BEFORE THE ADJUDICATING OFFICER SECURITIES

AND EXCHANGE BOARD OFINDIA ADJUDICATION

ORDER NO. PM/NR/2020-21/10086-10088

UNDER SECTION15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of

Sl. No.	Name of the Noticee	PAN
1.	Orient Resorts (India) Pvt., Ltd.,	AAAC03122G
2.	Dilpesh V Shah	BAHPS0953G
3.	Darshanbhai Arvindbhai Shah	AFYPS0954C

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

In the matter of Orient Resorts (India) Pvt., Ltd.,

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") received a complaint against Orient Resorts (India) Pvt., Ltd., *(hereinafter referred to as "ORIPL"/"Noticee 1"/"Company")* alleging that it had raised an amount of more than ₹10 crore from the public (more than 50,000 investors) through Collective Investment Scheme (CIS) without obtaining certificate of registration from SEBI.

2. Pursuant to examination of the documents and other records submitted by the Company as well as the complainants, the following were observed:

   a) *ORIPL had launched a scheme under name Vanashree Teak Bumper Profits Scheme (the Scheme) in the year 1993.*
   b) *The Scheme called for an investment of ₹910.00 per unit for a period of 18 years from the investors.*
   c) *The money collected was pooled towards setting up of a teak plantation.*
   d) *The Scheme claimed that the investors would receive ₹91000.00 for every ₹910.00 invested for one unit.*

e) *ORIPL had issued Teak Sapling Sale Certificate / Unit Certificate to the investors.*

f) *The units so issued were easily transferable on payment of a service fee of ₹15.*

g) *The teak trees were not investor-wise identifiable.*

h) *The plantation would be managed by ORIPL with the help of an Advisory Board.*

3. The aforementioned features of the scheme offered by ORIPL allegedly in the nature of a 'collective investment scheme' as defined in Section 11AA of the SEBI Act and it was found that ORIPL had not obtained any certificate of registration under the SEBI (Collective Investment Schemes) Regulations, 1999 *(hereinafter referred to as SEBI (CIS) Regulations)* for its existing fund mobilizing activity from the public, under the instant 'Scheme' offered by it. Accordingly, it was observed that ORIPL (Noticee 1) and its Directors viz., Dilpesh V Shah (Noticee 2) and Darshanbhai Arvindbhai Shah (Noticee 3) had violated the provisions of Section 12(1B) of SEBI Act and Regulation 3, 5, 73 and 74 of SEBI (CIS) Regulations.

4. The Hon'ble Whole Time Member (WTM), SEBI vide Order dated November 26, 2013 had *inter-alia* issued the following Directions under Section 11 and 11B of the SEBI Act, 1992 read with Regulations 65 and 73 of SEBI (CIS) Regulations:

"*ORIPL and its Directors Mr. Darshanbhai Arvindbhai Shah and Mr. Dilpesh V Shah to windup its schme and to repay the income or returns to the investors or transfer the produce i.e., one teak tree per unit to them as represented under the scheme, within a period of three months from the date of this Order".*

5. It was observed that ORIPL (Noticee 1) and Dilpesh V Shah (Noticee 2) failed to submit any report to SEBI about compliance with the aforesaid Directions. Therefore, it is alleged that the Noticees had not complied with the Directions issued by SEBI vide Order dated November 26, 2013.

APPOINTMENT OF ADJUDICATION OFFICER

6. Based on the findings of the examination, SEBI initiated Adjudication proceedings against the Noticees and appointed the undersigned as the Adjudicating Officer vide Order dated June 8, 2017 under Section 19 of SEBI Act read with Sub-section 1 of Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **"***SEBI Adjudication Rules")* to inquire into and adjudge under Section 15D(a) and 15HB of the SEBI Act, as per the following:

Sl. No.	**Name of the Noticee**	**Alleged violations in brief**	**Charging provisions**	**Penal provisions**
1 2	Orient Resorts (India) Pvt., Ltd., Dilpesh V Shah	Operating unregistered CIS	Section 12(1B) of SEBI Act and Regulations 3, 5, 73 and 74 of SEBI (CIS) Regulations.	Section 15D(a) of SEBI Act
		Non-compliance of Directions issued by SEBI vide Order dated November 26, 2013		Section 15HB of SEBI Act
3	Darshanbhai Arvindbhai Shah	Operating unregistered CIS	Section 12(1B) of SEBI Act and Regulations 3, 5, 73 and 74 of SEBI (CIS) Regulations.	Section 15D(a) of SEBI Act

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. A Show Cause Notice (SCN) dated December 31, 2019 was served on all the Noticees under Rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against them under Section 15D(a) and 15HB of the SEBI Act *(as applicable)*, for the violation alleged to have been committed by them.

