

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

ORDER

Under sections 11(1), 11(4) and 11B 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 Limited and its Directors, Mr. Balasaheb K. Bhapkar, Mrs. Vandana B. Bhapkar and Mr. Shashank B. Bhapkar

Date of personal hearing : July 15, 2014

Appearance:

For Sai Prasad Foods Limited:

1. Mr. Vishnu Sharma, Advocate
2. Prason Shukla
3. Amarendra Kumar, Consultant
4. Mr. Uday Verma, Consultant

For the Securities and Exchange Board of India:

1. Mr. Rajesh Kumar Dangeti, Deputy General Manager
 2. Ms. Anitha Anoop, Deputy General Manager
 3. Mr. Mridul Rastogi, Assistant General Manager
 4. Mr. T. Vinay Rajneesh, Assistant General Manager
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1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") had, vide an interim ex-parte Order dated July 17, 2013 ("the SEBI Order"), *prima facie* found that Sai Prasad Foods Limited (hereinafter referred to as "the Company") is engaged in fund mobilizing activities from the public by floating or sponsoring or launching Collective Investment Scheme ("CIS") as defined in section 11AA of the Securities and Exchange Board of India Act, 1992 ("the SEBI Act"), without obtaining a certificate of registration from SEBI as required under section 12(1B) of the SEBI Act and the SEBI (Collective Investment Schemes) Regulations, 1999 ("the CIS Regulations").

2. The SEBI Order was issued in order to protect the interest of investors who have invested/subscribed to the CISs of the Company and also to prevent the Company from further carrying on with its illegitimate fund mobilizing activities through the alleged CISs. This Order

directed the Company and its directors, namely, 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.*

3. The SEBI Order, which came into immediate effect, was to be treated as a show cause notice and the Company and its aforementioned directors (Company and its directors are collectively referred to as "the noticees") were advised to 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. The noticees were also advised to file their reply within a period of 15 days from the date of receipt of the SEBI Order and also to indicate whether they wish to avail an opportunity of personal hearing in the matter.

4. After seeking extension of time for filing its reply, the Company through its counsel, Mr. Vishnu Sharma vide letter dated September 12, 2013 sought an opportunity of inspection of documents which are relied upon by SEBI while passing the SEBI Order. The Company also made a request for inspection of document, vide letter dated September 13, 2013 and *inter alia* made the following submissions :

- a) There is no investor in the company and whosoever participates in the Joint-Venture Projects of the Company are the 'Co-Venturers'.
- b) There are no complaints against the Company regarding its commitments. The Company has always satisfied its commitments with all its participants. The company is required to refund/ repay its participants and its process has been slowed down because of the interim order (*i.e., the SEBI Order*).
- c) The Company has administrative expenditures/ overheads and statutory dues like Income Tax, PF etc which has to be met on day to day basis. However, on account of the interim order, the company is facing serious hardship in discharging its legal duties.
- d) The Company, through the 'joint-venture', has a number of ongoing projects and farm development activities, which requires timely investments. This is being hampered

- e) The company presently owns more than 1170 acres of lands in the different States and more than 20 of its projects are underway on these lands.

The Company also requested SEBI to modify the interim order to protect the interest of the 'co-venturers' who have already participated on or prior to date of the interim order and as per its commitment, the Company be allowed to receive/refund the subscription/commitments.

5. An opportunity for inspection of documents was afforded to the Company on September 24, 2013. Thereafter, the Company vide letter dated November 12, 2013 *inter alia* made the following submissions :

- a) The Company {PAN : AAHCS3986M} was incorporated in the year 2004 under the Companies Act, 1956. The Company is a professionally managed manufacturer and distributor of various commodities, employing more than 159 employees.
- b) The Company is executing numerous projects like agricultural farms, allied agricultural projects like haldi powder etc. in the name of Zaika, Bottling plants of 'Bagpiper water and soda' etc. The Company has already installed its own manufacturing process for the packaged drinking water and beverages units, which are functioning with the 'Joint Participation of the Associates of the Company'.
- c) The capital requirement for these projects is taken as project participation in the Joint-Venture. The returns from the project are 'estimated returns' and not 'promised returns'. An 'associate' decides on a project in which he desires to participate.
- d) Sometimes the projects are expanded depending on various factors. Accordingly, the time period of such projects also increases. In such a case, if the 'associate' wishes to receive the refund, the Company would refund at any point of time. The Company has a flexible exit policy.
- e) There are no investors in the Company whereas whosoever participates in the joint venture projects are called 'co-venture associate'. As per its understanding, co-venture associates are participants who have participated/subscribed by their own will/offer in the joint venture projects of the Company.
- f) In pursuance of its Main Objects, the Company has been exercising/developing its activities/projects with various persons who associate themselves with the ongoing projects through joint venture participation. The participation of associates is through a joint venture

agreement, as per the prescribed format of the Company. Under the said joint venture system, the Company also undertakes various project and farm development projects and associates of the Company are allotted a unit of project which is based on their participation value as per the different business plans/schemes/projects.

- g) The joint venture participation business model of the Company is a special combination of the company and the associates, wherein profit is jointly sought for a specific venture without there being any active partnership between the parties. The contribution made by the associates are treated as capital of the joint venture. The refund of the participation amount paid to the co-venture associates is made through the 'Participation Subscription Structure' of the Company.
- h) The Company is a law abiding company and is always willing to co-operate and participate in the investigation as and when SEBI requires. The Company is complying with the directions issued by SEBI and while doing so is facing certain operational administrative hassles. The Company has already stopped the proposed new projects/on-going projects thereby complying with the orders.
- i) The Company, till date, has no complaints regarding performing of its commitments with its partners in the Joint Venture. The 'associates' participate in joint-venture on their free will without any misrepresentation or coercion, undue influence etc. If there is any loss in the joint-venture, the same has to be borne by the associates on pro-rata basis.
- j) The Company has always met its commitments with all its participants i.e., associates. The Company is required to refund/repay its associates and the process has been slowed down due to compliance of the SEBI Order.
- k) The Company requests SEBI to modify the SEBI Order to the extent of allowing the Company to receive/refund the subscription/commitments which has occurred prior and/or as of July 17, 2013.
- l) The Company has always in the past and present deployed funds/contribution received to the committed/subscribed projects and has never ever diverted funds for any other projects. Till today, the Company has not received complaints from co-venture associates about any dispute or being not satisfied from the acts/commitments of the Company.

The Company has also made submissions regarding its business activities. The Company has stated that it has acquired offices situated at various locations like Pune, Nasik, Thane, Bhopal, Indore, Ujjain, Korba, etc. and has made investments exceeding Rs.5 crores for such establishments. The Company further submitted that it conducts business all over the country and is governed by the provisions of the Companies Act, 1956 and it comes within the purview of the Ministry of Corporate Affairs, Government of India. The Company also stated that this reply is a partial reply and would file its reply only after December 2013. The Company requested for time of 60 days for filing its reply along with documents.

6. The Company also forwarded another letter dated November 12, 2013 to SEBI stating *inter alia* the following :

- a) The Company is willing to enroll under the CIS Regulations and all formalities may be completed within four weeks.
- b) Its business model should not be blocked and the same may be regularized and suitable guidance was sought from SEBI in respect of the same.
- c) The SEBI Order may be modified as the Company was subjecting itself to the regulatory jurisdiction of SEBI.

SEBI vide letter dated December 16, 2013 informed the Company of the rejection of its request for enrolment as a CIS, as no person other than a Collective Investment Management Company which has obtained a certificate of registration can launch a CIS and that under scheme of the CIS Regulations, only existing schemes (prior to notification of CIS Regulations) were permitted to make an application to SEBI for grant of certificate of registration.

7. An opportunity of personal hearing was afforded to the Company on December 18, 2013. As the Company requested for an adjournment, the personal hearing was rescheduled and fixed on January 16, 2014. This personal hearing was also rescheduled and with respect to the personal hearing fixed on May 16, 2014, the Company's Advocate Mr. Vishnu Sharma, vide letter dated May 08, 2014, submitted the following :

- (a) The Company had stopped collection of contributions from its co-venture associates;
- (b) The Company has also started to send notices to its co-venture associates about the SEBI's directions and has requested them to settle their accounts;

- (c) Many of the co-venture associates started collecting the necessary application forms for closure of the joint venture account. The Company has also started the refund process on receipt of such forms.

The learned advocate requested for an adjournment on the ground of General Elections and Court vacations. He requested that the personal hearing be fixed after July 05, 2014. Accordingly, the personal hearing was fixed on July 7, 2014 and the noticees were informed of the same vide SEBI letter dated May 16, 2014.

8. Thereafter, the Company vide letter dated June 25, 2014, submitted that its Board does not wish to have any difference of opinion with regard to the scope and applicability of CIS Regulations and are subjecting itself before SEBI as the regulator. The Company also stated that it submits itself before SEBI for achieving the objects of the SEBI Act and that no money received by it remains unpaid. It stated that after passing of the SEBI Order, the Company did not start any new joint venture and the earlier money which was collected in the form of joint ventures etc are being refunded on its maturity or at the earliest as per demand. The Company also undertook to return the entire money at the earliest. The Company further stated that it would give the list of persons on the 15th day of every month regarding the details of money already returned.

9. The personal hearing had to be again adjourned to July 15, 2014 as the Company's Advocate requested for the same on account of his illness. In the personal hearing held on July 15, 2014, the Company was represented by its Advocate, Mr. Vishnu Sharma, and other representatives. During the hearing, the learned advocate claimed that the Company had commenced making refunds to their investors and tendered the following :

- (a) Covering letter dated 15.07.2014, Summary of queries of SEBI and replies of Sai Prasad Properties Limited, Summary of queries of SEBI and replies of Sai Prasad Foods Limited, Summary of refunds made by Sai Prasad Foods Limited and Sai Prasad Properties Limited for the period : 01.04.2013 to 30.06.2014.
- (b) List of investors to whom repayments made by Sai Prasad Foods Limited (4 volumes)
- (c) List of investors to whom repayments made by Sai Prasad Properties Limited (3 volumes).

The learned advocate also submitted a Compact Disc stating that the same contained the information/data as furnished vide the above documents. Further, the Advocate undertook to submit the Audited Balance Sheets of the Company at the earliest.

10. As the Company did not submit the audited balance sheets, SEBI vide letter dated October 21, 2014 advised the Company to submit the same latest by October 31, 2014. Thereafter, the Company vide e-mail dated October 31, 2014 submitted the Balance Sheet of the Company as at March 31, 2014.

11. I have considered the SEBI Order cum SCN, the documents available on record and the submissions made by the Company including those made in the personal hearing.

12. The SEBI Order cum SCN has alleged that the Company is engaged in the activity of money mobilization through CISs without obtaining registration from SEBI as required under section 12(1B) of the SEBI Act read with regulation 3 of the CIS Regulations. Admittedly, the Company is not registered with SEBI for the purposes of operating, launching or floating collective investment schemes. Though the Company, in its subsequent correspondence, stated that it submits to the jurisdiction of SEBI with respect to its business activities, it becomes necessary to find whether its business/activities are in the nature of CIS and whether the Company is culpable of the alleged violation.

13. Before proceeding, it would be necessary to refer to the relevant provisions of law, which are reproduced hereunder :

Section 11 of the SEBI Act:

Functions of Board.

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for-

.....

(c) registering and regulating the working of venture capital funds and collective investment schemes, including mutual funds;

Section 11AA of the SEBI Act:

Collective investment scheme.

11AA. (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) or sub-section (2A) shall be a collective investment scheme:

Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.

(2) Any scheme or arrangement made or offered by any person under which,—

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized 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.

(2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.

(3) Notwithstanding anything contained in sub-section (2) 33[or sub-section (2A)], any scheme or arrangement—

(i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

(ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(iii) being a contract of insurance to which the Insurance Act, 1938 (4 of 1938), applies;

- (iv) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952);
- (v) under which deposits are accepted under section 58A of the Companies Act, 1956 (1 of 1956);
- (vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956 (1 of 1956);
- (vii) falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982 (40 of 1982);
- (viii) under which contributions made are in the nature of subscription to a mutual fund;
- (ix) such other scheme or arrangement which the Central Government may, in consultation with the Board, notify, shall not be a collective investment scheme.

Section 12(1B) of the 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:

Regulation 3 of the CIS Regulations:

No Person Other than Collective Investment Management Company to Launch collective investment scheme

3. No person other than a Collective Investment Management Company which has obtained a certificate under these regulations shall carry on or sponsor or launch a collective investment scheme.

Regulation 65 of the CIS Regulations:

65. The Board may, in the interests of the securities market and the investors and without prejudice to its right to initiate action under this Chapter, including initiation of criminal prosecution under section 24 of the Act, give such directions as it deems fit in order to ensure effective observance of these regulations, including directions:

- (a) requiring the person concerned not to collect any money from investors or to launch any collective investment scheme;

- (b) prohibiting the person concerned from disposing of any of the properties of the collective investment scheme acquired in violation of these regulations;
- (c) requiring the person concerned to dispose of the assets of the collective investment scheme in a manner as may be specified in the directions;
- (d) requiring the person concerned to refund any money or the assets to the concerned investors along with the requisite interest or otherwise, collected under the collective investment scheme;
- (e) prohibiting the person concerned from operating in the capital market or from accessing the capital market for a specified period.

14. I have perused the documents available on record and note the following :

a) As per the Company's brochure/solicitation material, the Company has stated that it is incorporated under the Companies Act, 1956 and has its main office at Chinchvad, Pune (Maharashtra). The Company has also stated that, having understood the importance of 'food' for the society, it has ventured into the business of 'food processing' for manufacture of 'ready to use' food and wants to deliver the same to the homes of the public. The Company also wishes to venture into 'education' and wants to provide the same to the needy. In order to satisfy such goals, the Company has devised a '**Joint Venture**' with '**Public Participation**', and in pursuance of the same, the Company has floated plans (details are reproduced below from the brochure), for mobilizing funds from the public :

Installments Payment Plan 'A' for 48 months/4 years							
No. of Units	Total Participation	Participation Value				Expected Refund of Participation	Accidental Death Compensation
		M	Q	HLY	YLY		
	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)
0.50	6000	125	370	735	1450	7700	9000
1.00	12000	250	740	1470	2900	15400	18000
1.50	18000	375	1110	2205	4350	23100	27000
2.00	24000	500	1480	2940	5800	30800	36000
2.50	30000	625	1850	3675	7250	38500	45000
5.00	60000	1250	3700	7350	14500	77000	90000

Instalment Payment Plan 'C' for 72 months/6 years							
No. of Units	Total Participation	Participation Value				Expected Refund of Participation	Accidental Death Compensation
		M	Q	HLY	YLY		
	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)	(Rs.)

0.50	6000	84	250	490	960	9450	9000
1.00	12000	168	500	980	1920	18900	18000
1.50	18000	252	750	1470	2880	28350	27000
2.00	24000	336	1000	1960	3840	37800	36000
2.50	30000	420	1250	2450	4800	47250	45000
5.00	60000	840	2250	4900	9600	94500	90000

Instalment Payment Plan 'O' for 90 months 7 1/2 years							
No. of Units	Total Participation (Rs.)	Participation Value				Expected Refund of Participation (Rs.)	Accidental Death Compensation (Rs.)
		M	Q	HLY	YLY		
		(Rs.)	(Rs.)	(Rs.)	(Rs.)		
0.50	6000	67	198	395	785	10850	9000
1.00	12000	134	396	790	1570	21700	18000
1.50	18000	201	594	1185	2355	32550	27000
2.00	24000	268	792	1580	3140	43400	36000
2.50	30000	335	990	1975	3925	54250	45000
5.00	60000	670	1980	3950	7850	108500	90000

Instalment Payment 'P' for 15 years with Mid Term Refund Option					
SR. No.	Yearly Participation (Rs.)	Expected Return After 5 years (Rs.)	Expected Return After 10 years (Rs.)	Expected Return After 15 years (Rs.)	Accidental Death Compensation (Rs.)
1	1000	7322	20813	44226	7500
2	3000	21966	64439	132678	22500
3	6000	42932	124878	265356	45000
4	10000	73220	208130	442260	75000
5	15000	109830	312195	663390	112500

Note for Plan 'P' : Refund of participation will be after 5 years interval only

Instalment One Time Payment Plan 'D' for 48 months 4 years			
No. of Units	Participation (Rs.)	Expected Refund of Participation (Rs.)	Accidental Death Compensation (Rs.)
0.25	3000	4720	4500
0.50	6000	9440	9000
1.00	12000	1880	18000
1.50	18000	28320	27000
2.00	24000	37760	36000
2.50	30000	47200	45000
5.00	60000	94400	90000

Instalment One Time Payment Plan 'Q' for 78 months 6 1/2 years			
No. of Units	Participation (Rs.)	Expected Refund of Participation (Rs.)	Accidental Death Compensation (Rs.)
0.25	3000	6750	4500
0.50	6000	13500	9000
1.00	12000	27000	18000
1.50	18000	40500	27000
2.00	24000	54000	36000
2.50	30000	67500	45000
5.00	60000	135000	90000

Instalment One Time Payment Plan 'R' for 138 months 11 ^{1/2} years			
No. of Units	Participation (Rs.)	Expected Refund of Participation (Rs.)	Accidental Death Compensation (Rs.)
0.50	6000	24000	9000
1.00	12000	48000	18000
1.50	18000	72000	27000
2.00	24000	96000	36000
2.50	30000	120000	45000
5.00	60000	240000	90000

*(Note : 1 Unit =500 sq. Ft Area of Land) "

From the above information contained in the table in the Brochure, the Company has devised two kinds of plans - (i) installment plan and one-time payment plan. Both these plans and the schemes have mentioned about the "expected return", "expected refund of application" after a particular period of time as per the scheme. The plans/schemes also mentions about 'accidental death compensation'. Though the Brochure states that 1 unit is equal to 500 sq.ft. area of land, the above manner of promise made for return of principal money along with interest does prove that the transaction is not be a pure real estate transaction.

b) There is also on record an 'Agreement for Joint Ventureship'. The public investor, who enters into this agreement, with the Company is referred to as "Associate"/"Joint Venturer". The following are the relevant clauses as reproduced from the document :

"

.....

- *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.*

.....

- *AND WHEREAS the company has launched various schemes/ plans to borrow or raise money or the payment of money and launch the various plans including the instalment, payment plans described in plan A, B, C and also one time 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.*

- *AND WHEREAS the company has launched schemes/plans and for issuing certificates to enable the company to raise finance especially described in the plan A to E, K & L hereinafter described and the party of the Second part (i.e., 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.*
 1.
 2. *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.*
 3. *That irrespective of the profit and losses suffered by the Company, the Company hereby undertake and assure to the party of the Second part to pay the amount of investment plans as per the category and on maturity subject to the fulfillment of terms and conditions or as the case may be otherwise.*
 4. *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.*
 5.
 6.
 7. *All the tangible and intangible assets of the Company including the goodwill, stock in trade, benefit of business license and permits, benefits of contracts entered etc will be in the name of the company and the property of the company shall be used by the company exclusively for the business of the Company and the Joint Venture shall have no nexus or right, title and interest in connection therewith.*
 8. *At the end of maturity period the Joint Venture will be entitled to withdraw/renew the said Certificate amount and the said Company will permit towards repayment of the Certificate amount*

- or renew the said certificate as per the Company's rules and regulations, terms & conditions mentioned in certificate.
9. 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.
 10. That the Company has reserved his rights to revival/amendment of this participation of the investment plan certificate as per the rules, regulations and procedures but same shall not affect the investment plan/certificate issued by the company.
 11.
 12. The company has issued investment plans 1) Installment Payment Plan 'A' for 48 months/4 years 2) Installment Payment Plan 'B' for 60 months/5 years 3) Installment Payment Plan 'C' for 72 months/6 years 4) Installment payment plan 'K' for 96 months/8 years 5) One Time Payment Plan 'D' for 48 months/4 years 6) One Time Payment Plan 'E' for 72 months/6 years 7) One Time payment plan 'L' for 114 months / 9.6 years And the Company further reserved the right to introduce any other more schemes/certificate/plans depending on the situation of the Company.
 13. That through this Agreement the Company has as agreed, issued letter of allocation of land with a ratio of Rs.12,000 of participation equal to 500 sq. ft. of and but this ratio can be changed / altered solely at the discretion of management depending upon promotion the cost/value of lands at the time of agreement. The Company has issued separately the letter of allocation of land annexed here with this agreement.
 14. 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.
 15. Company shall be entitled to alter/vary/modify the terms and conditions of the Agreement pertaining to new/un allotted investment plan certificate. The party of the end part herein acknowledges and admits & confirm such right of party of the 1st part in this regard.
 16.
 17. 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.

18.

19. *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.*

20.

....."

I have perused the above referred agreement of the Company. As per this agreement -

- 1) The Company has stated that it is authorized to enter into agreement to borrow or raise money and has formulated various plans/schemes including the 'expected sum' payable on expiry of the term.
- 2) The Company calls its model of raising/collecting money from the public as 'joint venture'.
- 3) The agreement records the sum of money which the customer/associate would pay in pursuance of his participation in the plans/schemes of the Company.
- 4) It is important to note that irrespective of whether the profits and losses of the Company, the Company has assured the customer/associate that it would pay investment amount as per the plan on maturity. In this regard, it becomes important to test whether the nature of relationship between the customer is actually that of a 'joint venture' or is a business model conceived by the company where the customer is promised the return not depending on the performance of the businesses of the Company.

A **Joint Venture** is a business model, whereby two or more parties come together in conceiving and executing a particular activity or business, as per the terms and conditions agreed to between/amongst them, generally called a Joint Venture (JV) Agreement. The parties to the joint venture agree to have have equal rights/liabilities in the said venture and share the profits or losses, as the case may be, arising from the implementation of the said venture or business. This collaboration is akin to a 'partnership'. The joint venture would not have any connection or relation with the other business interests of the individual parties. As mentioned in the SEBI Order, I also refer to the following observations made by the Hon'ble Supreme Court in the matter of *New Horizons Ltd vs. Union of India* [1995 (1) SCC 478]:

“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].”

In the present case, the Company calls its association with the customer/public investor as a Joint Venture. However, the terms and conditions of the 'Joint Venture Agreement', do not give the status of Joint Venture to the business model adopted by the Company to mobilize funds from the public. Therefore, it is a misnomer.

In this regard, I also note the following observations made in the SEBI Order :

"....

9.2 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.

*9.3 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."*

Further, in the agreement, the Company has clearly (clause 4) stated that the customer/associate shall have no right in the management and policies of the Company. The customer would only have to pay the installments, as per the plans opted by

him/her. The customer does not have any right in the tangible or intangible assets of the Company. The only benefit, as per the agreement, to a customer is that, at the end of the tenure, he would could withdraw or renew the amount that is due to him. The Company has kept with itself the right to change the plans/schemes. In clause 19 of the agreement, the Company has in unequivocal terms stated that *"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."* The relationship between the Company and its customer subsists only till the tenure of the agreement and the same ceases after the monies are repaid.

c) I also note that the Company has in clause 13 of the agreement stated that *"That through this Agreement the Company has as agreed, issued letter of allocation of land with a ratio of Rs.12,000 of participation equal to 500 sq. ft. of and but this ratio can be changed /altered solely at the discretion of management depending upon promotion the cost/value of lands at the time of agreement. The Company has issued separately the letter of allocation of land annexed here with this agreement."* I have also perused the "Allocation Letter" attached with the agreement. As per this letter, as an indemnity to the customer for payment of his investment on its maturity, the Company allocates, without prejudice to its right, a piece of land with the 'ratio of Rs.12,000/- of participation to 500 sq. ft. of land' to the customer. The details of the allotted land would be mentioned in this letter by the Company. In the letter available on record, I note that the customer who is based in Korba, State of Chhattisgarh has been allotted a piece of land in Satara District, Maharashtra. The allocation letter clearly states that the same is issued as Guarantee/Warranty to repay the amount of investment and that in case the Company goes into liquidation, only then the customer/joint venturer has the right and the Company would help the customer in disposing of the land. The said letter restrains the Customer from doing anything to the land, sell, assign, transfer, alienate, leave and license, mortgage, create any charge or any encumbrance of whatever nature on the piece of land.

From the above document, it becomes clear that the installments collected from the customer is not in respect of sale of the property so allocated vide the 'allocation letter'. As mentioned above, the Company has promised returns on the investment amount received from the customers under the plans/schemes (offered by the Company) as opted for by the customer. All through the 'joint

venture agreement' and the 'allocation letter', the Company acknowledges the payment of funds by the customer and the returns that it would give on maturity. Real estate is not a transaction which the Company is involved in.

13. Having made the above observations, it now becomes necessary to test whether the four conditions enumerated under section 11AA(2) of the SEBI Act are satisfied in this case :

- i. The first condition is that *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* . The Company has stated in its Brochure that it is involved in the Food Processing and has installed infrastructure for making 'ready to eat food' and approaches the participation of funds from the public for the said ventures. The joint venture agreement also states that the Company is engaged in the business of processing, servicing, marketing instant foods, agricultural and dairy products etc and has entered into the joint venture agreement with the customer/associate for the purposes of raising or borrowing money for the same.

The Brochure also states that 1 unit is equal to 500 sq. feet of land. The joint venture agreement also records the subscription made by the customer. As per regulation 2(1)(dd), 'unit' includes any instrument issued under a scheme, by whatever name called, denoting the value of the subscription of a unit holder. A unit holder is a person holding the unit in a scheme. Therefore, it is found that the Company has issued unit to its 'Associate', who is none other than a unit holder in the schemes offered by the Company.

As mentioned above, the Company claims to have mobilised money under the joint venture agreement only for funding its businesses. The brochure clearly states that it invites public participation under a joint venture model for raising funds.

The submission of the Company that *'The joint venture participation business model of the Company is a special combination of the company and the associates, wherein profit is jointly sought for a specific venture without there being any active partnership between the parties. The contribution made by the associates are treated as capital of the joint venture. The refund of the participation amount paid to the co-venture associates is made through the participation Subscription Structure of the Company'* also

substantiates the observation that the money is pooled from investors for the purposes of the business.

Considering these factors, it can be concluded that the contributions or payments made by the public investors are pooled and utilised solely for the purposes of the scheme or business of the Company.

- ii. The second condition is that *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*. As seen from the various plans/schemes floated by the Company to receive funds from the customers/public investors, the Company has promised refund of the principal amount received from customers along with interest. The period of payment (installments) and the rate of return depends on the specific plans of the Company. The contributions or payments are made by investors in such schemes/plans launched by the Company is only with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement. Therefore, the second condition is therefore met.
- iii. The third and fourth conditions specified under section 11AA(2) are that *"the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors"* and *"the investors do not have day to day control over the management and operation of the scheme or arrangement"*. Various clauses of the agreement including clauses 3, 4, 7, 8, 10, 12, 14, 17 and 19 would prove that the business is managed by the Company and the customers/associates/public investors have no right over the management and the policies of the Company. Thus, these two conditions are also met.

14. In view of the above observations, the plans/schemes of the Company satisfy all the four conditions specified under section 11AA(2) of the SEBI Act. Therefore, such plans/schemes floated by the Company under the 'joint venture', which are impugned in these proceedings, are collective investment schemes. As the Company has not obtained registration from SEBI, under section 12(1B) of the SEBI Act read with regulation 3 of the CIS Regulations, such floating, sponsoring or execution of such CISs are not authorized and therefore illegal. Therefore, the monies collected

from public investors, through such illegal and unauthorized money collection modes, need to be refunded to such investors with returns that have been promised to them. As the Company has carried out CISs illegally without obtaining registration from SEBI, the same cannot be regularized or authenticated at this stage under the SEBI Act read with the CIS Regulations. For the above violations, the directors/promoters of the Company, namely, Mr. Balasaheb K. Bhapkar, Mrs. Vandana B. Bhapkar and Mr. Shashank B. Bhapkar are also responsible and liable. Accordingly, suitable action needs to be taken against the Company as well as its above directors.

15. I also note that in terms of regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and includes illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any collective investment scheme by any person. This provision in the above Regulations has been brought into effect from September 06, 2013. In the auditor's report (item (i) in page 4), it is stated that the "*Company has accepted the project participation money till January (of 2014) under the existing contracts*". Accordingly, it could be held that by mobilizing public funds through CIS without obtaining registration from SEBI as required under section 12(1B) of the SEBI Act read with regulation 3 of the CIS Regulations, after the provision coming into force, the Company has contravened the above provision.

16. Further, it is to be noted that as per the Company's auditor's statement, mentioned in the above paragraph, the Company has been mobilizing funds from investors till January 2014. This is a breach of the direction (i.e., not to collect any more money from investors under the existing schemes) issued vide the SEBI Order against the Company and its directors.

17. I also note that SEBI had received a complaint dated December 6, 2013 *inter alia* alleging that the Company is still collecting money from public despite the SEBI order dated July 17, 2013. Accordingly, SEBI conducted an inspection of the books of accounts, other records and documents of the company on January 13, 2014. During the course of inspection, SEBI noticed that the Company has failed to comply with the directions issued in the SEBI Order. For such violations, SEBI has initiated adjudication proceedings against the Company.

18. During the personal hearing, the authorized representative of the Company claimed that the Company had commenced making refunds to their investors. A list of investors to whom such refunds were claimed to have been made were submitted. As per this list, it is noticed that the Company claims to have refunded (i) 26 investors under 'accidental death' category, (ii) 156 investors under 'natural death' category and (iii) 65,106 investors to whom refund was made under regular claim. It was also claimed that 506 investors were paid in cash (under regular claim) and rest 64,782 were repaid through the bank.

The Company has claimed to have repaid Rs.150.84 crores to 65,288 investors during the period April 1, 2013 to June 30, 2014. However, no documentary proof has been provided to substantiate such claims. Trail of funds, bank statements, receipts from investors whose dues are satisfied are not placed on record by the Company. It is also noted that details/identity of investors i.e. address, contact num, ID proof etc was not provided to ascertain the veracity of the claim. Therefore, such claims cannot be verified for their veracity. Further, the Company has also not provided a complete list of investors and the total dues (*principal amount with promised interest*) payable to them in terms of the plans/schemes subscribed to by such investors.

19. The Company has also submitted a copy of the audited financials of the Company for the year ended March 31, 2014. From the same, it is observed that the auditor (item 3 at page 3 of auditor's report dated 05.09.2014) has noted that –

"i. During the year the company has received "Project participation money" from various participants & outstanding balance on reporting date was Rs. 394.30 crores. The company has accepted the project participation money till January under the existing contracts."

"ii. During the year, the company has received "project participation money" from various participants which is in the nature of "Joint venture contribution", considering the number of participants and volume of the transactions involved, we are not in position to verify the details of participants and source of his/her income. Also, as per information given to us there is an internal accounting policy for recording of the transactions relating to "Project participation money" and joint venture. ..."

"iv. As on balance sheet date, the company possesses huge cash balance. We have not able to verify this cash in hand physically...."

The cumulative impact of aforesaid qualification of assets, Liabilities, income and Expenditure is not ascertainable."

As per the Balance Sheet as at March 31, 2014, the project participation value is Rs.3,94,29,64,838.69/- (i.e., Rs.394 crores approx.) as against Rs.4,18,42,01,693.69/- (Rs.418 crores approx.). Considering the above statement made in the balance sheet and the comment of the auditor that project participation money is from various participants of the joint venture, this may be the amount mobilised by the Company from its business activity through 'joint venture' which is found to be in the nature of (unregistered) CIS activities. Though, the Balance Sheet refers to a list (B-1), the same has not been furnished by the Company.

The report also states that the Company has taken unsecured loan from various companies covered in the register maintained under section 301 of the Companies Act, 1956. The maximum amount involved during the year in respect of such companies is Rs.1,91,36,31,430/- and the year-end balance in respect of such companies is Rs.1,89,58,53,715/-. Company-wise details as provided therein is given below:

S.N	Related Party Name	Amount Involved during the year (in Rs.)	Amount outstanding at reporting date (in Rs.)
1	Sai Prasad Landmarks Ltd.	5,17,06,200	5,17,06,200
2	Sai Prasad Corporation Ltd	5,66,93,461	5,74,43,461
3	Sai Prasad Properties Ltd	88,70,27,428	1,78,65,28,405
4	Sai Prasad Infra & Constro Pvt. Ltd.	1,75,649	1,75,649
	Total	Rs.1,91,36,31,430/-	Rs.1,89,58,53,715/-

The auditor has also commented that they are unable to form opinion whether the loan taken by Company is prejudicial to the interest of the Company or not. The short term borrowings (loans and advances from related parties) has increased to Rs.189 crores (as at 31.03.2014) as compared to Rs.90 crores (as at 31.03.2013). The list (B-2) with respect to this item has also not been produced by the Company.

20. As discussed above in this Order, the Company by collecting money under the existing schemes from investors has violated the directions issued vide the SEBI Order. Further, SEBI, in its inspection has also noticed that the Company was involved in the diversion of its monies, for which adjudication proceedings has been initiated. In view of the above findings and observations made in this Order and the violations committed by the Company, it becomes necessary for SEBI to issue appropriate directions in order to protect the interest of investors and also to secure the interest of the securities market.

21. Accordingly, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 and sections 11, 11(4) and 11B thereof read with regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby issue the following directions :

1. **Sai Prasad Foods Limited (PAN : AAHCS3986M) and its promoters and directors including Mr. Balasaheb K. Bhapkar (PAN : AFIPB3674A), Mrs. Vandana B. Bhapkar (PAN : AFIPB3675B) and Mr. Shashank B. Bhapkar (PAN : AQHPB8639H)** shall abstain from collecting any money from the investors or launch or carry out any Collective Investment Schemes including the schemes which have been identified as a Collective Investment Scheme in this Order.
2. **Sai Prasad Foods Limited and its promoters and directors including Mr. Balasaheb K. Bhapkar, Mrs. Vandana B. Bhapkar and Mr. Shashank B. Bhapkar**, shall wind up the existing Collective Investment Schemes and refund the monies collected by the said company under the schemes with returns which are due to its investors as per the terms of offer/agreement within a period of three months from the date of this Order and thereafter, within a period of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, along with the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds.
3. **Sai Prasad Foods Limited and its promoters and directors including Mr. Balasaheb K. Bhapkar, Mrs. Vandana B. Bhapkar and Mr. Shashank B. Bhapkar**, shall not alienate or dispose off or sell any of the assets of the aforesaid company except for the purpose of making refunds to its investors as directed above.
4. **Sai Prasad Foods Limited and its promoters and directors including Mr. Balasaheb K. Bhapkar, Mrs. Vandana B. Bhapkar and Mr. Shashank B. Bhapkar** are also directed to immediately submit the complete and detailed inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.

- 5. Sai Prasad Foods Limited and its promoters and directors, Mr. Balasaheb K. Bhapkar, Mrs. Vandana B. Bhapkar and Mr. Shashank B. Bhapkar** are restrained from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities market for a period of four (4) years.
- 6.** In the event of failure by Sai Prasad Foods Limited and its promoters and directors including Mr. Balasaheb K. Bhapkar, Mrs. Vandana B. Bhapkar and Mr. Shashank B. Bhapkar, to comply with the directions in paragraphs 1-4, the following actions shall follow:
- i.** Sai Prasad Foods Limited and its promoters and directors including Mr. Balasaheb K. Bhapkar, Mrs. Vandana B. Bhapkar and Mr. Shashank B. Bhapkar, shall remain restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, even after the completion of period of four (4) years (of restraint) imposed vide sub-paragraph 5 above, till all the Collective Investment Schemes of Sai Prasad Foods Limited are wound up and all the monies mobilized through such schemes are refunded to its investors with returns which are due to them.
 - ii.** SEBI would make a reference to the State Government/ Local Police to register a civil/ criminal case against Sai Prasad Foods Limited, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and mis-appropriation of public funds; and
 - iii.** SEBI would make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the company, Sai Prasad Foods Limited.
 - iv.** SEBI shall also initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder.
- 22.** This order shall come into force with immediate effect.
- 23.** This Order shall be without prejudice to the right of SEBI to initiate prosecution proceedings under section 24 and adjudication proceedings under Chapter VIA of the Securities and Exchange Board of India Act, 1992 against Sai Prasad Foods Limited and its promoters and directors including Mr. Balasaheb K. Bhapkar, Mrs. Vandana B. Bhapkar and Mr. Shashank B. Bhapkar, including other persons who are in default, for the violations as found in this Order.

24. With respect to the contravention of regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, SEBI may examine whether to initiate appropriate proceedings under Sections 11(4) and 11B of the SEBI Act read with Regulation 65(e) of the CIS Regulations and Chapter VI A of the SEBI Act against Sai Prasad Foods Limited and its promoters and directors including Mr. Balasaheb K. Bhapkar, Mrs. Vandana B. Bhapkar and Mr. Shashank B. Bhapkar.

25. Copy of this Order shall be forwarded to the stock exchanges and depositories for necessary action.

**PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**

Date : January 14, 2015

Place : Mumbai