

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SR/PP/2019-20/5812/135]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

(Late) Mr. Brita Singh Bhau
(Address: Guru Maira, Tehsil Akhnoor
Jammu- 181201)

In the matter of Sheen Agro & Plantation Limited

BACKGROUND

1. A Department (**OD**) of Securities and Exchange Board of India (hereinafter referred to as the **SEBI**) conducted examination of fund mobilization by Sheen Agro & Plantation Limited (hereinafter referred to as **Sheen Agro / Company**) and into possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act**). OD observed that Sheen Agro was running a collective investment scheme (**CIS**) without obtaining a Certificate of Registration from SEBI as required under SEBI (Collective Investment Scheme) Regulations, 1999 (hereinafter referred to as **SEBI (CIS) Regulations**). OD further observed that Sheen Agro though filed an application seeking registration with SEBI but the same was withdrawn by Sheen Agro and in view of this withdrawal the said application was rejected by SEBI. After such rejection, Sheen Agro on October 16, 2003, filed winding up and Repayment Report (hereinafter referred to as "WRR") with SEBI under the provisions of SEBI (CIS) Regulations. OD further alleged that Sheen Agro mobilized funds from investors and also renewed the investments of investors instead of repaying them, thereby continuing to operate a CIS without obtaining a Certificate of Registration required for the purpose of running CIS from SEBI, as seen from copies of receipts of accepting investment by Sheen Agro from several persons before filing of WRR. OD further alleged that after filing of WRR with SEBI, Sheen Agro continued to mobilize funds from investors and also renewed the investments of investors instead of repaying them, thereby continuing to operate a CIS without obtaining a Certificate of Registration required for the purpose of running CIS from SEBI. Thus, OD alleged that Sheen Agro was acting in violation of section 12(1B) of SEBI Act and regulation 3 of SEBI (CIS) Regulations. The Noticee was

one of the directors of Sheen Agro and was responsible for carrying out such activities for the company.

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the said examination, OD of SEBI initiated adjudication proceedings against the Noticee, to inquire into and adjudge under section 15D(a) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act**) for alleged violations of provisions under of section 12(1B) of SEBI Act and regulation 3 of SEBI (CIS) Regulations. The adjudication proceedings were approved by the Competent Authority. Shri Nagendraa Parakh, was appointed as the Adjudicating Officer (AO) under section 15-I of the SEBI Act, 1992 r/w rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under section 15D(a) of the SEBI Act, the said alleged violations of PIT Regulations, 1992 by the Noticee. Subsequent to the transfer of Mr. Nagendraa Parakh, undersigned was appointed as the Adjudicating Officer (AO). The said appointment of Adjudicating Officer (AO) was communicated to the undersigned vide communique dated May 22, 2018.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated November 27, 2018 (hereinafter referred to as **SCN**) was issued to the Noticee in terms of rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against it for the alleged violations of provisions under section 12(1B) of SEBI Act and regulation 3 of SEBI (CIS) Regulations and why penalty be not imposed on the Noticee under section 15D(a) of the SEBI Act for the alleged violations as specified in the SCN. The SCN was issued to the Noticee through speed post acknowledgement due (SPAD) and the same was delivered. The acknowledgment of service of SCN is on record.
4. During the adjudication proceedings, Mr. Yogesh Singh Bhau, one of the 16 Noticees named in the SCN, vide his letter dated December 20, 2018, informed that the Noticee expired on December 27, 2000 and submitted the death certificate of the Noticee against whom adjudication proceedings were initiated in the matter of Sheen Agro.

5. I note from the death certificate that the Noticee passed away on December 27, 2000. In this regard, it is pertinent to refer the matter of Padmalaya Telefilms Ltd. (November 2, 2006), the Hon'ble Whole Time Member (WTM), SEBI inter-alia held that *"...Since the proceedings were initiated against the personal acts of omission of a person who is no more alive to face the penalty, the proceedings against him are liable to be abated"*. Further, in Girijandini vs. Bijendra Narain (1967 AIR 1124), the Hon'ble Supreme Court, inter-alia observed that in case of personal action, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives, and in such cases, the maxim actio personalis moritur cum persona (personal action dies with the death of the person) would apply. The Hon'ble Securities Appellate Tribunal has also held in Chandravadan J Dalal Vs. SEBI that *"The appeal abates since the appellant during the pendency of the appeal died on 29th November, 2004. The appeal accordingly abates. The penalty imposed on the original appellant being personal in nature also abates."*
6. In view of the above, the adjudication proceedings initiated against late Mr. Brita Singh Bhau is liable to be abated without going into the merits of the case. The said SCN in respect of late Mr. Brita Singh Bhau is accordingly disposed of.

ORDER

7. In view of the above paragraphs, I hereby dispose of the adjudication proceedings initiated against the Noticee i.e. Mr. Brita Singh Bhau vide SCN dated November 27, 2018 without going into the merit of the case.
8. In terms of the rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticee at his last known address and also to Securities and Exchange Board of India.

Date: November 29, 2019

Place: Mumbai

SANGEETA RATHOD

ADJUDICATING OFFICER