8. The Noticees vide their respective letters dated February 8, 2020 submitted their reply, which is similar, is summarized hereunder:

(a) *The fact that the cognizance of the said complaint and other complaints have already been taken by the WTM, SEBI and a consolidated final Order has been passed against all such complaints, references, and the Noticees have also duly complied with such Order. Therefore, as on date, no disputes exist and no complaint/reference remains unresolved, so as to warrant issuance of the present notice.*

(b) *ORIPL had launched the scheme "Vanashree" in the year 1993 wherein the unit holders were sold teak tree sapling at ₹910 each. As per the scheme, this amount of ₹910 per unit had to be refunded to the investors in 5 years. It was clearly disclosed in the scheme to all investors that there would be no indicative realisation.*

(c) *There was no promise to pay the investors ₹91000 per unit after a period of 18 years. The statement in its brochures to that effect was merely the expected realizable value and the same will only be realized from the sale of teak tree.*

(d) *The money collected from investors was refunded after 5 years from the date of collection as promised and after the said period of 18 years, an amount (whatever the figure may be) as it obtained from the sale of the teak trees as per unit was to be realized by the applicants.*

(e) *Thereafter, ORIPL had a very minimal role to play in the said schemes and the applicants were to duly sell their respective teak trees and obtain the proceeds of the same.*

(f) *That the entire amount of ₹910/- per unit was refunded to the applicants much before the enforcement of the SEBI (CIS) Regulations.*

(g) *However, on November 27, 2012 a SCN was issued by SEBI to the Noticees on the basis of a complaint dated July 14, 2017 alleging that ORIPL had raised an amount of 10 crore from the public (more than 50,000) through CIS scheme.*

(h) *The Noticees replied to the SCN with a detailed explanation and made further submissions during the course of hearing before the Hon'ble WTM.*

(i) *The Hon'ble WTM vide Order dated November 26, 2013 directed the Noticees 1 and 2 to windup the scheme and repay the income or returns to the investors. Further, the Hon'ble WTM had debarred the Noticees from accessing the securities market and restrained and prohibited from buying, selling or otherwise dealing in the securities for a period of three years.*

(j) *In accordance with the final Order, ORILP wound up the entire scheme, after duly performing the following activities:*

i. *Numbering the trees at the plantation from the 10.12.2013 to identify the trees with unit certificate. Also while doing the said numbering the lean/undeveloped trees having less than 4" girth were segregated;*
ii. *The final round of application of pesticide, anti-termite treatment was also done to protect the trees and Geru/coating/white line coating etc., was completed with regards to the entire plantation;*
iii. *For smooth access to the plantation site by visitors, a pathway was also prepared and banners were also placed at appropriate spots to identify the site address;*
iv. *The data/records were updated for transferring the ownership of the trees;*
v. *Necessary board resolutions were passed on 15.01.2014, whereby two eminent legal advisors were appointed to seek their guidance and to comply with the final order;*
vi. *Under the guidance of the eminent legal advisors, the allotment certificates were prepared with terms and conditions and the same were printed;*
vii. *The public notices for such allotment were prepared in Gujarati, and were published in Bhuj, Bhavnagar, Rajkot, Ahmedabad, Vadodara, and Surat editions and Mumbai editions of "Divya Bhaskar", the largest regional daily in Gujarat and Mumbai;*
viii. *Public Notices were also published in English in all Gujarat edition of Western Times and in Gujarati Western Times as well;*
ix. *The website was updated with the public notice and other steps were also taken, as was displayed on the website http://oripl.synthasite.com;*
x. *The requisite staff was also appointed with data/allotment certificates to respond to unit holders visiting the site or through post;*
xi. *Subsequently, reminder advertisements were also issued and published in the Sandesh Gujarati Daily again in the interest of the unit holders on 28.02.2014, notifying the unit holders to collect their allotment certificates;*
xii. *Further, repeated reminders were also to the forest department to grant permission for cutting of the teak trees;*

(k) *Thus, the final Order stood complied with in all aspects and was communicated to SEBI vide letter dated March 5, 2014 along with the supporting documents.*

(l) *Thereafter, the Noticees 1 and 2 were shocked to receive the notice of demand dated October 6, 2016 demanding a sum of ₹13,42,91,111/- due to alleged non-compliance of the Order dated November 26, 2013.*

(m) Subsequently, the recovery certificate no. 994 of 2016 was drawn up by the Recovery Officer of SEBI and pursuant to the same, the accounts of the Noticees 1 and 2 were frozen.

(n) Thereafter, the representatives of ORIPL appeared before SEBI, Western Regional Office once again and offered necessary explanations along with all the relevant documents. It was informed to the Recovery Officer that out of the total amount of ₹3,31,33,824 received, ₹3,26,15,052/- have been refunded and only an amount of ₹5,18,300 was unclaimed by the applicants.

(o) It was further explained that on around December 7, 2013, the Order of WTM dated November 26, 203 was received vide letter dated December 2, 2013 and thereafter complied with all the Directions and submitted the compliance report to SEBI vide letter dated March 5, 2014.

(p) The Company vide its letter dated March 5, 2014 has reported the compliance in the form of transfer of produce, i.e., allocating one teak tree per unit to investors. The Company had issued public notice in all leading newspapers of Gujarat and Mumbai for creating awareness among the unitholders. The amount collected from the investors were already repaid and hence the Order was complied with in the above manner.

9. In order to conduct an Inquiry, in terms of Rule 4(3) of SEBI Adjudication Rules, the Noticees were given an opportunity of hearing on October 9, 2020, which was communicated vide notice dated September 18, 2020. In view of the prevailing circumstances owing to Covid-19 pandemic, the hearing was scheduled through video conferencing on Webex platform on October 9, 2020. The Noticee 1 vide letter dated October 5, 2020 sought adjournment of hearing on account of illness of one of the Noticees viz., Darshan Shah. The request made by the Noticee 1 was acceded to and accordingly, all the Noticees were provided with one more opportunity of hearing on October 29, 2020, which was communicated vide email dated October 7, 2020. On behalf of all the three Noticees, their Authorized Representative appeared on the scheduled date of hearing i.e., October 29, 2020 through videoconferencing and reiterated the submissions made by the Noticee vide letter dated February 8, 2020. Further, the Authorized Representative requested a time period of 5 days to make additional submissions, which was acceded to. The Authorized Representative vide email dated November 4, 2020 filed additional

submissions on behalf of all the three Noticees. I note from the additional submissions made by the Noticees that they have once again reiterated the earlier submissions made vide letter dated February 8, 2020, which are not discussed hereunder for the sake of brevity. The summary of additional submissions made by the Noticees, which are identical, are furnished hereunder:

i. *That vide the order dated November 26, 2013, bearing No. WTM/RKA/48/2013, punishments were also levied on the Noticees for violations of Section 12(1B) of the SEBI Act, and Regulations 4,5,73, and 7 of the Regulations. Vide the said Order, certain directions were passed by the Whole Time Member on ORIPL which have been duly complied by ORIPL and therefore its liability with regards to the violation of Section 12(1B) of the SEBI Act, and Regulations 4,5,73, and 7 of the Regulations in the Vanashree scheme were put to rest;*

ii. *The Noticees vehemently urges the Hon'ble Adjudicating Officer to consider that the cause of action under which the SCN dated 31st December, 2019 is being sent is the same cause of action for which an adjudication has already been conducted and pursuant to which certain directions were passed against ORIPL, which have been fully and completely complied with by ORIPL;*

iii. *Article 20(2) of the Constitution of India states that "No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence";*

iv. *Section 26 of the General Clauses Act, 1897 reads "Provision as to offences punishable under two or more enactments. – Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.";*

v. *The Constitution Bench of the Hon'ble Supreme Court of India in S.A. Venkataraman v. Union of India & Anr. reported in AIR 1954 SC 375, explained the scope of doctrine of double jeopardy, observing that in order to attract the provisions of Article 20 (2) of the Constitution, there must have been both prosecution and punishment in respect of the same offence;*

vi. *In The State of Bombay v. S.L. Apte and Anr., reported in AIR 1961 SC 578, the Constitution Bench of the Hon'ble Supreme Court while dealing with the issue of double jeopardy under Article 20(2), held that "To operate as a bar the second prosecution and the consequential punishment thereunder, must be for "the same offence". The crucial requirement therefore for attracting the Article is that the offences are the same i.e. they should be identical."*

vii. *It is therefore stated that the second SCN dated 31st December, 2019 as also been issued on ORIPL for the same offences. Therefore, the bar of double jeopardy is clearly attracted to the second SCN dated 31st December, 2019;*

viii. *It is also pertinent to reproduce another order of the Hon'ble SAT titled Murli Lekhraj, Sanwa Finance Private Limited Vs. Securities and Exchange Board of India, reported in 2006 68 SCL 29 SAT. The facts of the said matter are stated hereunder:*

i. *In the said matter, SEBI, by exercising powers under Sections 11A and 11B of the SEBI Act, 1992 read with Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 has debarred the appellant from accessing the securities market for a period of two years. The said debarment was made pursuant to the order of the Whole Time Member dated 31.08.2014. In furtherance to the same, SEBI had issued a Show Cause Notice dated 11.06.2004 to the said appellant under Regulation 6(1) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations.*

ii. *The question that was raised before the Hon'ble SAT was whether the said action of issuing the SCN amounted to double jeopardy and therefore, it was prayed that the said SCN should be set aside. The subsequent SCN was issued on the Appellant in his capacity as an investor, whereas the previous prosecution was initiated in his capacity as a broker. Therefore, both the proceedings were initiated against him in different capacities;*

iii. *While considering whether the said SCN amounted to double jeopardy or not the Hon'ble SAT held that there can be no question of double jeopardy if a person is tried under different offences, or for the same offences, but under different rules/regulations, or if the person is prosecuted twice in different capacities;*

iv. *Vide the said order, the Hon'ble SAT, even though both the prosecutions were initiated against the Appellant in different capacities, had held that Taking into account the appellant has suffered debarment for one year and 4 months and taking into account the peculiar facts and circumstances of the case it would be appropriate that the period of debarment undergone by the appellant till date shall be treated as the period of penalty under Section 11 and 11B of the SEBI Act, 1992. We also feel in the extraordinary facts and circumstances the show cause notice dated 20/12/2004 shall stand withdrawn taking all these factors into account and the fact that the appellant has already endured the debarment both as a broker and as an individual by the order dated 31/08/2004 without this order being a precedent for the reasons stated above;*

v. *Therefore, it is humbly prayed that in the present case the second SCN dated 31st December, 2019 has not even been initiated against ORIPL in any different capacity, or under any different law, rule, act, or regulation and therefore, fresh adjudication in a matter that has already been adjudicated will clearly amount to double jeopardy to ORIPL;*

CONSIDERATION OF ISSUES

10. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticees was that they engaged in fund mobilizing activity from public, which is in the nature of a 'collective investment scheme' as defined in Section 11AA of the SEBI Act. It was also alleged that the Noticees had not obtained any certificate of registration under the SEBI (CIS) Regulations for its existing fund mobilizing activity from the public, under the instant 'Scheme' offered by it. Further, It was alleged that the Noticees 1 and 2 had failed to comply with the Directions issued by SEBI vide Order dated November 26, 2013.

11. After perusal of the material available on record, I have the following issues for consideration, viz.,

I. *Whether the Noticees have violated the provisions of Section 12(1B) of SEBI Act and Regulation 3, 5, 73 and 74 of SEBI (CIS) Regulations?*

II. *Whether the Noticees 1 and 2 have complied with the Directions issued vide Order dated November 26, 2013?*

III. *Does the violations, if any, attract monetary penalty under Section 15D(a) and 15HB of SEBI Act?*

IV. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

ISSUE-I: Whether the Noticees have violated the provisions of Section 12(1B) of SEBI Act and Regulation 3, 5, 73 and 74 of SEBI (CIS) Regulations?

12. It is pertinent to refer to the relevant provisions of SEBI Act and SEBI (CIS) Regulations, alleged to have been violated by the Noticees, which reads as under:

Section 12(1B) of SEBI Act

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 .

Regulation 3 of SEBI (CIS) Regulations

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

Regulation 5 of SEBI (CIS) Regulations

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 73 of SEBI (CIS) Regulations

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.

Regulation 74 of SEBI (CIS) Regulations

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.

13. Before going into the merits of the case, I would like to examine the primary contention raised by the Noticees that continuation of the present Adjudication proceedings against them would tantamount to double jeopardy, in view of the Order passed by the Hon'ble WTM on November 26, 2013 for the same cause of action of the same alleged breach of violations.

14. In this regard, I note that the principle of double jeopardy flows from the fundamental right enshrined in Article 20(2) of the Constitution of India. I note that it is judicially settled position that in order to claim the protection of Article 20(2) it is necessary to show that - (a) there was a previous prosecution, (b) as a result of which the accused was punished, and (c) the punishment was for the same offence. Unless all the three conditions are fulfilled, Article 20 (2) of the Constitution of India is not attracted.

15. The words 'offence', 'prosecution' and 'punishment' in the context of Article 20(2) of the Constitution of India contemplate proceedings of criminal nature before a court of law. The Hon'ble High Court of Bombay in the matter of SEBI Vs. Cabot International Capital Corporation (2004) to Comp L J held *that "the adjudication for imposition of penalty by Adjudication Officer, after due inquiry, is neither a criminal nor a quasi-criminal proceeding. The penalty leviable under this Chapter or under these sections is penalty in cases of default or*

failure of statutory obligation or in other words, breach of civil obligation. The provisions and scheme of penalty under SEBI Act and the regulations, there is not element of criminal offence or punishment as contemplated under criminal proceedings."

16. The Hon'ble Supreme Court in Shriram Mutual Fund & Anr. {Appeal (civil) 9523-9524 of 2003}, has also held that adjudication proceedings under SEBI Act are civil proceedings.

17. It is pertinent to mention the Hon'ble SAT's observations in the matter of Sunita Gupta Vs. SEBI in the Appeal No. 193 of 2016 decided on April 21, 2017, which was filed by the Noticee, aggrieved by the Hon'ble WTM's Order dated April 13, 2016. The Hon'ble SAT in its judgement had observed that:

> *"Where a person violates the provisions contained in the SEBI Act and the regulations made thereunder, then, SEBI is empowered to initiate penalty proceedings against that person under Chapter VIA of SEBI Act and also issue directions in the interests of investors or securities market as it deems fit under Chapter IV of SEBI Act. Thus, the powers conferred on the Board under Chapter IV are independent from the powers to impose penalty under Chapter VIA of SEBI Act. Accordingly, in the present case, since the appellant had indulged in synchronized/ circular trades in gross violation of SEBI Act/ PFUTP Regulations and the same was detrimental to the interests of the investors and securities market, the Board deemed it fit to issue direction under Chapter IV in addition to the penalty imposed under Chapter VIA of SEBI Act. Therefore, in the facts of present case, initiation of proceedings under Chapter IV even after initiating proceedings under Chapter VIA cannot be faulted.*

18. Therefore, in my view, the principle of double jeopardy do not apply to the present proceedings, as the directions issued by Hon'ble WTM of SEBI under Section 11 and 11B of the SEBI Act are also civil proceedings and not criminal proceedings. In view of the above, I find no merit in the argument put forth by the Noticees and accordingly I proceed further in the matter.

19. It is essential to examine whether the scheme of ORIPL in this case was a collective investment scheme as defined in SEBI (CIS) Regulations and SEBI Act and whether it was operating immediately prior to commencement of SEBI (CIS) Regulations. I note that Regulation 2(2) of the CIS Regulations (prior to its amendment on February 14, 2000 provided that in order to determine whether any scheme is a CIS, the following conditions should be satisfied:-

(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 or otherwise;

20. Subsequently, by Securities Law (Amendment) Act, 1999, section 11AA was inserted in SEBI Act, which defined CIS. The definition was provided as a clarificatory provision. Relevant provisions of section 11AA of the SEBI Act state as follows:

"(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) shall be a collective investment scheme.
(2) Any scheme or arrangement made or offered by any company under which,---

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;
(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;
(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;
(iv) the investors do not have day to day control over the management and operation of the scheme or arrangement

21. I note that regulation 2(2) of CIS Regulation as it was existing prior to February 14, 2000 and section 11AA both provide for the following four essential ingredients for determining any scheme as collective investment scheme-

(a) Pooling of investments / contribution / subscription by investors and utilisation thereof exclusively for the purpose of the scheme;

(b) The investment / contribution / subscription is made by the investors with the view to receive profit or income or produce from the scheme / property;

(c) The investment / property / scheme is managed on behalf of the investors;

(d) The investors do not have day to day control over the operation of the scheme.

22. In the instant case, under its scheme, the ORIPL issued and circulated application forms along with brochure containing terms and conditions of its schemes and the contributions were invited from public to contribute ₹910 per unit of teak tree. While the original contribution was to be refunded in 5 years, the interest thereon @8% was to be used for utilisation exclusively for the purposes of the scheme i.e. the plantation of the teak trees, their maintenance and management. I note that ORIPL had issued Teak Sapling Sale Certificate / unit certificates to the investors against their contribution. Further, it is noted that the units are transferable.

23. From the terms and conditions of the scheme and copy of the agreement between the investor and ORIPL, I note that ORIPL has made several statements, declarations, and announcements enticing the investors and soliciting contribution from public with a view to receive profit, income, returns. For instance, in its brochures it had announced as following: *"Just invest ₹910/- and own a teak tree. The money invested for Vanashree will be received back on completion of 5 years. What is more? Receive your ₹91,000/- after 18 years and become a "Lakhpati".* I, therefore, find that the scheme in question was launched to enable the investors to participate in the scheme with a view to receive profit. The scheme does not necessarily involve

sale of teak tree per se at the time of pooling of investments or subsequently as sought to be contented by the ORIPL.

24. Further, I also note that under the scheme of ORIPL, the teak trees in its plantation were not identifiable according to investors' interest in the tree. The investors do not manage the teak plantation, contribution or investment forming part of schemes at any stage under the schemes. Admittedly, the contribution / investment, teak plantation and all activities under the scheme are managed by ORIPL itself on behalf of the investors.

25. It is also admitted fact that the investors did not have any say in identifying the place where of teak plantation, number and quantity teak trees to be planted, management and maintenance of the teak trees. Admittedly, it is ORIPL who with the help of its Advisory Board was having day-to-day control over management and operation of the scheme. I, further note that the facts leading to determination of its scheme as collective investment scheme have not been disputed or contested by Orient.

26. In view of the above, I find that the scheme of ORIPL satisfies all the ingredients of Regulation 2(2) of the CIS Regulations, section 11AA of the SEBI Act and also of Section 2(h) of the Securities Contracts (Regulation) Act, 1956. Therefore, its scheme is a collective investment scheme.

27. Now, I proceed to examine whether Orient was operating its scheme immediately prior to commencement of SEBI (CIS) Regulations so as to be within ambit of section 12(1B) of the SEBI Act and Regulation 3 of the SEBI (CIS) Regulations. Admittedly, the scheme in question was launched on December 19, 1992 when though SEBI Act was in force, Section 12(1B) and SEBI (CIS) Regulations were not in force. As on that date, there was no violation of SEBI Act or SEBI (CIS) Regulations. I note from the submissions made by the Noticees that ORIPL has claimed to have refunded the contribution money i.e. ₹910 per unit in 1998 as promised in the scheme and its scheme was closed on account of such refund i.e. before the commencement of the SEBI (CIS) Regulations. I find that admittedly, the scheme in question was in operation in 1995 when the mandatory obligation

under section 12(1B) of the SEBI Act came into force and the scheme in question could avail the benefit of the proviso to Section 12(1B) till the SEBI (CIS) Regulations were notified. In this case, I note that the scheme in question not only involve repayment of contribution money in 5 years, it also involved returns to the investors from the plantation scheme as promised to them. Furthermore, the interest accrued on their investment has been utilised for the purposes of the scheme with a view to pass on income or profit out of the scheme to the investors. Therefore, in my view, the scheme in question is not yet closed and is in operation. The scheme in question was in operation when the SEBI (CIS) Regulations were notified. Thus, ORIPL was under mandatory obligation to obtain registration from SEBI in accordance with SEBI (CIS) Regulations and, as permitted under Regulation 5 of SEBI (CIS) Regulations, to make application in that regard within two months from the date of commencement of the CIS Regulations.

28. I find that ORIPL has neither sought registration from SEBI as a Collective Investment Management Company nor has it wound up its schemes as per the provisions of Regulation 73 and 74 of the SEBI (CIS) Regulations.

29. Therefore, I conclude from the aforementioned findings that ORIPL has violated the provisions of Section 12(1B) of the SEBI Act and Regulation 3, 5, 73 and 74 of the CIS Regulations.

30. In my view for the above act and omissions which have led to the contravention of the provisions of SEBI Act and CIS Regulations by the Noticee 1, I find that the persons in charge of its affairs and management of the scheme viz., Noticees 2 and 3 are also liable for the violations committed by the Company in operating a Scheme as discussed which is a CIS in terms of section 11AA of the SEBI Act, without obtaining registration from SEBI. Accordingly, I hold that the Noticees 2 and 3 have violated the provisions of Section 12(1B) of the SEBI Act and Regulation 3, 5, 73 and 74 of the CIS Regulations.

31. At this juncture, I find it relevant to refer to the judgment of Supreme Court of India in the matter of P.G.F. Limited & Ors. v. Union of India & Ors. (Civil Appeal No. 6572 of 2004 dated March 12, 2013 : MANU/SC/0247/2013) wherein, the court observed that, *"It has to be borne in mind that by seeking to cover any scheme or arrangement by way of collective investment scheme either in the field of agricultural or any other commercial activity, the purport is only to ensure that the scheme providing for investment in the form of rupee, anna or paise gets registered with the authority concerned and the provision would further seek to regulate such schemes in order to ensure that any such investment based on any promise under the scheme or arrangement is truly operated upon in a lawful manner and that by operating such scheme or arrangement the person who makes the investment is able to really reap the benefit and that he is not defrauded." It further observed that, "we can also take judicial notice of the fact that those schemes, which would fall under Sub-section (2) of Section 11AA would consist of a marketing strategy adopted by those promoters, by reason of which, the common man who is eager to make an investment falls an easy prey by the sweet coated words and attractive persuasions of such marketing experts who ensure that those who succumb to such persuasions never care to examine the hidden pitfalls under the scheme, which are totally against the interests of the investors, apart from various other stipulations, which would ultimately deprive the investors of their entire entitlement, including their investments. The investors virtually by signing on the dotted lines of those stereotyped blank documents would never be aware of the nature of constraints created in the documents, which would virtually wipe out whatever investment made by them in course of time and ultimately having regard to the legal entangles in which such investors would have to undergo by spending further monies on litigations, ultimately prefer to ignore their investments cursing themselves of their fate. More than 90 per cent of such investors would rather prefer to forget such investments than making any attempt to secure their money back. Thereby, the promoters put to unlawful gain who always thrive on other people's money."*

32. Thus, I am of the view that the Noticees' act of carrying on an unregistered collective investment scheme was not only a violation of provisions of SEBI Act and Regulations made thereunder, but it also put investments of lakhs of investors in jeopardy, which is a serious offence.

ISSUE II: Whether the Noticees 1 and 2 have complied with the Directions issued vide Order dated November 26, 2013?

33. I note from the records that Hon'ble WTM, SEBI vide Order ref. no. WTM/RKA/WRO/48/2013 dated November 26, 2013 issued the following Directions to the Noticees under Section 11 and 11B of the SEBI Act, read with Regulations 65 and 73 of SEBI (CIS) Regulations, for running a CIS without obtaining registration from SEBI:

i. ORIPL and its Directors Mr. Brahm DevAmarnath Shukla, Mr. Dilpesh V Shah to windup its Scheme and to repay the income or returns to the investors or transfer the produce i.e. one teak tree per unit to them, as represented under the Scheme within a period of three months from the date of this Order, failing which the following actions shall follow:

(a) SEBI would initiate prosecution proceedings under Section 24 of SEBI Act and Adjudication proceedings under Chapter VI of the SEBI Act against them.
(b) A reference would made to the State Government / Local Police to register a Civil / Criminal case against them for apparent offences of fraud, cheating, criminal breach of trust and misappropriation of public funds.
(c) Make a reference to the Ministry of Corporate Affairs to initiate the process of winding up of ORIPL.
(d) Without prejudice to the above, SEBI shall also initiate attachment and recovery proceedings under Section 28A of the SEBI Act.

ii. ORIPL, Mr. Darshanbhai Arvindbhai (former Managing Director, Mr. Brahm Dev Amarnath Shukla and Mr. Dilpesh V Shah are directed to not to access the securities market and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market for a period of three years.

34. I note from the records that vide letters dated December 2, 2012, a copy of the said Order was served on the three Noticees. It was given to understand that Mr. Brahm Dev Amarnath Shukla expired on April 23, 2014.

35. Since, no reply from the Noticees was received, SEBI vide letter dated March 7, 2014 reminded the Noticees 1 and 2 to expedite submitting "winding up and repayment report" (WRR) to SEBI by February 25, 2014 i.e., 3 months from the date of the Order.

36. In the meanwhile, ORIPL vide letter dated March 5, 2014 received by SEBI on March 10, 2014 submitted the following documents / information:

    (a) Numbering of trees at the plantation from December 10, 2013 and segregation of lean / undeveloped trees;
    (b) Application of pesticide, anti-termite;
    (c) Making pathways for easy smooth access and placing banners with directions;
    (d) Appointing two legal advisors (advocates of Gujarat High Court) viz., M/s Raval and Raval and Ms. Varshal Pancholi to seek guidance for completion of proceedings;
    (e) Printing of allotment letters with terms and conditions;
    (f) Public notice issued by ORIPL in all Gujarati editions of "Divya Bhaskar" and all English editions of "Western Times". Reminder advertisement issued in "Sandesh" informing unitholders to collect their allotment certificate and
    (g) Copy of reminder letter dated February 20, 2014 forwarded by ORIPL (signed by Authorized Signatory of Sruchi Vruksh Utpadak Sahakari Mandali Ltd.,) to Forest Department seeking permission to cut the trees.

37. I note from the aforesaid documents submitted by ORIPL that a permission was sought from Forest Department to cut the trees, which was written by Suruchi Vruksh Utpadak Sahakari Mandali Ltd., and not ORIPL.

38. Accordingly, vide letter dated April 24, 2014 ORIPL was advised to clarify as to why the letter was written by Suruchi Vruksh Utpadak Sahakari Mandali Ltd., to Forest Department while the money from general public has been raised by ORIPL. Further, ORIPL was advised to submit written consent of Advocates for defending the case of ORIPL. I note from the records that, ORIPL and the Noticee 1 had failed to furnish any reply.

39. Further, I note from the records that complaints/reminders of (i) Shri A V Vadnerkar (ii) Shri Vithalbhai Morarbhai Mahta (iii) Shri Kantilal Kamdar and (iv) Shri Varunkumar Atulbhat Dave received by SEBI were forwarded to the Managing Director, ORIPL advising him to redress the complaints and submit an action take report. However, the Noticee Company failed to submit any reply to SEBI in this regard.

40. I note from the submissions made by the Noticees 1 and 2 in reply to the SCN dated December 31, 2019 that they stated to have repaid the amount collected from the investors and that the Order was stated to have been complied with, which is factually incorrect in view of the following observations:

(a) There is no documentary proof on record to substantiate the claim of the Noticees 1 and 2 for having repaid the income or returns to the investors.

(b) The Noticees 1 and 2 failed to provide any reply to SEBI as to how the permissions was sought by Suruchi Vruksh Utpadak Sahakari Mandali Ltd., and not ORIPL.

(c) No ATR was failed by ORIPL with regard to the complaints / reminders forwarded by SEBI pursuant to the Order dated November 26, 2013.

(d) The Noticees 1 and 2 in their replies to the instant proceedings have neither made any reference to the aforesaid facts nor submitted any reply thereafter on the same.

(e) As per the scheme details the 18 years period stipulated in the scheme has expired and ORIPL has not yet made repayment of profit, income to investors as promised by it. ORIPL has submitted that as per Gujarat Government Circular no. TRS 2060-9863-A3 dated 11/2/1961 it has sought permission from DFO to cut down the teak trees in order to repay the investors but the permission is yet to be granted. I find that Gujarat

Government Circular no. TRS 2060- 9863-A3 dated 11/2/1961 was in force even at the time of inviting subscription from the public in the scheme of Orient. However, Orient had chosen to not disclose this condition anywhere in its publicity materials or Teak Sapling Sale Certificate / unit certificates issued by it to the investors. In my view, this is a material fact which would have had a strong bearing on the investment decision of the investors. I find that ORIPL has illegally continued the scheme in contravention of the provisions of the SEBI Act and the SEBI (CIS) Regulations. Further, the scheme period is over and income or profit or produce to investors is not contingent upon the cutting of the trees as per the scheme. Nevertheless, if it was so, ORIPL had to take appropriate steps before the expiry of 18 years and should have ensured the repayment to investors in terms of its scheme. In this regard, I further note that the District Consumer Forum, Bharuch has also directed ORIPL to handover the position of one teak tree per unit to two complainants after deduction of expenses incurred by it. Thus, it is not mandatory for ORIPL to wait for permission of DFO in order to pass on the agreed income, profit or produce in the scheme to the investors.

(q) I note that the non-compliance of the Directions issued by SEBI by the Noticees 1 and 2 further corroborates the fact that the notice of demand dated October 6, 2016 demanding a sum of ₹13,42,91,111/- due to non-compliance of the Order dated November 26, 2013 was served on the Noticees 1 and 2 and that their bank accounts & demat accounts have been frozen.

41. It is evident from the above facts that the Noticees 1 and 2 had failed to comply with the Directions issued by SEBI vide Order dated November 26, 2013.

42. In this connection, I deem it appropriate to refer to the observations of the Hon'ble SAT in the matter of Deepakkumar Shantilal Jain Vs SEBI (Appeal No. 490 of 2018), wherein the Hon'ble SAT vide Order dated September 24, 2019 observed that *"Admittedly, there has been a failure on the part of the appellant in not complying with the order of WTM as well as failure on the part of the appellant in not complying with the order of the Hon'ble Supreme Court of India. Thus, no relief can be granted to the appellant".*

43. In view of the aforementioned findings and in view of the observations of the Hon'ble SAT, I cannot take a different view and conclude that the Noticees 1

and 2 failed to comply with the Directions issued by SEBI vide Order dated November 26, 2013.

ISSUE – III: Does the violation, if any, attract monetary penalty under Section 15 D(a) and 15HB of SEBI Act.?

44. It is established that the Noticee Company by mobilizing public funds through CIS without obtaining registration from SEBI as required under Section 12(1B) of the SEBI Act and Regulation 3, 5, 73 and 74 of the SEBI (CIS) Regulations, the Company (Noticee 1) and its Directors viz., Dilpesh V Shah (Noticee 2) and Darshanbhai Arvindbhai Shah (Noticee 3), have contravened the above provisions and therefore the Noticees are liable for monetary penalty under Section 15D(a) of SEBI Act, the provisions of which are reproduced hereunder:

> *If any person, who is—*
>
> *(a)required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty of one lakh rupees for each day during which the sponsors or carries on any collective investment scheme including mutual funds, or one crore rupees, whichever is less.*

45. Further, it is established that the Noticees 1 and 2 had failed to comply with the Directions issued by SEBI vide Order dated November 26, 2013 and accordingly, the Noticees 1 and 2 are liable for monetary penalty under Section 15HB of SEBI Act, the provisions of which are reproduced hereunder:

> *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which*

shall not be less than one lakh rupees but which may extend to one crore rupees

ISSUE – IV - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

46. While determining the quantum of monetary penalty under Section 15D(a) and 15HB of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

Section 15J - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under Section 15 - I, the Adjudicating Officer shall have due regard to the following factors, namely:

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

47. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticees' default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of default. The hard earned money of the investors cannot be allowed to be duped by the illegal activities of the Company. The activities of unauthorized pooling of funds from the investors by the company are illegal because it has launched CIS without obtaining certificate of registration from SEBI. Any attempt by any person or entity to raise funds illegally, without complying with regulatory requirements, especially from gullible investors, warrants strict action. Therefore, I consider it as a fit case for imposition of penalty which would not only act as deterrent to Noticees but also instil confidence among the investors. Further, I am of the view that the

Noticees 1 and 2 are duty bound to comply with the Directions issued by SEBI which are in the interest of public to safeguard securities market from any wrongdoing. Any lapse on delayed / non-compliance cannot be viewed leniently and has to be dealt by SEBI seriously in order to protect the interests of investors in securities market. Therefore, I consider it appropriate to impose penalty on the Noticee, for its failure to comply with the directions issued by SEBI vide Order dated November 26, 2013.

ORDER

48. Having considered all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 15I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, hereby impose the penalty on the Noticees under Section 15D(a) and 15HB of SEBI Act.

Sl. No.	Name of the Noticee	Penalty amount in ₹	Penal provisions
1	Orient Resorts (India) Pvt., Ltd.,	25,00,000	Section 15D(a) of SEBI Act
		10,00,000	Section 15HB of SEBI act
2	Dilpesh V Shah	25,00,000	Section 15D(a) of SEBI Act
		10,00,000	Section 15HB of SEBI act
3	Darshanbhai Arvindbhai Shah	15,00,000	Section 15D(a) of SEBI Act

49. The said penalty imposed on the Noticees, as mentioned above, is commensurate with the violation committed and acts as a deterrent factor for the Noticees and others in protecting the interest of investors.

50. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor of “SEBI - Penalties

Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website **www.sebi.gov.in** on the following path by clicking on the payment link.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

51. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-III, SEBI, in the format as given in table below:

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

52. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: January 11, 2021
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER