

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

Under sections 11(1), 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999 in the matter of Sai Prasad Foods Ltd. and its Directors, Mr. Balasaheb K. Bhapkar, Mrs. Vandana B. Bhapkar and Mr. Shashank B. Bhapkar.

1. The Securities and Exchange Board of India (hereinafter referred to as "SEBI") had received a complaint dated June 2, 2010, alleging illegal mobilization of funds by M/s Sai Prasad Foods Ltd. (hereinafter referred to as "SPFL").
2. As a matter of preliminary enquiry, SEBI, vide several letters sent during the period between June 2010 - October 2011, sought the following information from SPFL in relation to its business activity, viz. -
 - i. Structure of plans or schemes;
 - ii. Number of plans or schemes launched;
 - iii. Main terms and conditions of the plans or schemes;
 - iv. Names of the promoters, directors and key management personnel;
 - v. No. of investors and amount collected in each plan or scheme;
 - vi. Annual Reports and Financial Statements for the last 3 years;
 - vii. Details about past and present directors and promoters;
 - viii. Details of the plan-wise or scheme-wise amount mobilized till date alongwith the no. of investors under each plan or scheme;
 - ix. Memorandum and Articles of Association of the company, as filed with the Registrar of Companies (hereinafter referred to as "ROC");
 - x. Mode of advertisement or publicity for the plans or schemes offered and the details regarding such advertisement or publicity made.
3. During the period between June 2010 - October 2011, SPFL replied to SEBI vide several letters wherein it *inter alia* submitted the following information, viz.

- i. Company profile;
 - ii. Advertising materials;
 - iii. Application form;
 - iv. Joint Venture Agreement and Allocation letters;
 - v. List of assets;
 - vi. List of re-payments made;
 - vii. Details regarding its Directors;
 - viii. Balance Sheet for the financial years 2007 - 2008, 2008 - 2009 and 2009 - 2010;
 - ix. Memorandum and Articles of Association.
4. Pursuant to receipt of the abovementioned information, SEBI vide letter dated March 29, 2012, informed SPFL that upon an analysis of such information, it appeared that its activities may fall under the purview of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "**CIS Regulations**") and therefore, the company may provide its comments in the matter on the applicability of the aforesaid regulations.
5. In reply to the abovementioned letter, SPFL vide letter dated April 29, 2012, submitted as under -
- "... Section 11AA of the SEBI Act under which the conditions laid down for Collective Investment Scheme indicated in your above letter do not fall under any of the provisions laid down for the purpose of joint venture system of participation. In a joint venture, the necessary elements are an express or implied agreement, common purpose with the group intends to carry out for the business, share profits and losses, each member has an equal voice in controlling the project."*
6. Subsequently, SEBI received an Order dated July 13, 2012, of the Hon'ble High Court of Madhya Pradesh (Gwalior Bench), as forwarded by the Department of Financial Services, Ministry of Finance vide letter dated September 21, 2012. From the aforesaid order, which was passed in the matter of *Dharmvir Singh and Anr. vs. Union of India & Ors. [Writ Petition No. 3332 of 2010 (PIL)]*, it was observed that -

- i. The Petitioner therein i.e. Dharmvir Singh, had filed a Public Interest Litigation seeking order of enquiry against various financial companies including SPFL. The petitioners had pleaded that thousands of persons of various districts in the State of Madhya Pradesh had been cheated by various finance companies under the garb of various schemes, which used to collect deposits from the persons with a promise to pay the money back with higher return of interest from 15%-20%.
- ii. Thereafter, the Hon'ble High Court vide order dated July 5, 2011, directed the Central Bureau of Investigation (hereinafter referred to as "CBI") to conduct the preliminary investigation regarding the activities of such companies.
- iii. The findings of the CBI in respect of SPFL (as contained in the abovementioned order dated July 13, 2012, of the Hon'ble High Court) were as follows:
 - a. *"The details regarding the number of customers of the company, total land bank, the land allotted to the customer and sale deed executed were requested from the company M/s Sai Prasad Foods Ltd. and as per the details provided by the company, it has revealed that there are total 6,71,121 customers with the company in which 26,077 are under one-time payment plan while 6,45,044 are under installment plan. Further, only 102 customers have been issued allotment letters and the land allotted against these allotment letters is 1,31,145 sq. ft. No sale deed has been executed by the company with any of its customers while 34,278 have been given refund claims on completion of the agreement period.*
 - b. *Both the companies (SPFL and its one group company viz. M/s Sai Prasad Properties Ltd.) follow a hierarchy of agents involving 10 levels, for the purpose of getting business. These are from the level of Field Representatives to the level of Chief Controller. The company also gives commission to senior up-line members on the business brought by the junior most level against the booking of plots. In case of installment payment plan, the commission percentage is 20% for the Field Representative in the first year, and further commission is distributed till the highest level of Chief Controller but goes on reducing upwards the hierarchy and is 2 per cent at the top most level. In the similar way under cash down payment plan this is 6 to 9% to the Field Representatives and is 0.5% at the top most level.*

- c. *There have been several complaints against the company. 15 persons for 18 complaints (total 25 agreements) as mentioned in the Hon'ble High Court order, were examined during the course of enquiry. It was revealed that neither the company nor its representatives/agents have at any time intimated the investors that the plan being offered by the company is in anyway related to purchase of land in its name. Some investors emphasized that had it been in their knowledge that the money was for allotment of land units, they would have never gone in for the investment plans. They also said that they invested with the company as the plans of the company seemed to be lucrative in comparison to that of Government sponsored schemes. Further, only a few investors had the knowledge that the company will be investing their deposits in land and at the end of the maturity period they would be getting the amount as mentioned in the certificates issued by the company. No allotment letters were found issued by the company to any of its customers who had made the required payments. The amounts of the investors who had made complaints with the Collector, Gwalior have been refunded without interest by the company. Examination of one of the investors also revealed that the company has also floated yearly Income Scheme in its policies/plans.*
- d. *Thus from the above it is indicated that the company is not actually into the business of sale of land as claimed by it but are receiving deposits and floating investment policies without registration with RBI."*
- iv. On the basis of the abovementioned CBI report, the Hon'ble High Court vide its Order dated July 13, 2012, observed that "*the authorities of the organizations are at liberty to take appropriate action in accordance with law.*" The Hon'ble High Court directed the Principal Registrar of that Court to forward the copy of the aforesaid order to the various authorities including SEBI to take appropriate action in accordance with law.
7. SEBI also received a reference dated December 4, 2012, from the Collectorate, Godda District, Jharkhand, alleging that the Sai Prasad Group of Companies was collecting money from the public in the name of "*Joint Venture*", which appeared to be in the nature of "*collective investment scheme*".
- 8.1 The material available on record i.e. correspondences exchanged between SEBI and SPFL alongwith the documents contained therein; the Order dated July 13, 2012 of the

Hon'ble Madhya Pradesh High Court alongwith the reference dated December 4, 2012, have been perused. In this context, the issue for determination in the instant matter is whether the mobilization of funds by SPFL under "Joint Venture", is a 'collective investment scheme' in accordance with section 11AA of the SEBI Act, 1992 (hereinafter referred to as "SEBI Act").

8.2 On an examination of the material available on record, it is *prima facie* observed that -

- i. SPFL was incorporated on September 18, 2001 under the Companies Act, 1956 (CIN:U51909PN2001PTC016447) and has its registered office in Building CB-1, Empire Estate, Office No. 202/203, Chinchwad, Pune, Maharashtra - 411019.
- ii. As per the Memorandum of Association of SPPL, its main object is to carry on the business of manufacturing, processing, servicing and marketing of instant foods, fruit, agricultural and dairy products.
- iii. SPFL has launched a scheme or arrangement having nomenclature "Joint Venture", whereby it has invited participation from the public to borrow or raise money *inter alia* for meeting the object of its business.
- iv. In pursuance of the "Joint Venture", SPFL enters into an "Agreement for Joint Venture Ship" with "Associates" or investors, who are invited to contribute in the form of monetary payment or contribution (participation) to the various plans launched therein. Such contribution is dependent on the plan that an "associate" or investor may opt for. In this context, an illustration of instalment payment plan alongwith one-time payment plan offered under the "Joint Venture" is provided below -

Instalments Payment Plan A for 48 Months /4 Years						
No. of Units 1 Unit = 500 Sq. Ft. Area of Land.	Total Participation (Rs)	Participation Value (Rs)				Expected Refund of Participation (Rs.)
		M	Q	HLY	YLY	
0.50	6,000	125	370	735	1,450	7,700
1.00	12,000	250	740	1,470	2,900	15,400
1.50	18,000	375	1,110	2,205	4,350	23,100

2.00	24,000	500	1,480	2,940	5,800	30,800
2.50	30,000	625	1,850	3,675	7,250	38,500
5.00	60,000	1,250	3,700	7,350	14,500	77,000

One Time Payment Plan D for 48 Months /4 Years		
No. of Units 1 Unit = 500 Sq. Ft. Area of Land.	Total Participation (Rs)	Expected Refund of Participation (Rs.)
0.25	3000	4720
0.50	6,000	9440
1.00	12,000	18,880
1.50	18,000	28,320
2.00	24,000	37,760
2.50	30,000	47,200
5.00	60,000	94,400

- v. When an "associate" or investor makes a contribution (participation) as per the instalment payment plan or one-time payment plan offered under the "Joint Venture", wherever applicable, he is issued a Certificate of Investment (hereinafter referred to as "Certificate") by SPFL *inter alia* indicating the contribution made by him. As against such contribution, the "associate" is promised a return (expected refund of participation) on maturity subject to the fulfillment of terms and conditions of the Certificate. At the end of the maturity period i.e. completion of relevant payment plan, the "associate" will be entitled to withdraw or renew the contribution indicated under the Certificate.
- vi. In addition to the return offered under the relevant plan i.e. expected refund of participation, an "associate" is also offered accidental death compensation under the "Joint Venture". Further, a letter of allocation of land is issued by SPFL to such "associate" as a guarantee to repay the contribution indicated in the Certificate. The land allocated is as per the ratio - 1 Unit or ₹12000 equivalent to 500 sq. ft. area of land.
- vii. From the "Agreement for Joint Venture Ship", as entered into between SPFL and an "associate" or investor, the following clauses are noted -

- a. "AND WHEREAS the company is hereby authorized to enter into Agreement for borrowing, to raise money or secure the payment of money by way of Joint Venture or otherwise in such manner as the company may determine, and further authorized to invest or otherwise employ the money belonging or entrusted to the company in movable or immovable properties or in securities or in such other manner as may be deemed expedient.
- b. AND WHEREAS the company has launched schemes/plans to borrow or raise money or to secure the payment of money and launch the various plans including the instalment, payment plans described in plan A, B, C and ... and also onetime payment plan D, E and L for various periods in pursuance of rules and regulations made thereof including the expected sum payable on expiry of the said term and also consisting of the accidental compensation as contemplated in the said plans.
- c. AND WHEREAS the company has launched schemes/plans and for issuing certificates to enable the company to raise the finance especially described in the plan A to E, K & L hereinafter described and the party of the Second part (Associate or Joint Venturer) came to know about the investment in said plan and agreed to join him in Joint Venture with a view to carryout and complete the said finance raising object as joint venture. The party of the second part has agreed to do so and parties have agreed to enter into this Venture ship Agreement on the terms and conditions mentioned herein".
- d. The party of the second part has contributed with the company the sum of Rs. _____ onwards Rs. Only of the _____ certificate in category _____ plans dated _____ and on maturity the sum assured is payable to the extent of Rs. _____ and the party of the second part will contribute such further amounts as may be desired by him from time to time for carrying out the said work and the amounts will be treated as a participation made by him to the company in the participation plans of the company repayable to the party of the second part as per terms and conditions of the Certificate. (Clause 2)
- e. The company will look after the financial side of the participation plans as well as look after the administration of the company and its said business and the party of the second part will have no nexus right of the shares or share capital of the company or to interfere in the company or the management and the policies of the company or/otherwise the

board of directors will have sole and absolutely discretionary powers as per the companies laws. (Clause 4)

- f. *That the company has insured the life of Joint Venturer with the New India Insurance Company's and subject to the rules and regulations framed in respect there of as described in Rule Book, in connection with investment plan certificate issued to Associate. (Clause 9)*
- g. *That through this Agreement, the Company has as agreed, issued letter of allocation of land with a ratio of Rs. 12000 of participation equal to 500 sq. ft. of land but this ratio can be changed/alterd solely at the discretion of management depending upon promotion the cost/value of lands at the time of agreement. (Clause 13)*
- h. *It is further agreed by and between the parties that in case the company is unable to repay the expected return of participation of the plan, in that event only the Company would help the Associate/Joint Venturer to dispose of the allocated land at the written request of Associates as per process of law. (Clause 14)*
- i. *The Joint Venturer shall continue his/its participation till the completion as per the certificate of the investment plans or if the investment plan is cancelled for any reason, till the cancellation of such certificates. (Clause 17)*
- j. *It is agreed by & between the parties that this is Agreement for Joint Venture Associate and shall not be treated as partnership with the company by joint venture. Once repayment of participation is made to the associate then this agreement along with allocation letter will be automatically cancelled. (Clause 19)*
- k. *Once full and final payment of said certificate is paid to the associates, this joint venture agreement automatically stands cancelled and said land allocated to the associates, becomes free from holding of associate and company thereafter has full holding of land. (Clause 24)"*
- viii. From the Allocation Letter issued by SPFL to an "associate" under the "Agreement for Joint Venture Ship", it is noted that -

- a. "That the said Allocation Letter is issued as Guarantee/Warrantee to repay the amount of said investment plan as per the Certificate issued.
- b. And that in case company goes in liquidation, then only the Joint Venturer has right and Company would help the Joint Venturer or Associate to dispose of the aforesaid allocated land at the request of Joint Venturer or Associate subject to law of land ..."

8.3 The abovementioned details of the "Joint Venture" offered by SPFL, have to be considered in light of Section 11AA of the SEBI Act, which reads 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."*

8.4 In this context, I note that –

- i. SPFL operates investment plans through the "Joint Venture", which it offers to the public. The contribution made by "associates" or investors in response to the plans offered under the "Joint Venture" i.e. participation in the form of monthly instalments or onetime payment in lieu of units, are pooled and utilized for the purpose of such "Joint Venture".
- ii. Such contribution towards plans offered under the "Joint Venture" is made by an "associate" or investor with a view to receive profit or income in the form of expected refund of participation, on maturity. For example, an "associate" or

investor opting for subscription to the Instalments Payment Plan A is required to make a total contribution of ₹6000 over a period of 4 years and the expected return for such investment is ₹7700. Accidental death compensation is also offered under the "Joint Venture". In addition, a letter evidencing allocation of land wherein 1 unit or ₹12000 of participation is equivalent to 500 sq. ft. area of land is issued by SPFL to the extent of contribution made by such "associate" or investor, for guaranteeing repayment as per the Certificate.

- iii. The financial aspect of the "Joint Venture" i.e. contributions made by "associates" or investors under the various plans offered therein, are managed on their behalf, by SPFL.
- iv. SPFL exercises complete managerial and administrative control over the plans offered under the "Joint Venture".

8.5 In view of the above, I find that the "Joint Venture" offered by SPFL, has all the ingredients of a 'collective investment scheme' as defined in section 11AA of the SEBI Act.

9.1 Vide letters dated December 15, 2010 and April 12, 2012, SPFL has submitted that –

- i. *"We are not engaged in accepting public deposits, neither we advertise or publicize public deposits schemes. We do not have any investors & we have only associates who are participating in the joint venture ship against their participation values."*
- ii. *"Section 11AA of the SEBI Act under which the conditions laid down for Collective Investment Scheme ... do not fall under any of the provisions laid down for the purpose of joint venture system of participation. In a joint venture, the necessary elements are an express or implied agreement, common purpose with the group intends to carry out for the business, share profits and losses, each member has an equal voice in controlling the project."*

9.2 I note that the categorization of any scheme or arrangement as "Joint Venture" is not determinative of its nature and character; the same has to be determined with

reference to the terms and conditions of such scheme or arrangement, which indicate the intention of parties therein. In this regard, I note that the Hon'ble Supreme Court of India had occasion to consider the nature of '**joint-venture**' in *New Horizons Ltd vs. Union of India* [1995 (1) SCC 478], wherein it observed:

"The expression 'joint venture' ... connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject matter, a right to direct and govern the policy in connection therewith, and duty, which may be altered by agreement, to share both in profit and losses. [Black's Law Dictionary; Sixth Edition, p. 839]."

9.3 Upon analysis of the instant "*Joint Venture*" offered by SPFL (in terms of the "*Agreement for Joint Venture Ship*") in the context of the abovementioned observations of the Hon'ble Supreme Court of India, I note the following -

- i. The "*Joint Venture*" in question is not a partnership between SPFL and the "*associate*" for furtherance of a commercial enterprise, etc. but rather an arrangement which provides for a monetary return on the investment made by such "*associate*". Further, such "*Joint Venture*" stands cancelled after payment of monetary return on the investment made by the "*associate*" / investor.
- ii. Under the instant "*Joint Venture*", there is no shared control. The "*associate*" is excluded from the financial aspect of the "*Joint Venture*". Further, such "*associate*" will have no right to interfere in the "*Joint Venture*" since SPFL exercises complete managerial and administrative control over the plans offered therein.

9.4 From the findings of the CBI (contained in the Hon'ble Madhya Pradesh High Court order dated July 13, 2012), it is noted that there are 6,71,121 "*associates*" or investors with SPFL in which 26,077 are under one-time payment plan while 6,45,044 are under installment plan. In this context, I find it difficult to accept that SPFL has entered into a "*Joint Venture*" with such a huge number of "*associates*". I find the claimed existence of a "*Joint Venture*" between SPFL and the "*associates*" preposterous since such venture

has arisen from separate agreements between SPFL and 6,71,121 individual "associates" but has resulted in a common pool of contribution.

9.5 In view of the above, I find that the scheme or arrangement offered by SPFL having nomenclature "*Joint Venture*" is not a '**joint-venture**' in accordance with law but rather such term has been used by SPFL to camouflage its fund mobilising activity, which is in the nature of a '*collective investment scheme*', in order to mislead and attract investment from the general public.

10.1 I note that the main characteristics of a '*collective investment scheme*' are found in the instant scheme offered by SPFL. In this context, we may refer to the observations of the Hon'ble Supreme Court of India in *P.G.F Limited & Ors. vs. UOI & Anr.* (MANU/SC/0247/2013), wherein it had observed:

"...sub-section (2) of Section 11 AA, which defines a collective investment scheme disclose that it is not restricted to any particular commercial activity such as in a shop or any other commercial establishment or even agricultural operation or transportation or shipping or entertainment industry etc. The definition only seeks to ascertain and identify any scheme or arrangement, irrespective of the nature of business, which attracts investors to invest their funds at the instance of someone else who comes forward to promote such scheme or arrangement in any field and such scheme or arrangement provides for the various consequences to result there from."

10.2 In view of the abovementioned observations, I find that the SEBI Act is applicable to '*collective investment scheme*' that engage in inviting investment or contribution from investors for investing in any asset which will *inter alia* result in a return on such investment. In this regard, the activity of fund mobilization by SPFL under the instant scheme with a resultant promise of returns when considered in light of the other features of such scheme, as discussed in the preceding paragraphs, *prima facie* falls within the ambit of '*collective investment scheme*' as defined under section 11AA of the SEBI Act.

10.3 I note that in terms of section 12(1B) of the SEBI Act, "*no person shall sponsor or cause to be sponsored or cause to be carried on a 'collective investment scheme' unless he obtains a*

certificate of registration from the Board in accordance with the regulations". Regulation 3 of the CIS Regulations provides that no person other than a Collective Investment Management Company which has obtained a certificate under the CIS Regulations shall carry on or sponsor or launch a '*collective investment scheme*'. Therefore, a person can launch or sponsor or cause to sponsor a '*collective investment scheme*' only if it is registered with SEBI as a Collective Investment Management Company. In my view, therefore, the launching/floating/sponsoring or causing to sponsor any '*collective investment scheme*' by any '*person*' without obtaining the certificate of registration in terms of the provisions of the CIS Regulations is in contravention of section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations. In this regard, I note that SPFL has not obtained any certificate of registration under the CIS Regulations for its fund mobilizing activity from the public, under the instant scheme offered by it.

- 10.4 Upon a consideration of the aforementioned paragraphs, I am of the view that SPFL is *prima facie* engaged in fund mobilising activity from the public, by floating or sponsoring or launching '*collective investment scheme*' as defined in section 11AA of the SEBI Act without obtaining a certificate of registration from SEBI as required under section 12(1B) of the SEBI Act and the CIS Regulations.
11. As discussed at paras 9.1 – 9.5 above, I find that the instant scheme offered by SPFL under the nomenclature "*Joint Venture*" is nothing but a camouflage for its fund mobilising activity. I find that such fund mobilising activity falls within the ambit of '*collective investment scheme*' as defined under section 11AA of the SEBI Act and the same has been carried on by SPFL without due registration from SEBI. In this context, I note that protecting the interests of investors is the first and foremost mandate for SEBI and therefore, steps have to be taken in the instant matter to ensure only legitimate investment activities are carried on by SPFL and no investors are defrauded. In light of the same, I find it reasonable to take recourse through an interim action against SPFL for preventing it from further carrying on with its fund mobilising activity related to '*collective investment scheme*', without registration from SEBI.
12. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11(1), 11B and 11(4) of the SEBI Act read with Regulation 65 of CIS Regulations, hereby

direct SPFL and its Directors viz. Mr. Balasaheb K. Bhapkar, Mrs. Vandana B. Bhapkar and Mr. Shashank B. Bhapkar, -

- a. not to collect any more money from investors including under the existing schemes;
 - b. not to launch any new schemes;
 - c. not to dispose of any of the properties or alienate any of the assets of the schemes;
 - d. not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of the company.
13. The above directions shall take effect immediately and shall be in force until further orders.
14. This Order shall also be treated as a show cause notice. SPFL and its abovementioned Directors may show cause as to why appropriate directions under the SEBI Act and CIS Regulations including directions in terms of Regulations 65 and 73 of the CIS Regulations should not be taken against them.
15. SPFL and its abovementioned Directors shall, within 15 days from the date of receipt of this Order, file their reply, if any, to this order. SPFL and its abovementioned Directors may also indicate, in such reply, whether they wish to avail an opportunity of personal hearing in the matter.

Place: Mumbai
Date: July 17, 2013

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA