with the SCN to that effect.

c. For the exercise of powers under 11 B, an enquiry was required to be conducted and an enquiry officer appointed. No copy of the appointment letter had been provided with the SCN. In case an enquiry officer had been appointed, then such proceeding should have been conducted in accordance with the provisions of the SEBI (Intermediaries) Regulations, 2008 ("**Intermediaries Regulations, 2008**"). Also, an enquiry officer was vested with the power of conducting enquiry and recommending actions to the Designated Member; he did not have the power to issue orders.

d. The Noticees had provided all information to SEBI as sought for and had also sent an Information Memorandum to the members of the scheme seeking their consent as to whether the scheme should be continued or not. 5226 members gave their consent in writing to continue with the scheme and 395 members opted for repayment and 3,604 did not reply. A winding up and repayment report was sent to SEBI on February 12, 2001 in terms of Regulation 73 and 74 of the CIS Regulations. And since the scheme, which was started in 1992, was for a period of 17 years, it came to an end in the year 2009.

e. The Teak Sapling Scheme commenced in the year 1992 and the Company had sold teak sapling at Rs. 1,000 per sapling and had undertaken to maintain the same for a period of 17 years. Upon completion of the scheme, the owner of the teak tree was entitled to cut the tree by himself and use it for his own purpose or sell it or could entrust the task for cutting and selling of such tree to the Company. So, there was no pooling of resources. On completion of the scheme, the total amount realised was not intended to be pooled and distributed amongst the owners of the saplings in the ratio of their respective holdings. Each person was the owner of the identified tree and was entitled to individually receive the amount realised from the specific tree owned by him. The Company had only undertaken to take care of the trees owned by the teak holder for 17 years.

f. Corporate veil could be lifted in exceptional circumstances and in particular where there had been a fraud.

g. Yashodhan D. Gaekwad and Siddharth D. Gaekwad were neither the Directors/promoters in the company on the date of passing of the Order i.e., December 07, 2000 and also on January 06, 2001 when the alleged non-compliance was supposed to have happened.

h. A distinction was required to be made between deliberately not complying and not being able to comply. Payments had been made by the Company to those investors who had surrendered their certificates. If the investors were not forthcoming in surrendering their certificates then the Company would be unable to pay.

i. Indian Oil had set up a storage unit next to the plantation of the Company which had adversely affected the growth of the trees. Also, floods had affected the area where the plantation was located.

j. The Noticees have relied on the following case laws:

    i. Judgment of the Madras High Court in the matter of J Sheikh Parith V. The Commissioner of Customs & Others dated August

21, 2020 to contend that the SCN should be dropped because of delay.

ii. Judgment of the Calcutta High Court in the matter of Sunderlal Girdhar Lal Gandhi V. Union of India & Others dated May 17, 2018 to contend that the SCN should be dropped because of delay.

3.3. **Relevant Provisions**

a. **Provisions of the SEBI Act —**

<u>Section 11 B (1)</u>

"***Power to issue directions.***

11 B. (1) Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary, —

(i) in the interest of investors, or orderly development of securities market; or
(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or
(iii) to secure the proper management of any such intermediary or person,

it may issue such directions, —

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or
(b) to any company in respect of matters specified in section 11A,

as may be appropriate in the interests of investors in securities and the securities market."

b. **Provisions of the CIS Regulations—**

Regulation 2 (2) [as it existed on the date of notification of the CIS Regulations – October 15, 1999]

“ (a) the purpose of which is to enable the investors to participate in the scheme or arrangements by way of subscriptions and to receive profits or income or produce arising from the management of such property or the investments made thereof; and

(b) in which the subscriptions of the investors by whatever name called, are pooled, and are utilized for the purposes of the schemes or the arrangements; and

(c) in which the property or such subscriptions are managed on behalf of the investors, who do not have day to day control over the management or operation of the scheme, whether or not such properties or subscriptions and the investments made thereof are evidenced by identifiable properties or otherwise;

Provided that following shall not be deemed to be a collective investment scheme:

(a) acceptance of deposits by companies under section 58A of the Companies Act, 1956 (1 of 1956) or by Non-Banking Financial Companies as defined in section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

b) acceptance of funds by Chit Funds in terms of the Chit Funds Act, 1982 (40 of 1982);

(c) acceptance of funds by companies declared as Nidhi companies under section 620A of the Companies Act, 1956, (1 of 1956), as per directions issued under, section 637A of the said Act;

(d) contracts of insurance under the Insurance Act, 1938 (4 of 1938);

(e) any scheme of the employer as per Employees' Provident Fund and Miscellaneous Provisions Act, 1952, (19 of 1952); or any other recognized Provident Fund under the Income Tax Act, 1961;

(f) arrangements of cooperative societies under the Cooperative Societies Act, 1912 (2 of 1912) including Cooperative Societies registered under any Provincial Act or State Act for the time being in force;

(g) any scheme under Securities and Exchange Board of India (Mutual Funds) Regulations, 1996;

or

(h) any other scheme or arrangement specifically exempted by the Board, from the operation of these regulations."

Regulation 5 (1) [as it existed on the date of notification of the CIS Regulations – October 15, 1999]

" ***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."

Regulation 68 [as it existed on the date of notification of the CIS Regulations – October 15, 1999]

" Existing schemes to obtain provisional registration

68. (1) Any person who has been operating a collective investment scheme at the time of commencement of these regulations shall be deemed to be an existing collective investment scheme and shall also comply with the provisions of this Chapter.

Explanation: The expression 'operating a collective investment scheme' shall include carrying out the obligations undertaken in the various *documents entered into with the investors who have subscribed to the scheme.*

(2) An existing collective investment scheme shall make an application to the Board in the manner specified in regulation 5.

(3) The application made under sub-regulation (2) shall be dealt with in any of the following manner:

(a) by grant of provisional registration by the Board under sub-regulation (1) of regulation 71;

(b) by grant of a certificate of registration by the Board under regulation 10;

(c) by rejection of the application for registration by the Board under regulation 12."

Regulation 73 [as it existed on the date of notification of the CIS Regulations – October 15, 1999]

*" **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."

Regulation 74 [as it existed on the date of notification of the CIS Regulations – October 15, 1999]

" *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."

4. Issues –

4.1. In view of the submissions made, I see that the issues for consideration are:

I. Whether GPL has violated the direction contained in paragraph 8 of SEBI's Order of December 7, 2000 ?

II. **If the answers to issue I is in the affirmative, then what was the amount mobilised and what would be the quantum of refund?**

III. **If the answer to issue I is in the affirmative, then whether Noticees 2, 3 and 4 would also be liable for the acts of GPL?**

5. Consideration and findings –

5.1. Before I proceed with the consideration of the substantive allegations made in the SCN, it shall be relevant to first deal with the preliminary issues raised by the Noticees.

Proceeding not maintainable owing to delay

5.2. With respect to the submission of the Noticees that there had been delay in the proceeding, it is seen from the record that an Order was passed by SEBI on December 7, 2000 stating therein that GPL was liable to make refunds to the investors, with such returns as offered, within a period of one month from the date of the said order. Consequent to the above order, it is noted from the record that WRR 1 was received from GPL. By way of WRR 1, it was informed that all the investors had been refunded by GPL. The details provided through WRR 1 dated January 26, 2001 are extracted hereunder for facility of reference:

“

Name of the scheme	*Amount mobilised*		*Amount due to the investors (Principal + promised interest/return)*		*Amount Repaid*		*Mode of repayment*
	Total no. of investors	*Amount (in Rs. Lacs)*	*Total no. of investors*	*Amount (in Rs. Lacs)*	*Total no. of investors*	*Amount (in Rs. Lacs)*	*By Demand Drafts and pay orders*
Sale of Teak sapling	*9520*	*123.60*	*9520*	*125.00*	*9520*	*125.00*	

5.3. As may be seen from the above, WRR 1, submitted to SEBI by way of a covering letter dated February 12, 2001, GPL had asserted that all the 9520 investors had been refunded their promised return. I also note that the letter dated February 12, 2001, through which WRR1 was received, bears a SEBI stamp impression with the date February 27, 2001, denoting that the same was received on February 27, 2001. I further note that the said letter along with the attached documents was marked to an officer, who has made a noting for the filing of the said letter. Thus, it is evident that the letter dated February 12, 2001 along with WRR 1 was received and considered at SEBI’s end. Since, the letter dated February 12, 2001 along with WRR 1 demonstrated the compliance of SEBI’s order, no further action was contemplated and the same was placed in the appropriate file.

5.4. The matter thus stood till 2010. In the year 2010, as has been brought out in the preceding paragraphs, a letter dated June 17, 2010 was received by SEBI from Link Intime (a SEBI registered Registrar and Transfer Agent) containing therewith complaints filed by certain investors who had invested in the Teak Sapling Scheme of GPL. The complaints upon examination by SEBI revealed that the Company was yet to pay investors, even after the investors had informed the Company of their pending dues.

5.5. Thus, the complaints received in 2010 form the genesis of the present proceeding. So, the claim of the Noticees that SEBI started the present proceeding after a delay of 22 years, given the present context, is not accurate.

5.6. Additionally, since the matter was very old, the examination that ensued from 2010 faced multiple challenges. In this regard, the correspondence exchanged between SEBI and GPL, post the receipt of complaints in 2010, is provided hereunder:-

Table – 2

S. No.	Date	Event
1.	21.09.2010	SEBI forwarded copies of the complaints received to GPL, and advised it to clarify the position and offer comments/explanation along with documents in support, within a period of 7 days from the receipt of the said letter. The same was sent by courier. The letter came back undelivered. A copy of the letter dated September 21, 2010 was also dispatched by Speed Post with AD on September 30, 2010. The same was delivered.
2.	25.11.2010	Since no reply was received from GPL, SEBI issued a reminder to GPL advising it to offer comments/explanation within 7 days. The said letter also came back undelivered.
3.	29.10.2012	SEBI's Western Regional Office ("**WRO**") received another complaint against GPL from Shri Vitthalbhai Morarbhai Mahta for non-receipt of money from GPL.
4.	01.02.2013	SEBI forwarded a copy of the complaint of Shri Vitthalbhai Morabhai Mahta to GPL to redress the same and submit a status report.

5.	11.03.2013	GPL informed that vide Chq Nos. 684624 & 684625 dated December 08, 2012, the amount had been sent to the investor. It was further informed by GPL that it had made payments to all the investors who had sought refund in the year 2000, and Vitthalbhai Morabhai Mahta had not asked for refund at that time.
6.	08.05.2013	SEBI referring to the SEBI Order and WRR 1 advised GPL to show cause why action should not be initiated against it.
7.	17.05.2013	GPL in its reply to SEBI letter dated May 08, 2013 stated the following: • Signatures appearing in WRR 1 were forged and did not bear correct signatures of the Company. • GPL intended to lodge a criminal complaint with the Police with respect to the same. • Pages of WRR 1 had been changed in the papers filed with SEBI. • GPL further stated that papers filed with SEBI were neither in the prescribed format nor gave the correct facts and figures. In addition to the above information, GPL provided the following documents: • Copy of letter dated January 05, 2001 addressed by GPL to SEBI, wherein it was stated that about 57% of teak holders had given positive consent to continue with the scheme. • Copy of letter dated October 15, 1999 addressed to SEBI informing about the amount mobilised and amount repaid. • Copy of the winding-up and repayment report dated January 26,2001 with a covering letter dated February 12, 2001 claimed by GPL to be the one that had in fact been sent by it ("**WRR 2**").

8.	21.05.2013	SEBI informed GPL that letter dated January 05, 2001 had not been received by SEBI. It was also stated by SEBI that the floppy disk was not available with WRR1. Further, in order to substantiate claims made by GPL in WRR 2, GPL was advised to provide the following: • Copy of the Information Memorandum issued to the investors soliciting consent regarding winding up/continuance of the scheme along with proof of dispatch. • Copies of all communication received from investors giving their positive consent for the continuance of the scheme. • Efforts made to trace investors claimed as untraceable by GPL. GPL was advised to submit the above documents within 7 days.
9.	28.05.2013	GPL sought 15 days' time to submit the information.
10.	15.06.2013	GPL sought another 15 days' time to submit the requisite information.
11.	26.06.2013	GPL stated that it had confirmations from a majority of investors who had consented for continuance of the scheme. The confirmations received were in the form of hundreds of letters or may be in thousands. GPL also questioned whether there was a need for the information to be submitted to SEBI. Further, GPL requested time for inspection of documents forwarded by SEBI vide its letter dated May 08, 2013.
12.	01.07.2013	SEBI granted an opportunity to GPL to inspect documents on July 04, 2013 at 3 PM.
13.	11.07.2013	GPL sought another opportunity, with 10 days prior notice, to inspect the documents.
14.	27.08.2013	SEBI granted another opportunity to GPL to inspect the documents on September 05, 2015 at 3 PM.

15.	02.09.2013	GPL stated that it was not in a position to coordinate with the authorised persons, hence requested for another date for inspection of documents.
16.	25.11.2013	SEBI granted another opportunity for inspection of documents on December 12, 2013.
17.	12.12.2013	GPL inspected the documents along with attachments at SEBI's WRO in Ahmedabad. A letter acknowledging inspection of documents was obtained from GPL.

5.7. From the facts brought out in Table -2, it is evident that the support and cooperation provided by the Company to SEBI was limited. The Company also disputed the veracity of WRR1, which was on SEBI's record, by production of WRR 2. However, upon being asked to provide the supporting material by way of letter May 21, 2013, the same was not forthcoming. It is noted that some of the details regarding the queries raised by way of letter May 21, 2013 were only provided in the reply dated March 21, 2016 of GPL filed before the Adjudicating Officer ("**AO**") appointed in the Adjudication Proceeding initiated in the matter. Thus, in the face of limited assistance from the Company, the examination in the matter was greatly hampered and prolonged.

5.8. It is also noted that the SEBI Order contemplated proceeding under Section 24 (Prosecution Proceeding) against GPL in case the directions contained therein were not followed. Later on it came to SEBI's knowledge that the directions of the SEBI Order had not been followed, so additionally proceeding under Sections 11/11B and Adjudication Proceeding, as stated above, were also initiated. Since multiple proceedings had been initiated, the aggregation of material required for initiating each of those proceedings consumed time. This was exacerbated by the lack of assistance from the Company. Also, it is emphasised that the examination that ensued in the year 2010 was started pursuant to the receipt of complaints from the investors regarding non-payment of returns. It is noted that the adjudication proceeding in the matter has concluded and an Order in this regard has already been passed by the AO on February 14, 2022. The said Adjudication Proceeding was initiated vide order dated June 2, 2014 with the appointment of the AO. Consequently, a show-cause notice dated January 19, 2015 was issued. Further thereto hearings were held in the matter and an order passed, as mentioned above imposing a penalty of Rs.10,00,000.

5.9. It is not in doubt that the initiation of proceedings has to be within a reasonable period of time. In this regard, the Hon'ble Supreme Court in the case of *Adjudicating Officer, Securities and Exchange Board of India v Bhavesh Pabari, (2019) 5 SCC 90* has opined that reasonable time, would *inter alia* depend upon the facts and circumstances of the case, nature of the default, prejudice caused etc.

5.10. The circumstances surrounding the initiation of the present proceeding, especially the lack of assistance from the Company has already been brought out in the aforesaid paragraphs. Additionally, it has also been brought out that the default was in ensuring the payment of dues to the investors. No worthwhile relief could be granted to the investors without appropriate examination and directions to GPL, and the same could only be done with the issuance of a show cause notice. Lastly, as required under the above-mentioned judgement of the Supreme Court, the Company has not clarified any specific prejudice caused to it. On the contrary, not initiating action would gravely prejudice the interests of the investors who would be denied of the benefit of earning due returns of their investments, which has been long pending.

5.11. It is acknowledged that Hon'ble Securities Appellate Tribunal ("**SAT**") in many cases has held that inordinate delay could be a ground for the quashing of a proceeding. In the same vein, the Hon'ble SAT has in its Order dated February 05, 2020 (*Appeal No. 376 of 2019, Jindal Cotex Limited and Ors Vs. SEBI*) and Order dated February 15, 2021 (*Appeal No. 168 of 2020, G. V. Films Ltd. Vs. SEBI*) exempted delay where the facts adequately justified the time taken for issuance of SCN. In the above matters, which related to issuances of GDRs, the Hon'ble SAT recognised the complexity involved in those matters and the time taken by SEBI to gain information relating to the same from various entities. It is stated that since the present matter involved multiple proceedings and information not being made available by GPL, as elaborated in the preceding paragraphs, time was consumed in the issuance of the SCN. Accordingly, it is stated that the present matter is similar to Jindal Cotex Limited and G. V. Films Ltd.

5.12. Thus, in view of the aforesaid and considering that the issuance of SCN in the present matter has been made in the interests of investors, I find that the issuance of SCN has been within a reasonable time and occasioned by fair reasons. Also, the concomitant facts as brought out above, give satisfactory account for the delay, if any. Accordingly, I do not find any merit in the assertion of the Noticees that the present proceeding is not maintainable owing to delay.

Scope and conditions for the use of powers contained in Section 11 B

5.13. It has been submitted by the Noticees that the invocation of Section 11 B envisages the initiation of 'enquiry' and appointment of an 'enquiry officer' under the Intermediaries Regulations, 2008. As an extension of the said assertion, it has been argued that since no enquiry officer had been appointed in the present matter the invocation of Section 11 B was wrong and improper.

5.14. It is stated that Section 11 B, in its original form, was inserted in the SEBI Act by way of the Securities Laws (Amendment) Act, 1995. In this regard, reference is made to the judgement of the Hon'ble Bombay High Court in the matter of *Ramrakh R. Bohra V SEBI, [1999] 33 CLA 243 (Bom.)*. The Hon'ble High Court while defining the scope of Section 11 B has stated, "*the power which has been conferred by section 11 B to issue direction are of a widest amplitude and are exercisable in the interest of investors and in order to prevent, inter alia, a broker from conducting his business in a manner detrimental to the interest of investors or the securities market. The said power to issue directions under section 11 B must carry with it, by necessary implication, all powers and duties incidental and necessary to make the exercise of these powers fully effective…*" The Hon'ble Bombay High Court in the matter of *Anand Rathi and Ors. vs. Securities and Exchange Board of India* *and Ors.[2001] 32 SCL 227* while clarifying the object of Section 11 B has stated, "*Section 11B is an enabling provision enacted to empower the SEBI Board to regulate securities market in order to protect the interest of the investors. Such an enabling provision must be so construed as to subserve the purpose for which it has been enacted. It is well settled principle of statutory construction that it is the duty of the Court to further Parliament's aim of providing of a remedy for the mischief against which enactment is directed and the Court should prefer construction which will suppress the mischief and advance remedy and avoid evasions for the continuance of the mischief.*

5.15. Thus, from the above judgements two fundamental things emerge with respect to Section 11B: a) the power is of a wide amplitude; and b) the aim of the power is to further the objects of the SEBI Act including the protection of the investors, as in the present case.

5.16. It is stated that the process of conduct of enquiry with the appointment of an enquiry officer as per the SEBI Intermediaries Regulations came only in 2008. Prior to that the process of conduct of enquiry with the appointment of an enquiry officer was under the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002. It is emphasised that the invocation of Section 11 B had started since 1995 when no regulations existed for the appointment of enquiry officers, and the same had been upheld by SAT. Also, the scope and object of Section 11 B was crystallised, as would be evident from the above, prior to the promulgation of Regulations that envisaged appointment of enquiry officers. Thus, the interpretation of Section 11 B would not change just on the ground that Regulations were framed to appoint enquiry officers and enquiry proceeding conducted in respect of intermediaries.

5.17. Accordingly, the claim of the Noticees that the invocation of Section 11 B (presently Section 11 B (1) subsequent to amendment in 2019) requires the appointment of an enquiry officer would be a negation of the long established judicial principles on Section 11 B, and, as such, I do not find any merit in the said argument.

5.18. Additionally, it is stated that the SEBI Intermediaries Regulations and the consequent appointment of an enquiry officer cannot be done in the present case as the SEBI Intermediaries Regulations apply to SEBI registered intermediaries, and GPL is not an intermediary registered with SEBI.

I – Whether GPL has violated the directions contained in paragraph 8 of the SEBI Order dated December 7, 2000?

5.19. The SEBI Order dated December 7, 2000 directed the entities named in the said order to *"refund the money collected under the scheme(s) with returns which is due to the investors as per the terms of the offer within a period of one month from the date of this Order*".

5.20. In this regard, I find that the said Order was in respect of 523 entities listed therein, including Gaekwad Plantations Limited (Noticee 1).

5.21. The SCN has alleged that the Noticees in the present matter had not complied with the direction contained in SEBI Order dated December 7, 2000, and, as such had violated Regulations 5(1), 68(1), 68 (2), 73 and 74 of CIS Regulations.

5.22. The Noticees by way of their replies have submitted that the Teak Sapling Scheme commenced in the year 1992 and the Company during 1992-93 had sold teak saplings at Rs. 1,000 per sapling and had undertaken to maintain the same for a period of 17 years. It has also been submitted that upon the completion of the scheme, the owner of the teak tree was entitled to cut the tree on his own and use it for its own purpose or sell it or could entrust the task for cutting and selling to the Company. In view of the same, it has been submitted that there was no pooling of resources. The scheme did not envisage that on completion of the scheme, the total amount realised would be pooled and distributed amongst the owners of the saplings in the ratio of their holding. Each person was the owner of the identified tree and was entitled to individually receive the amount realised from the specific tree owned by him.

The Company had only undertaken to take care of the trees owned by the teak holder for 17 years. Additionally, it has been submitted that in 1999 about 311 teak saplings were sold at Rs. 2,500 per sapling.

5.23. So, from the above submissions of the Noticees, the following facts emerge:

a. The investors participated in the Teak Sapling Scheme by investing Rs. 1,000/ 2,500 per sapling, which was the subscription amount. Upon the end of tenure of the scheme, the investor was entitled to the grown trees or the sale value of the trees post their felling and sale. So, the investor was entitled to the produce i.e., the grown tree or the profit/income realised post the felling and sale of the tree.

b. The amounts received from the investors for the purchase of saplings were pooled together and using the same, the saplings were cultivated and a plantation developed. This plantation was maintained by the Company. In this regard, reference is made to Anenxure A of the reply dated July 27, 2022 of the Noticees. By way of the said annexure, a break-up of the receipts and expenditure from 1992 to 2000, as incurred by the Company has been provided. In this respect, it would be relevant to reproduce the same for reference:

" *Details of Total Receipt from Sale of Teak Saplings and Expenses incurred during period from 1992-93 to 1999-2000*

Total Receipt from Sale of Teak Saplings	(Rs.)
Year 1992-93	*115.82 lacs*
Year 1999	*7.78 lacs*
	123.60 lacs

Total Expenditure incurred for the purpose of the Scheme of the Company

Cost of Teak Saplings purchased (Two years old already grown)	*32.70 lacs*
Advertising Expenses, Marketing Expenses, Traveling Expenses	
Brokerage Charges and other scheme promotion expenses	*20.92 lacs*
Total	*53.62 lacs*

Administrative Expenses, Teak Sapling Management Expenses (Net)

1992-93	*2.93 lacs*	
1993-94	*2.60 lacs*	
1994-95	*6.74 lacs*	
1995-96	*6.06 lacs*	
1996-97	*6.86 lacs*	
1997-98	*5.56 lacs*	
1998-99	*0.79 lacs*	
1999-00	*0.75 lacs*	
Total		*32.29 lacs*
Total Expenses up to 31.03.2000		*85.91 lacs*

Total amount incurred for acquisition of Office premises,

Furniture & Fixtures, Office Equipment

and Installation of water supply and other

Facility for teak sapling development *13.44 lacs*

Total Fund utilized *99.35 lacs*

<u>*Balance Fund available for meeting maintenance of teak saplings*</u>

<u>*for remaining Period of 10 years and for*</u>

<u>*Administrative and running expenses*</u>

<u>*up to Winding up of the scheme*</u> *24.25 lacs* "

It is thus evident from the above that all the expenses were made out of the monies received from the investors, which had been pooled together into a fund. The size of the said fund was Rs. 123. 60 lakh. Also, the expenditure was *inter alia* with respect to the maintenance of the teak saplings, and towards other ancillary ends viz., installation of water supply for the plantation, office premises, office equipment, furniture and fixtures etc. So, the expenditure incurred was also geared towards fulfilling the purpose of the scheme, which in this case was to receive profits/ income or produce from the management of teak saplings.

c. GPL was responsible for the day to day care of the saplings and their upkeep, and the investors were in no manner involved in that activity. As has already been brought out, Annexure A to the reply dated July 27, 2022 shows the expenditure incurred with respect to the maintenance of the teak saplings and other purposes of the scheme. It is noted that these expenses were incurred by the Company and the maintenance was also done by it. So, the investors had no role in the day to day maintenance or in authorising expenses from the pooled amount.

5.24. It is noted that in the Order of SEBI dated December 07, 2000 the following has been stated,

" *You had filed information/details with SEBI regarding your Collective Investment Schemes pursuant to SEBI Press Release dated November 26, 1997, and/or public notice dated December 18, 1997 and/or our letter. Subsequent to the notification of SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as the said regulations) dated October 15, 1999, any person who immediately prior to the commencement of these regulations was operating a Collective Investment Scheme(s), shall make an application to SEBI for grant of registration within a period of two months from the date of notification, under the provisions of the said Regulations.*

SEBI having regard to the interest of the investors and requests received from various entities, extended the last date for submitting application by existing entities upto March 31, 2000 and the same was intimated by SEBI vide a press *release and a public notice. However, you did not apply for grant of registration with SEBI as provided under the said Regulations.*"

5.25. It has already been held in the SEBI Order of December 07, 2000 that on the date of notification of the CIS Regulations i.e., October 15, 1999, the Teak Sapling Scheme floated by GPL was a Collective Investment Scheme. It is also on record that Noticee 1 had been acting pursuant to directions of SEBI, which had determined that GPL was running a Collective Investment Scheme. Additionally, as already brought out before, the AO by way of her Order dated February 14, 2022 has imposed penalty on GPL, being a CIS, for non-compliance of the SEBI Order dated December 07, 2000.

5.26. In this regard, it has been argued by the Noticees that there was no pooling of resources, as the scheme did not envisage the pooling of the total amount realised on the completion of the scheme and its distribution amongst the owners of the saplings in the ratio of their holding. At this stage, the status of GPL being a Collective Investment Scheme having been settled, consideration of whether the scheme envisaged pooling of funds, appears superfluous and belated.

5.27. In view of the above, as per Regulation 68 of the CIS Regulations, the Teak Sapling Scheme qualified as an "existing" Collective Investment Scheme. In this regard, by virtue of Regulations 68 (2) and 5 (1) of the CIS Regulations any person operating an existing Collective Investment Scheme was required to make an application to SEBI within a period of two months from the date of notification of the CIS Regulations. So, GPL was required to make an application for registration with SEBI by December 14, 1999.

5.28. In the regulatory structure of the CIS Regulations, Regulation 74 provided a sort of exception to the obligation cast upon existing Collective Investment Schemes to be registered with SEBI. Regulation 74 allowed an existing Collective Investment Scheme, which was not desirous of obtaining provisional registration, to formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Regulation 73. So, an existing Collective Investment Scheme which had not chosen to apply to SEBI, was required to send an Information Memorandum to the investors seeking to know their desire with respect to the continuance of the scheme, within a period of two months from the date of receipt of intimation by SEBI.

5.29. As per Regulation 73, in case positive consent was received from more than 25 percent of the total investors, the scheme could run with respect to such investors who had given their positive consent for the continuance of the scheme. As regards, the rest of the investors, they were to be refunded. In case positive consent was received from less than 25 percent of the total investors, then all the investors were to be repaid, and the scheme wound up.

5.30. Thus, to summarise, an existing Collective Investment Scheme at the time of notification of the CIS Regulations could either apply for registration by virtue of Regulations 68 (2) and 5 (1) of the CIS Regulations within a period of two months from the date of notification of the CIS Regulations or in case the Collective Investment Scheme was not desirous of taking provisional registration, an Information Memorandum was to be sent to the investors for getting assent on the continuance of the scheme.

5.31. In this respect, reference is made to the SEBI letter dated December 10, 1999 addressed to Noticee 1, whereby the options available to an existing Collective Investment Scheme, as already brought out above, were spelt out. Subsequently, SEBI by way of letter dated December 29, 1999 informed GPL to send the Information Memorandum within a period of two months from the date of such intimation. Further to the above, a letter dated May 12, 2000 was sent to Noticee 1 informing that the Noticee had neither applied for registration by March 31, 2000 (the prior deadline of December 14, 1999 having been extended) nor taken steps to wind up the scheme. The said letter further stated that Noticee 1 was required to send the Information Memorandum to the investors by February 28, 2000. Additionally, the said of letter of May 12, 2000 had called upon GPL to show-cause as to why directions under 11 B and other enforcement actions not be initiated against it. It is on the culmination of the proceeding initiated by way of the notice/letter dated May 12, 2000 that the SEBI Order (dated December 07, 2000) was passed.

5.32. Additionally, post the issuance of the SEBI Order, SEBI received WRR1 from Noticee 1 wherein it was stated that GPL had refunded to all investors . It is noted that when the complaints were received by SEBI in 2010, information was again sought from Noticee 1.

5.33. As already brought out, GPL in its reply to SEBI by way of letters dated May 17, 2013 and March 21, 2016, has disputed the authenticity of WRR 1. Additionally, it has provided a copy of WRR 2 dated January 26,2001 with the covering letter dated February 12, 2001. WRR 2 in its content is distinct from WRR1. The details as provided by way of WRR 2 are provided hereunder:

Sr. No	*Name of the scheme*	*Amount mobilised*		*Amount due to the investors (Principal + promised interest/return)*		*Amount Repaid*		*Mode of repayment*
		Total no. of investors	*Amount (in Rs. Lacs)*	*Total no. of investors*	*Amount (in Rs. Lacs)*	*Total no. of investors*	*Amount (in Rs. Lacs)*	
1	*Sale of Teak sapling*	*9520*	*123.60*	*(a) 398+* *(b) 3888**	*1.16* *12.62*	*380*	*0.95*	*By Demand Drafts and pay orders*
Total				*4286*	*13.78*	*380*	*0.95*	

Notes :-

(a) + 398 Teak holders expressed their desire to discontinue from the scheme upto 31.12.2000 out of which 380 investors return their certificates of teak saplings held by them and hence fully paid. 18 teak holders did not returned

their certificates of teak saplings and hence could not paid, Company shall pay them on receipt of certificates from them.

(b) *Company has returned @ 250/- per tree plus one tree owned by them and one additional tree to the teak holders who desired to discontinue from the scheme. Company arranged to sell these trees in the market and paid to outgoing investors.*

(c) ** 3888 Teak holders did not replied at all. Company could not make payment to these Teak holders due to non-submission of teak sapling certificates held by them. Company shall pay them on receipt of certificates from them."*

I note from the record that SEBI has denied receiving WRR 2.

5.34. Without getting into the question of the authenticity of WRR 1 and WRR 2, it is clear from the facts brought out above that GPL had not applied for registration by March 31, 2000, when the deadline for filing an application for provisional registration ended. The said fact has not been disputed by Noticee 1 in its submissions. As regards WRR 2, even if it is assumed that the same was received by SEBI, it cannot bring much relief to the Company. This is because SEBI letter dated May 12, 2000, records February 28, 2000 to be the final date for sending Information Memorandum under Regulation 73 to investors. The information memorandum, as evident from WRR 2, was sent by GPL only on May 29, 2000.

5.35. Thus, on December 07, 2000 when the SEBI Order was passed, Noticee 1 and the Teak Sapling Scheme did not have protection either under Regulations 5/ 63 (regularisation by way of registration) or Regulation 73 (continuance of scheme through affirmation sought by way of an information memorandum). Clearly there was an obligation on Noticee 1 to abide by the directions contained in the SEBI Order of December 07, 2000, the failure of which would result in the consequences listed therein.

5.36. It is clear from the material on record and from the complaints of investors that refund to all the investors has not been made. Further, the submissions of the Noticees also demonstrate that refund to all the investors has not been effected. The issue of refund to the investors of GPL has been dealt at length in the subsequent paragraphs. As a supplementary argument, it has been submitted by the Company that it could not refund to all investors as the investors were not forthcoming with their certificates. This assertion is however belied by the complaints received by SEBI in 2010. In the said complaints, the investors had annexed letters that had been addressed to the Company as well as copies of their certificates. They had not received any response in respect of such complaints. In view of the same, SEBI's Order directing GPL to refund the money to the investors within a period of one month from the date of the Order has not been complied with. Accordingly, I find that GPL has violated the provisions of Regulations 5(1), 68(1), 68 (2), 73 and 74 of the CIS Regulations.

III – What was the amount mobilised and what would be the quantum of refund?

5.37. Multiple communications have been received from GPL with respect to the details of its Teak Sapling Scheme. The details as received through these communications are provided hereunder:

Table – 3

S. No.	**Communication**	**Amount Mobilised (Rs.)**	**Total Number of Investors**	**Investors who have been refunded**	**Amount refunded (Rs.)**	**Investors to whom refund is to be made**	**Amount Outstand-ing (Rs.)**
1.	WRR 2 dated February 12, 2001	123.60 lakh	9520	380	0.95 lakh	-	-
2.	Letter dated August 13, 2021	123.60 lakh	11893	1780	-	7740	8,53,275

5.38. As is evident from the above, if refunds had been made to 1780 investors and the amount outstanding was with respect to 7740 investors, then the total no of investors comes to 9520 (1780+7740). However, it has been stated that the total number of investors was 11,893.

5.39. In this regard, clarification was sought from the Company by way of letter dated November 26, 2021 with respect to the conflicting details about its Teak Sapling Scheme. The Company by way of letter dated February 04, 2022 provided additional details/clarifications regarding the Teak Sapling Scheme. The details as received from the Company are brought out in the following paragraphs.

5.40. Total amount received by GPL from investors through sale of teak saplings:

Table – 4

S. No.	**Year of Receipt**	**Amount Received (Rs. in lakhs)**	**Number of Buyers**
1	1992-93	115.82	9225
2	1999	7.78	295

By way of the said reply, it was also clarified that the reference to 11,893 in an earlier reply was with respect to the total number of teak saplings sold and not the number of investors who bought those saplings. The total number of investors was 9520.

5.41. With respect to the amount refunded by the Company, the following details have been provided:

Table – 5

Year of Refund	Amount Refunded	Number of Buyers	Number of Trees
1997-98	1074000	297	537
2000-01	683280	537	657
2010-11	Members who cut and collected their trees	10	25
2010-11	741000	380	494
2011-12	472500	249	315
2012-13	223500	132	149
2013-14	96000	50	64
2014-15	159000	82	106
2015-16	40500	20	27
2016-17	18000	9	12
2017-18	9000	6	6
2018-19	3000	2	2
2019-20	3000	2	2
2020-21	28000	4	22

5.42. On the basis of submissions of the Company and the WRR 2, it appears that the total amount mobilised by the Company was Rs. 123.60 Lakh (9,520 investors for 11,893 saplings). Further, as per submissions of the Company, it has made repayments of Rs. 35,50,780 to 1770 buyers in respect of 2393 trees. Additionally, the Company by way of its letter dated March 30, 2022 has stated that the total number of investors to be refunded was 7,740 in respect of 9,475 trees and the amount payable to these investors was Rs. 8,53,275.

5.43. It has been submitted by the Company that Indian Oil had set up a storage unit next to the plantation of the Company which had adversely affected the growth of the trees. Also, it has been submitted that floods had affected the area where the plantation was located alluding that they had also affected the plantation.

5.44. From a consideration of the submissions made by the Company, the number of investors and trees appear to be in order. However, the basis/ rationale for arriving at the amount of Rs. 8,53,275 as the outstanding amount has not been provided by the Company. Even after clarifications being sought from the Company with respect to the above amount, the Company has failed to provide the basis for arriving at the figure of Rs. 8,53,275. From the Company's submissions dated March 30, 2022, it is noted that it had mobilised Rs. 1,000 per tree with respect to 11,582 teak saplings during 1992-93 and Rs. 2,500 per tree with respect to 311 teak saplings during 1999.

5.45. The master data of investor-wise refund is not available as the same has not been provided by the Company. So, considering that only 311 out of 11,893 trees were allotted at Rs. 2,500 per tree, if one assumes that Rs. 1,000 per tree was mobilised with respect to the 9475 trees that remain outstanding for payment, the principal amount would still come to Rs. 94,75,000 (9475 X 1000) out of the gross mobilised amount of Rs. 123.60 lakh. Further, even considering that impediments such as floods and adjacent structures close to the plantation did affect the growth of the trees, the value of Rs. 90.05 (8,53,275/ 9,475) fixed for each of the 9475 trees that remain outstanding for payment appears to be too low. Additionally, I note that the Company has made repayments of Rs. 35,50,780 in respect of 2393 trees to 1770 investors. Thus, the value determined for each of those 2393 trees is Rs. 1,484. It cannot be the case of the Noticees that floods and adjacent structures close to the plantation affected the growth of 9475 trees and not the 2393 trees, payments in respect of which have been made.

5.46. In view of the above, a liability of at least Rs. 1,484 per tree accrues for the remaining 9475 trees in respect of which payment is pending. I also note that Rs. 2,500 per tree was collected by the Company with respect to 311 teak saplings during the year 1999. In the refund details provided by the Company, it has not been clarified if the refunds so far made included the 311 teak saplings which were sold for Rs. 2,500 per tree. Considering that the trees for which payments have been made were the ones which matured first i.e., trees sold for Rs. 1000 in 1992-93, I note that the average point to point return has been about 48.4%. Considering the same, a tree bought for Rs. 2,500 should give at least a return of 48.4% over the course of its tenure, which comes to Rs. 3,710. Accordingly, if the 9475 trees include any of the above-mentioned 311 teak saplings then in such circumstance, I find that a payment of at least Rs. 3,710 per tree should be made in respect of such trees.

5.47. Accordingly, the refund liabilities of the Company for funds mobilised in respect of the 9475 trees are provided hereunder:

Table – 6

S. No.	**Type of Teak Sapling/Tree**	**Due Amount (Rs.)**	**Interest on the Due Amount (Rs.)**
1.	Teak sapling/tree with a principal cost of Rs. 1000	1,484 per teak sapling/ tree	12 % simple interest per annum from April 01, 2009 # till the date of payment.
2.	Teak sapling/tree with a principal cost of Rs. 2500	3,710 per teak sapling/tree	12 % simple interest per annum from April 01, 2012 £ till the date of payment.

 # These trees sold in 1992-1993 had a tenure of 17 years. Considering the same, the date from which interest is to be calculated for the purpose of refund is April 1, 2009 – being the earliest date post 17th year from 1992-1993 i.e., 2009-10.

£ No certificate of sale of saplings during this period is available on record specifying the exact start date of scheme for money mobilised in 1999. However, from the submissions made by GPL before the Adjudicating Officer, it is noted that the tenure of such trees was 14 years. Additionally, it is noted from the submissions of GPL before the Adjudicating Officer that the second phase of the sale of teak saplings happened in 1998-99. In the submission made in the present proceeding it has been stated that the second phase of the sale of teak saplings happened in the year 1999. Further, the information relating to tenure of the second phase of

the sale of teak saplings under which trees were sold in 1998/1999, was sought from GPL vide email dated Jan 16, 2023. However, GPL has failed to provide any response to the same till date. In light of the above and lack of response from GPL, the date from which interest is to be calculated for the purpose of refund is April 1, 2012 – being the earliest date post 14th year from 1998-1999 i.e., 2012-13.

IV— Whether Noticees 2, 3 and 4 would also be liable for the acts of GPL?

5.48. It has already been established that the Company has violated the directions contained in the SEBI Order. In this regard, Noticees 2, 3 and 4, who were directors of the Company, have also been arraigned in the SCN with respect to the non-compliance of the directions contained in the SEBI Order .

5.49. In this regard, it has been submitted by the Noticees in their reply that Yashodhan D. Gaekwad and Siddharth D. Gaekwad were neither Directors or promoters in the company on the date of the SEBI Order i.e., December 07, 2000. In support of the said assertion, the following facts have been placed by the Noticees:

Table – 7

S. No.	Director	Date of Appointment	Date of Termination
1	Yashodhan D. Gaekwad	December 10, 2002	-
2	Siddharth D. Gaekwad	December 01, 2015	-

5.50. It is evident from the SCN that the principal allegation is with regard to the non-compliance of directions contained in the SEBI Order, and the continuance thereof of the scheme by the Company. So, it is only natural that the consideration of liability of the directors/promoters of the Company should be from the date such liability arose for the Company.

5.51. Upon perusal of the information as gathered from the website of the Ministry of Corporate Affairs ("**MCA**"), the following are noted regarding the tenures of Noticees 2, 3 and 4 as directors:

Table – 8

S. No.	Director	Date of Appointment	Date of Termination
1	Yashodhan D. Gaekwad	December 10, 2002	-
2	Siddharth D. Gaekwad	December 01, 2015	-
3	Kamleshkumar Patel	September 10, 1999	-

5.52. In view of the above, the assertion that Yashodhan D. Gaekwad and Siddharth D. Gaekwad, on the date of the SEBI Order or on the date of the said order's non-compliance one month hence i.e., January 06, 2001 were not directors of the Company is correct. However, it must be recognised that January 06, 2001 is the point when the non-compliance of the SEBI Order dated December 07, 2000 started, and the said non-compliance was continuing when SCN 1 was issued to the Noticees on June 23, 2021. It is not in dispute that all the investors have not been refunded. Also, the Noticees ran the scheme for the full term of 17 years (1992/93 to 2009/10) even when there was an explicit direction in the SEBI Order of December 07, 2000 to make refunds to all the investors, and as a corollary windup its scheme. This evidently has not happened.

5.53. It is trite law that a company operates through its directors who are part of its board. It is seen from the records that Yashodhan D. Gaekwad was a director from December 10, 2002, Siddharth D. Gaekwad was a director from

December 01, 2015 and Kamleshkumar Patel was a director from September 10, 1999. The very nature of the aforesaid positions and the long tenures of their directorships would show that they had the required knowledge and involvement in the functioning of the Company.

5.54. In this regard, the decision of the Hon'ble Supreme Court in the matter of *Official Liquidator v. P.A.Tendolkar, [(1973)1SCC602]* has been referred to in the case of *N.Narayanan Vs. Adjudicating Officer, SEBI, [AIR2013SC3191]*, wherein the Hon'ble Supreme Court held that "*It is certainly a question of fact, to be determined upon the evidence in each case, whether a Director, alleged to be liable for misfeasance, had acted reasonably as well as honestly and with due diligence, so that he could not be held liable for conniving at fraud and misappropriation which takes place. A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially. If he does so he could be held liable for dereliction of duties undertaken by him and compelled to make good the losses incurred by the Company due to his neglect even if he is not shown to be guilty of participating in the commission of fraud. It is enough if his negligence is of such a character as to enable frauds to be committed and losses thereby incurred by the Company.*" Not only has the association of Noticees 2, 3 and 4 in the affairs of GPL been close and long, it is also gathered from the documents accessed from the MCA website that Noticees 2 and 3 hold substantial shareholding of GPL.

5.55. In this respect reference is also made to the Order dated March 07, 2022 of the Hon'ble SAT in the matter of *Soumen Ghosh and Another V. G. Mahalingam, WTM, SEBI in Appeal Nos. 171 and 172 of 2020* . The said Order was pursuant to an appeal filed against the Order dated January 03, 2020 passed by SEBI in respect of Soumen Ghosh and Kaushik Roy. The Order dated January 03, 2020 of SEBI had found that Soumen Ghosh and Kaushik

Roy being directors were liable for the CISs being run by the company, Sumangal Industries Limited, without registration under the CIS Regulations. The Hon'ble SAT affirmed the Order of SEBI holding the directors liable for the CISs being run by Sumangal Industries Limited, on the ground that the directors were closely connected and associated with its management, and as such would be deemed liable for the conduct of the company. The Hon'ble SAT while coming to the above conclusion also relied upon the above-mentioned judgement of the Supreme Court in *Official Liquidator v. P.A.Tendolkar, [(1973)1SCC602]*. Accordingly, the principles as enunciated above squarely apply to Noticees 2, 3 and 4 who are long-standing directors of GPL.

5.56. Thus, Yashodhan D. Gaekwad and Siddharth D. Gaekwad cannot be absolved of liability, as the non-compliance of the directions contained in the SEBI Order of December 07, 2000 is a continuing violation, which coincided with their respective tenures in the Company. Accordingly, I find that Noticees 2, 3 and 4 have violated the provisions of Regulations 5(1), 68(1), 68 (2), 73 and 74 of the CIS Regulations.

6. Directions –

6.1. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11(1), 11 (4) and 11B (1) of the SEBI Act read with Regulations 65 and 73 of the CIS Regulations, in the interest of investors and pursuant to the directions of the SEBI Order dated December 07, 2000 do hereby pass the following directions:

a) Gaekwad Plantations Limited, Yashodhan Digvijaysinh Gaekwad, Siddharth Digvijaysinh Gaekwad and Kamleshkumar Patel shall complete the winding up of its existing Collective Investment Scheme and refund the monies collected by Gaekwad Plantations Limited under its scheme(s) as determined in paragraph 5.47 of this Order, within a period of six (6) months from the date of this Order.

b) Gaekwad Plantations Limited, Yashodhan Digvijaysinh Gaekwad, Siddharth Digvijaysinh Gaekwad and Kamleshkumar Patel shall cause to effect a public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, inviting claims from investors/clients within a period of fifteen (15) days from the date of this Order. The said public notice shall detail the modalities for refund, and include the details of the contact person viz., name, address and contact number. The Noticees shall also send a copy of the public notice by way of Speed Post at the addresses of the investors that remain unpaid. A period of three (3) months from the date of the publication of the public notice shall be provided to the investors/clients for submitting their claims.

c) The repayments to the investors shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments.

d) Within a period of 15 days from the completion of refund as directed in paragraph 6.1 (a) above, the Noticees shall submit a winding up and repayment report in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999 to SEBI addressed to the "*Division Chief, IMD-RAC-3, Investment Management Department, SEBI Bhavan, Plot No.C4-A, 'G' Block, Bandra-Kurla Complex, Bandra (East), Mumbai - 400051, Maharashtra*". The above-mentioned report should be duly certified by an independent Chartered Accountant, and should indicate the amount of refund, mode of payment used (through banking channels), names of the investors, their addresses, contact details, etc. and the balance amount that remained unpaid, if at all along with the details of such investors who remained unpaid.

e) The remaining balance amount, if any, shall be deposited with SEBI which shall be kept in an interest bearing escrow account for a period of one (1) year for distribution to investors who had subscribed to the schemes floated by the Noticees. Thereafter, the said remaining amount shall be deposited in the Investors Protection and Education Fund, maintained by SEBI.

f) Gaekwad Plantations Limited, Yashodhan Digvijaysinh Gaekwad, Siddharth Digvijaysinh Gaekwad and Kamleshkumar Patel are restrained from selling their assets, properties and holdings of mutual funds/shares/securities held by them in demat/physical form except for the sole purpose of making the refunds as directed above. Further, banks are directed to allow debits from the bank accounts of Gaekwad Plantations Limited and its promoters and directors, including Yashodhan Digvijaysinh Gaekwad, Siddharth Digvijaysinh Gaekwad Kamleshkumar Patel, only for the purpose of making refunds to the investors who had invested in the Scheme of the Noticees and for depositing the balance amount with SEBI, as directed in this Order.

g) Gaekwad Plantations Limited, Yashodhan Digvijaysinh Gaekwad, Siddharth Digvijaysinh Gaekwad and Kamleshkumar Patel are debarred from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever, for the following periods:

Table – 9

S. No.	**Noticee**	**Period of Debarment**
1.	Gaekwad Plantations Limited	Five (5) years from the date of this Order or till the expiry of five (5) years from the date of compliance of directions in paragraphs 6.1 (a) and

		6.1.(e) above, whichever is later.
2.	Yashodhan Digvijaysinh Gaekwad	Five (5) years from the date of this Order or till the expiry of five (5) years from the date of compliance of directions in paragraphs 6.1 (a) and 6.1.(e) above, whichever is later.
3.	Siddharth Digvijaysinh Gaekwad	Five (5) years from the date of this Order or till the expiry of five (5) years from the date of compliance of directions in paragraphs 6.1 (a) and 6.1.(e) above, whichever is later.
4.	Kamleshkumar Patel	Five (5) years from the date of this Order or till the expiry of five (5) years from the date of compliance of directions in paragraphs 6.1 (a) and 6.1.(e) above, whichever is later.

h) Upon submission of report on completion of refund to clients/investors to SEBI and deposit of the balance amount, if any, with SEBI as directed at 6.1. (e), the direction at paragraph 6.1 (f) above shall cease to operate within 15 days thereafter.

i) Gaekwad Plantations Limited, Yashodhan Digvijaysinh Gaekwad, Siddharth Digvijaysinh Gaekwad and Kamleshkumar Patel shall abstain from collecting any money from investors or launch or carry out any

Collective Investment Scheme including the scheme which has been identified as a Collective Investment Scheme in this Order.

6.2. This Order is without prejudice to any other action that SEBI may initiate.

6.3. The direction for refund, as given in paragraph 6.1(a) above, shall not act as a bar on the clients /investors to pursue any other legal remedy available to them under any other law, against the Noticees for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

6.4. The above directions shall come into force with immediate effect.

6.5. A copy of this Order shall be forwarded to:

i) all the recognised Stock Exchanges, registered Depositories, banks and Registrar and Transfer Agents for necessary compliance with the above directions; and

ii) the Government of Gujarat.

6.6. The above directions shall come into force with immediate effect.

Place: Mumbai **ASHWANI BHATIA**

Date: February 27, 2023 **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA