

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA  
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 and regulation 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999**

**In respect of –**

- 1. Anmol India Agro-Herbal Farming and Dairies Care Company Limited (PAN:AAGCA6750L) and its Directors,**
- 2. Mr. Mohammad Junaid Memon (PAN:AIHPM9537D),**
- 3. Mr. Mohammad Umar Memon (PAN:ADUPM0907H),**
- 4. Mr. Mohammad Javed Memon (PAN:AJUPM0965D) and**
- 5. Mr. Mohammad Khalid Memon (PAN: AEYPM7188R).**

---

Date of hearing: November 26, 2015

Appearance: Mr. Joby Mathew, Advocate appeared on behalf of all 5 noticees.

For SEBI: Dr. Anitha Anoop, General Manager, Mr. T. Vinay Rajneesh, Assistant General Manager and Mr. Ankit Bhansali, Assistant General Manager.

---

1. Securities and Exchange Board of India (“SEBI”), vide an ex-parte interim Order dated March 09, 2015 (“interim order”), had *prima facie* observed that the company, Anmol India Agro-Herbal Farming and Dairies Care Company Limited (“Company” or “Anmol Agro”) has launched and carried out Collective Investment Schemes (“CISs”) without obtaining certificate of registration from SEBI and contravened section 12(1B) of the Securities and Exchange Board of India Act, 1992 (“the SEBI Act”) and regulation 3 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (“the CIS Regulations”). The Company was also alleged to have contravened regulation 4(2)(t) of the Securities and Exchange Board of India (Prohibition of

Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 (“the PFUTP Regulations”). The interim order mentioned that Mr. Mohammad Khalid Memon, Mr. Mohammad Junaid Memon, Mr. Mohammad Javed Memon and Mr. Mohammad Umar Memon are the directors of the Company.

2. In order to protect the investors and to prevent the Company and its aforesaid directors (collectively referred to as “noticees”) from continuing with their mobilization under the impugned CIS and also to safeguard the assets of the Company/its promoters and directors from the funds of investors, SEBI issued the interim order, wherein the following directions were passed:

“13. In view of the above, I, in exercise of the powers conferred upon me under Section 11(4) and 11B of the SEBI Act, 1992 and Regulation 65 of CIS Regulations, hereby direct M/s Anmol India Agro-Herbal Farming and Dairies Care Company Limited (PAN:AAGCA6750L) and its Promoters/ Directors, viz. Mr. Mohammad Junaid Memon (PAN:AIHPM9537D), Mr. Mohammad Umar Memon (PAN:ADUPM0907H), Mr. Mohammad Javed Memon (PAN:AJUPM0965D) and Mr. Mohammad Khalid Memon (PAN:AEYPM7188R):

- a. not to collect any fresh moneys from investors from its existing scheme;
- b. not to launch any new scheme/plan or float any new companies/firm to raise fresh moneys;
- c. not to dispose of any of the properties or alienate the assets of the existing scheme;
- d. not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of the company;
- e. to immediately submit the full inventory of the assets owned by Anmol Agro out of the amounts collected from the "purchasers"/investors under its existing schemes;
- f. to furnish all the information sought by SEBI, including,
  - i. scheme wise list of "purchasers"/investors as on date and their contact numbers and addresses,
  - ii. the details of amount mobilized till date,
  - iii. the details of amount refunded to the "purchasers"/ investors till date along with the details of mode of payment, duly certified by the company's auditors,

*iv. all documents/information and clarifications sought by SEBI, vide letters dated March 11, 2014, March 26, 2014, May 23, 2014 etc. and not yet submitted.*

*14. The above directions shall take effect immediately and shall be in force until further orders”.*

3. The noticees were advised to treat the interim order as a show cause notice and show cause as to why appropriate directions under the SEBI Act and CIS Regulations should not be passed against them. The noticees were also advised to file their replies and seek opportunity of personal hearing if they so desire.

4. On the request of the noticees, an opportunity of inspection was granted to them by SEBI. The noticees inspected the documents on June 12, 2015. Thereafter, SEBI, vide letter dated July 13, 2015 advised the noticees to file their reply by July 20, 2015. However, the noticees (vide letter dated July 20, 2015) sought time of further 4 weeks to file their submissions.

5. Thereafter, the Company, vide letter dated August 08, 2015 filed its response to the interim order, wherein the following submissions were made:

Preliminary submissions:

- (a) The Company had provided all the information/documents sought by SEBI vide various letters dated March 25, 2014, April 02, 2014, June 05, 2014 and July 15, 2014. For almost a year nothing was heard from SEBI and thereafter the interim order was passed without any opportunity to the Company to clarify and explain.
- (b) SEBI had passed the interim order without any justification as to the urgency of passing the same in violation of principles natural justice.
- (c) From the material on record, no investigation was done by SEBI in the month of July 2014 and no further clarification was sought. As the Company was cop-operative with SEBI there was no justification in passing an ex-parte interim order.

- (d) SEBI had erroneously found that the Company was operating CIS and has entirely relied on the letter forwarded to it by the Office of Superintendent of police, District Rajanandgaon. However, SEBI did not provide them with a copy of the said letter or seek comments on the same before passing the interim order.
- (e) The Company had already provided documents which clearly indicated that the Company is in the business of cultivation and marketing Stevia leaves and in the business of selling agricultural lands.
- (f) The Company reiterated that it is engaged in the business of agriculture including cultivation of stevia leaves, oranges, sweet lime, bananas, soya bean, lemon and wheat. All its business are completely in accordance with law and do not violate the SEBI Act and CIS Regulations.
- (g) SEBI had afforded an opportunity of inspection of documents on June 12, 2015. During the course of inspection, copies of the following documents were provided to it:
  - i. Letter dated February 04, 2014 from the office of the Superintendent of Police (SP), Dist. Rajnandgaon (CG).
  - ii. SEBI letters dated March 11, 2014 and March 20, 2014.
- (h) The aforesaid letter dated February 04, 2014 cannot lead to even a prima facie conclusion that the Company was carrying on CIS or that it had violated the SEBI Act and CIS Regulations. The reference of SP does not refer to any complaint or reasons for arriving at the conclusion.

Other submissions:

- (i) The Company was incorporated under the provisions of the Companies Act, 1956. It has an authorized capital of Rs.1,00,00,000/- and paid-up capital of Rs.5,00,000/-. Mohammed Junaid Memon, Mohammed Umar Memon and Mohammed Javed Memon hold 20% each of the paid up capital and Mohammed Khalid Memon, Nazia Bano Memon, Nilofer Bano Memon and Rozina Bano Memon hold 10% each of the capital.

- (j) The promoters of the Company are Mohammed Junaid Memon, Mohammed Umar Memon, Mohammed Javed Memon and Mohammed Khalid Memon who have invested Rs.5,00,000/- towards capital of the Company.
- (k) Since incorporation, the Company had purchased several parcels of land in its own name in four different states. These lands have a total market value of Rs.100 crore. After the interim order was passed, several customers sought refund of the advance given by them for purchase of agricultural produce including stevia leaves, oranges, sweet lime, bananas and wheat and for sale of land. A total sum of Rs.2,61,26,860/- had been refunded to 1706 customers by cheque and Rs.4,15,31,430/- from March 09, 2015 till date (i.e. date of reply). The Company had also delivered agricultural produce worth Rs.77,57,542/- to 3745 customers.

Submissions with respect to the contents/observations made in the interim order:

- (l) The reference dated February 04, 2014 from the Superintendent of Police (“SP”) containing allegations are not supported by any evidence. The Office of the SP did not provide any enquiry report or complaints from investors which substantiates the contents of their letter. The said Office of the SP had not granted opportunity to the Company to represent. SEBI cannot therefore rely on this reference to conclude that the Company had indulged in CIS activities.
- (m) SEBI has not considered all the relevant material while passing the interim order and that SEBI has considered only the aforesaid letter and considered whether the *mobilization of funds by Anmol Agro is a CIS*. SEBI did not consider the following issues – *whether Anmol Agro had in fact mobilized funds and the nature of business of Anmol Agro*.
- (n) With reference to paragraph 5(iv) & (v) of the interim order, the Company denied carrying on any scheme as alleged by SEBI or that it collected funds from the public. The Company further submitted that it was its business model to sell the farms/plants to its customers and to provide them the opportunity to pay the purchase money either in installments or single

payment. The Company stated that it is not dealing in the sale of animals or rearing of animals as alleged.

- (o) With respect to paragraph 5(vi) of the interim order, the Company submitted that adverse conclusion cannot be drawn against the Company because of simultaneous and concurrent execution of application form, sale agreement and development and maintenance contract agreement. Execution of all these agreements on the same day cannot lead to a conclusion that the Company is carrying on CIS.
- (p) With reference to paragraph 5(vii), the Company submitted that the clauses of the contracts referred to in the interim order cannot be read in isolation as same are incorporated in the contracts to protect the interest of the Company as in the absence of the same, customers may take undue advantage. The contract shall be read in full as all the clauses are in conjunction with each other.
- (q) With reference to paragraph 5(xi) of the interim order, the Company submitted that by merely reserving one's rights under the valid contract duly understood and signed by the customer, injustice is not caused to the customer. It was apparent from the records that the customer was aware about the agricultural plots/plants/stevia leaves ought to be purchased by him and that nothing was concealed from the customer. Till date, there was not even a single complaint by the customer regarding the quality and quantity of the product offered by the Company.
- (r) With reference to paragraph 7 of the interim order, the Company submitted that it did not offer any scheme towards sale and development/maintenance/ Rearing of Farms/Animals/Plants as alleged. The money received by it was towards advances towards sale agreement and no pooling was done by it. Further, the payments made by customers were for purchase of farms/plants and they would receive only the farms/plants and no profits/returns would be paid by the company to the customers. According to the Company, a mere restrictive covenant does not mean that the Company is managing the farms and the investors do not have day to day control over the property.

- (s) With respect to para 8 of the interim order, the Company submitted that SEBI has erroneously concluded that it is a CIS on the basis of letter of SP, District Rajnandgaon and SEBI failed to conduct any investigation in the matter. The SP should have given them a hearing before arriving at any conclusion and it is unlawful to conclude that they were operating a CIS without giving them a hearing and passing a reasoned order.
- (t) With respect to paragraph 9 of the interim order, the Company submitted that it does not carry on any scheme or arrangement towards sale and development and maintenance of farms/plants and therefore the judgment in PGF Limited case does not apply to their case.
- (u) With respect to paragraphs 10 and 11, the Company denied carrying on CIS or that it was engaged in fund mobilizing activity from the public and therefore the finding that it was required to be registered with SEBI as a CIS is misplaced.

In view of its submissions, the Company requested SEBI to vacate the interim order and also requested for an opportunity of personal hearing.

6. In accordance with the principles of natural justice, the noticees were afforded an opportunity of personal hearing on October 08, 2015. However, the Company sought an adjournment on the ground that its advocate was suffering from typhoid and requested that the hearing be rescheduled to October 26, 2015 or any date as per convenience of SEBI. The hearing was thereafter rescheduled to November 04, 2015. The noticees, through their counsel, vide letter dated October 29, 2015 again requested SEBI to postpone the hearing on the ground that they wish to make additional submissions and file certain documents including balance sheet and that this process would require some time. The noticees requested that the hearing may be fixed on November 18, 2015. The hearing was again rescheduled to November 26, 2015 on the ground of medical emergency in the family of one of the directors of the Company.

7. In the personal hearing was held on November 26, 2015, Mr. Joby Mathew, Advocate appeared for all the noticees and made oral submissions on the lines of the reply filed by the

Company. As requested, liberty was granted to file written submissions within a period of three weeks. The Company was directed to submit the following along with the written submissions:

- a. Total number of investors from inception;
- b. Total amount mobilized through the alleged CIS;
- c. Amount repaid, if any, along with verifiable proof; and
- d. Total amount that remains to be paid.

8. Thereafter, vide letter dated January 05, 2016, the written submissions of the Company was submitted. The following are *inter alia* the submissions (submissions which are already made in the reply dated August 08, 2015 are not repeated herein below for brevity) made therein:

- (a) The Company reiterated its submissions and contentions made in its reply dated August 08, 2015.
- (b) The Company is primarily focused on production and sale of agricultural products to its customers. In order to manage the production activities in an efficient and scientific manner, the Company had entered into a partnership with Mr. Umar Bera in August 2014 and formed a partnership firm called Prestige Agro Tech & Real Estates and introduced its land admeasuring about 930 acres as its capital contribution in the said partnership firm. Copy of the partnership deed was enclosed.
- (c) The Company entered into another partnership with Mr. Mohammed Hamid in January 2015 and formed a partnership firm called M/s. Vision Agro and introduced its land admeasuring about 156.34 acres as its capital contribution in the said partnership firm. Copy of the partnership deed was also enclosed.
- (d) The Company submitted that the aforesaid partnership firms are in absolute possession and control of the lands. In the last one year, the said firms have carried out the following activities in the lands:
  - a. Fencing of land

- b. Clearing of shrubs/bushes
  - c. Harrowing
  - d. Vermi-compost
  - e. Agricultural infrastructure
  - f. Plantation
- (e) The Company had entered into agreements with the said firms for exclusive purchase of agricultural products produced at the fields/farms of the firms which in turn would be further supplied to the customers of the Company. Copies of agreements were enclosed. The Company is selling agricultural products to its customers and is always in the continuous need of cultivating/ procuring the agricultural products to further supply the same to its customers. Therefore, the transactions with its customers are sale/purchase transactions *simpliciter* and not a CIS as alleged.
- (f) The Company submitted that it invested its land in the above partnership firms with a view to ensure better and efficient management of the same and for production of agricultural products, which the Company has to deliver to its customers. By entering into such arrangements with the above firms for agricultural production, the Company has to concentrate only on the sale of agricultural products and marketing. These arrangements/investments of the Company with the firms are also reflected under the heading 'INVESTMENT' in the Balance Sheet for FY 2014-15.
- (g) SEBI has considered the provisions of section 11AA of the SEBI Act to determine whether the scheme is a CIS. However, the said provision has been erroneously interpreted by SEBI. Submissions in this regard are as follows;
- a. With respect to the observations made regarding satisfaction of condition under section 11AA(2)(i) of the SEBI Act, the Company submitted as follows:
    - i. There is no invitation of funds from the public at large. The customers who want to purchase stevia leaves and other food crops sought some facilities for making payment including time and instalment facility and accordingly

- the noticee entered into agreements with the purchasers. Even the letter from the SP does not mention that there was an invitation to the public at large.
- ii. There is no 'scheme'. Mere use of the word 'scheme' in the application cannot imply that the noticee was carrying on CIS. It was only for the purpose of classifying and segregating customers purchasing the agricultural products of the noticee based on the kind of facility that they required that the noticee mentioned the same in their application format. The Company's agreements were multi-purpose agreements with respect to sale of different kinds of agricultural products including stevia leaves/animals and land.
  - iii. With respect to the observation in the interim order that "*As per the Development and Maintenance/ Rearing Contract, all the rights (i.e. title, ownership, possession etc.) of farms/ animals/ plants shall unconditionally pass on to the company, and the investor shall have no rights over the same*", the Company referred to clause 2 of the Development and Maintenance/Rearing Contract Agreement with respect to Possession/Custody that the customer has entrusted only the physical custody of the stevia plants from which the leaves are to be extracted for cultivation and growing the leaves to be sold to them.
  - iv. With respect to the observation that "*Further, the Sale Agreement states that along with one particular "Purchaser"/ investor, there may be several co-owners of the Farms/ Animals/ Plants.*", the Company referred to clause 11 of the Sale Agreement with respect to Undivided & Co-ownership rights and submitted that the Company is entitled to large land holdings wherein agricultural production activities are carried on. The Company, under the agreement, sells only stevia leaves and does not convey plot/land and the customer is not given title of the plot/land rather it is only the right in the plants that is conveyed.
  - v. Stevia leaves are planted over several acres of land which cannot be earmarked in accordance with sale agreements of different customers as the customer is given only output of the land i.e. stevia plants/leaves.

- b. With respect to the observations made regarding satisfaction of condition under section 11AA(2)(ii) of the SEBI Act, the Company submitted as follows:
- i. There was no scheme to provide profits to its customers. The noticee only provided a facility to its customers to make payments in instalments over time.
  - ii. When a customer is unable to complete payments, he could seek refund of the payments made and on such request, the Company correctly and justifiably pays interest. It also deducts charges and expenses incurred by them for growing the crops.
  - iii. With regard to the “*estimated realizable market value*”, it was submitted that the customers who did not want to take delivery of stevia leaves or other agricultural produce could opt to sell the produce that they have already paid for through the Company and arrange for the proceeds to be credited to them. The same cannot be interpreted as obtaining profits from any scheme as erroneously found in the interim order. Any profits earned by such sale of stevia leaves or other produce is only incidental.
- c. With respect to the observations made regarding satisfaction of conditions under section 11AA(2)(iii) & (iv) of the SEBI Act, the Company submitted as follows:
- i. The relevant clauses referred in the interim order was to prevent customers who availed the facility of making payments in instalments from claiming ownership or control over the Company. This is a standard legal precaution and cannot be interpreted to imply that the noticee was carrying on a CIS.
  - ii. A mere incorporation of the restrictive covenant in the contracts does not mean that it is managing the farms/plants sold to the customers and has been

wrongly alleged that the customers do not have day to day control over the management and operation of farms/plants.

iii. The identifiable farms/plants are being delivered to the customers on the completion of development/maintenance. The same does not amount to management of such property.

(h) The Company, therefore, contended that requirements under section 11AA(2) are not fulfilled and therefore the charges against it were not maintainable.

(i) The Company's business operation cannot be considered as a deemed CIS as its corpus amount is less than Rs.100 crore.

(j) There are no complaints made against the Company by any investor/customer with regard to business of the Company.

(k) The Company provided the following details sought in the personal hearing:

| <b>As on December 31, 2015</b>                                |                               |
|---------------------------------------------------------------|-------------------------------|
| Total number of customers since inception till date           | 72,350                        |
| Total amount paid by the customers till date                  | Rs.141,44,50,000/-            |
| Total amount repaid to customers till date                    | Rs.97,34,70,000/-<br>(68.82%) |
| Balance amount lying with the Company as on date              | Rs.44,09,80,000/-<br>(31.17%) |
| Total number of customers who have taken delivery of products | 12,365                        |

(l) The Company denied contravening section 12(1B) of the SEBI Act, regulation 3 of the CIS Regulations and regulation 4(2)(t) of the PFUTP Regulations.

(m) The Company requested that the directions passed vide the interim order may be revoked and the noticees may be discharged from the present proceedings.

9. Though the Company had claimed that it had repaid around 69% of the monies collected and that 12,365 investors had taken 'delivery', it failed to substantiate the same with evidence. Further, as per the Company's letter dated July 12, 2014, it was submitted that 31,310 investors have taken 'delivery'. However, vide the aforesaid written submissions, it is claimed that 12,365 investors have taken delivery as on December 31, 2015. The number of investors who are said to have taken delivery i.e. 31,310 investors should either remain a constant or increase and cannot decrease to 12,365 as on December 31, 2015. In view of the same, the figures given by the Company cannot be relied without any proof being submitted by it.

10. I have considered the interim order, the submissions made by the Company, the material submitted by it and other material available on record. The interim order, on the basis of the material collected during the inquiry in the matter, has alleged that the Company was offering collective investment scheme without obtaining a certificate of registration from SEBI as mandated under section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations. The Company is also alleged of contravening regulation 4(2)(t) of the PFUTP Regulations.

11. Before proceeding into the merits of the matter, I wish to deal with two of the noticees' submissions which are preliminary in nature:

(a) The noticees, in their submissions, have contended that only on the basis of the reference from the Superintendent of Police, SEBI had erroneously alleged that the schemes of the Company are CIS. They have submitted that the said reference does not contain any material to substantiate allegations made therein. It needs to be noted that the reference could have only been a trigger for SEBI to initiate an enquiry into the business activities of the Company. During the enquiry, SEBI had sought documents and information from the Company and

the Company had also forwarded certain scheme related documents like application forms, agreements which it enters into with its customers etc. The observations made in the interim order are on the basis of documents submitted by the Company to SEBI. It cannot therefore be said that reliance was entirely placed on the Police reference. Therefore, forwarding such reference to the Company at that stage would not have served any purpose. Moreover, copy of this reference has been provided to the Company when they availed opportunity of personal hearing. In view of the same, I find this contention of the noticees to be without any merit.

- (b) The other contention of the noticees is that SEBI had passed the interim order without any justification as to the urgency of passing the same in violation of principles natural justice. The interim order, in paragraphs 11 and 12 thereof, has explained the need to pass an ex-parte order in order to secure the interest of investors and to restrain the continuance of alleged CIS activities. Paragraph 12 of the interim order is reproduced for reference:

*“Protecting the interests of investors is the first and foremost mandate for SEBI. Under the circumstances, SEBI has to take immediate steps to prevent activities of companies or entities defrauding investors and damaging the orderly development of the securities market. In order to ensure that Anmol Agro and its directors/promoters do not collect any further funds under its schemes and to safeguard the assets/property acquired by Anmol Agro and its promoters/directors from the funds of the investing public until full facts and materials are brought about and a final decision is taken in the matter, it becomes necessary for SEBI to take urgent preventive action by way of an interim measure. In the light of the same, I find no other alternative but to take recourse through an interim measure against Anmol Agro and its promoters/directors”.*

In view of the above facts and circumstances, I find that SEBI is justified in passing the interim order. Further, as provided under section 11(4), the noticees have been afforded opportunity to file their response and have also availed opportunity of inspection of documents and opportunity of personal hearing. Therefore, the rules of natural justice have been adequately met in this case and therefore it cannot be said that the interim order was without any justification.

12. I have perused the application form, sale/contract agreement, letter of intent {LoI} (to be signed by proposed customer) for entering into maintenance contract with company, Company's acceptance and advising such customer to enter into a Development & Maintenance/Rearing Contract, the Development & Maintenance/Rearing Contract, Special Power of Attorney, Brochure of the Company's schemes/plans. I also note that in the record, sample scheme-related documents of a customer like the Registration letter, Allotment letter, application form, sale agreement, LoI from customer, Company's acceptance, Development & Maintenance/Rearing Contract, request for payment of money in lieu of product, Company's acceptance of the same, cheque for payment to customer and invoice for purported sale of stevia leaves.

13. The interim order has observed that the Company collects funds from the public, under its scheme for "Sale and Development/ maintenance/rearing of the farms/animals/plants" (hereinafter referred to as "scheme") and that the payments towards the scheme are collected under two categories:

- (i) Payments towards "Sale of farms/animals/plants" as per the "Application Form" and "Sale Agreement ",
- (ii) Payments towards the "Development & maintenance/rearing of the aforesaid farms/animals/plants" as per the "Development and Maintenance/ Rearing contract agreement".

As per the "Marketing Manual"/Brochure of the Company as submitted by it, the various payment plans are broadly classified under the following categories:

- (i) Installment Payment Sales scheme, and
- (ii) Single Payment Sales Scheme.

14. The following are the plans under the Single payment sales scheme:

- (i) Anmol Vihar (farm)– Single Payment Sales scheme for 6 years
- (ii) Anmol Royal (stevia leaves) – Single payment sales scheme for 1, 2, 3, 5.5, 9, 10.5 years
- (iii) Anmol Gold - Single Payment Sales scheme for 3, 5 and 7 years

- (iv) Anmol plus - Single Payment Sales scheme for 4, 6 years

The following are the plans under the Instalment Payment Sales Scheme:

- (i) Anmol Vatika – Instalment payment sales scheme for 6 years.  
(ii) Anmol Standard – Instalment payment sales schemes for 3, 4, 5, 6, 8 years  
(iii) Anmol Classic – Daily payment sales scheme for 1, 2, 3, 5, 6 and 8 years.

15. As illustration, one plan each from the Single payment and instalment scheme is reproduced below:

**Single Payment Sales Scheme for 5.5 year (Scheme no. RC. 5.5)**

| Consideration             | Estimated/ Projected Value of developed farm at the end of the term |                                                           | Accidental Death Help |
|---------------------------|---------------------------------------------------------------------|-----------------------------------------------------------|-----------------------|
| Purchase & Contract Value | No. of Product Equivalent or                                        | Estimated Market Value of the farm at the end of the term |                       |
| 3000                      | 40 Kgs. Stevia Leaves                                               | 6000                                                      | 6000                  |
| 5000                      | 67 Kgs. Stevia Leaves                                               | 10000                                                     | 10000                 |
| 7500                      | 100 Kgs. Stevia Leaves                                              | 15000                                                     | 15000                 |
| 10000                     | 133 Kgs. Stevia Leaves                                              | 20000                                                     | 20000                 |
| 30000                     | 1 Milching Cattle                                                   | 60000                                                     | 60000                 |
| 60000                     | 2 Milching Cattle                                                   | 120000                                                    | 120000                |
| 90000                     | 3 Milching Cattle                                                   | 180000                                                    | 180000                |
| 120000                    | 4 Milching Cattle                                                   | 240000                                                    | 240000                |

**Installment Payment Sales Scheme for 6 Year (Scheme no. SC 6)**

| Consideration             | Estimated/ Projected Value of developed farm at the end of the term |                     |              |                 | Accidental Death Help        |                                                           |
|---------------------------|---------------------------------------------------------------------|---------------------|--------------|-----------------|------------------------------|-----------------------------------------------------------|
| Purchase & Contract Value | Yearly Payment                                                      | Half Yearly Payment | Qtl. Payment | Monthly Payment | No. of Product Equivalent or | Estimated Market Value of the farm at the end of the term |
| 6120                      | 1020                                                                | 626                 | 266          | 90              | 66 Kgs. Stevia Leaves        | 9900                                                      |
| 9180                      | 1530                                                                | 789                 | 399          | 135             | 99 Kgs. Stevia Leaves        | 14850                                                     |
| 12240                     | 2040                                                                | 1052                | 532          | 180             | 132 Kg. Stevia Leaves        | 19800                                                     |
| 15300                     | 2550                                                                | 1315                | 665          | 225             | 165 Kgs = 7 Goats            | 24750                                                     |
| 18360                     | 3060                                                                | 1578                | 798          | 279             | 198 Kgs = 8 Goats            | 29700                                                     |
| 21420                     | 3570                                                                | 1841                | 931          | 315             | 231 Kgs = 10 Goats           | 34650                                                     |
| 24480                     | 4080                                                                | 2104                | 1064         | 360             | 264 Kgs = 12 Goats           | 39600                                                     |
| 30600                     | 5100                                                                | 2630                | 1330         | 450             | 330 Kgs = 15 Goats           | 49500                                                     |

|       |      |      |      |     |                       |       |       |
|-------|------|------|------|-----|-----------------------|-------|-------|
| 36720 | 6120 | 3156 | 1596 | 540 | 396 Kgs = 18<br>Goats | 59400 | 55080 |
| 42840 | 7140 | 3682 | 1862 | 630 | 462 Kgs = 21<br>Goats | 69300 | 64260 |

16. A customer who wishes to subscribe to the plans/schemes of the Company is required to execute the application form, sale agreement and the Development & Maintenance/Rearing Contract Agreement. The interim order has referred to the following clauses from the scheme-related documents of the Company and the same are reproduced here:

### **Application Form**

- *"The Farms/ Animals/ Plants shall be allotted in the name of the customer in the single Payment plans, after receipt of full payment within a reasonable time generally not exceeding 270 days and in the case of installment payment plans, within a reasonable period generally not exceeding 90 days after the final receipt of 50% of total amount of installments. Subject to the foregoing, the farms/ animals/ plants ownership would be ordinarily transferred in the name of customer within a reasonable period after allotment,*
- *The customer has the right to retain or sell the said farms/ animals/ plants ..on expiry of the tenure of the agreement. To facilitate easy liquidity, company provides to the applicant the marketing services for sale of the developed farm/ animals/ plants."*

### **Sale Agreement**

- *"COMPANY shall have the right to Development & Maintenance/ Rearing of the said Farm/ Animals/ Plants in consultation with Agro-Consultants and experts, and the Applicant/ Customer/ Purchaser shall not ordinarily interfere with the method and mode of Development & Maintenance/ Rearing of the said Farm/ Animals/ Plants*
- *During the course of Development & Maintenance/ Rearing of the said farm/ animals/ plants, whatever the sale proceed of the produce, the company will be the sole and legal owner of the produce and the Applicant/Purchaser/Customer will not make any claim for any sale proceed of the produce during the scheme or demand any benefit from the company*
- *That is it agreed between the PARTIES that the company can re-purchase the aforesaid Farm/ Animals/ Plants from the Applicant/Purchaser/Customer by making additional payment of Rs. \_\_\_\_\_/- over and above the agreed consideration on or before \_\_\_\_\_*
- *That, it is specifically understood that along with the Applicant/ Purchaser/ Customer herein, there may be several co-owners of the Farms/ Animals/ Plants*

- *The customer has the right to retain or sell the Farms/ Animals/ Plants as he/she may deem fit, on the expiry of the tenure of this agreement. To facilitate easy liquidity, COMPANY provides to the Applicant/ Purchaser/ Customer the marketing services for the sale of developed Farms/ Plants/ Animals.*
- *This facility is available only under Single Payment Sales Scheme before the allotment of the said Farms/ Animals/ Plants, in favor of CUSTOMER(S). Under this scheme, Applicant/ Purchaser/ Customer can exercise his option to opt out of the plan, on his submission of a specific written request to company to that effect."*

#### **Development & Maintenance/ Rearing Contract Agreement**

- *"The Contractee will become eligible to receive an estimated amount of Rs. \_\_\_\_/- or the Farm/ Animals/ Plants given to the company, only after the end of this Development & Maintenance/ Rearing Contract Agreement, which being the proceeds due to the possible profits likely to be made by the company arising due to the accretions mentioned herein above.*
- *All the rights (i.e. title, ownership ,possession etc.) of the said Farm/ Animals/ Plants under reference herein above shall unconditionally pass on the Company and the contractee shall have no rights over the said Farm/ Animals/ Plants and anything whatsoever in reference/ context to the said Farm/ Animals/ Plants.*
- *The Contractee hereby unconditionally authorizes the Company to take all the necessary decisions and to perform any acts irrespective to all the aspects remaining untouched and which are incidental to this Development & Maintenance/ Rearing Contract Agreement and / or arising by virtue of this Development and Maintenance/ Rearing Contract Agreement, the Contractee shall not have to say in all such matter neither shall Contractee file any proceedings against the decisions of the **Company** nor shall the Contractee contest any decision of the company.*
- *The Contractee hereby agrees that he will have no right to terminate this Development and Maintenance/ Rearing Agreement before the completion of the period mentioned herein above under any circumstances. The Contractee hereby further agrees that he/she shall have no right of refund of any installment at any circumstances."*

The interim order has also observed the following:

- viii. *"It is observed that after executing the aforesaid agreement, the company issues a "Registration Letter and thereafter a "Letter of Allotment of Farm/ Animals/ Plants", acknowledging the receipt of the payment (lumpsum of installment as per the plan opted by the investors), to the "purchaser"/ investor.*
- ix. *Following are noted from the copy of "Registration Letter" dated March 22, 2014 issued by the company to an investor (furnished by the company):*

- *Details of the customer name/ address and other details,*
- *Registration No. & date of commencement and Payment Scheme No. & term,*
- *Consideration Amount,*
- *Amount and Periodicity of installment,*
- *Details of "Estimated Realizable Value at the end of term" and Date of expiry of term,*
- *Amount of installment,*
- *Date of last installment.*

x. *From a copy of the "Letter of Allotment of Farm/ Animals/ Plants" issued to a "purchaser"/ investor (furnished by the company) in response to the application dated March 21, 2012, it is observed that the certificate mentions that a 3600 sq. ft. farm is allotted at village Maharumkala, Tehsil-Khairagarh, District-Rajnandgaon, Chhattisgarh against a payment of ₹1,20,000/- made under "Single Payment Sales Scheme". Following clauses are also noted from the said letter of allotment:*

- *"However the company reserves the right to change the location of this allotment and allot you an alternate site/product....."*
- *The sale deed in respect of the farm/ animal/ plants allotted to you, shall be executed and registered shortly. However, if size/quantity of such Farm/animals/plants is prohibited by law or otherwise not possible/feasible/practicable to transfer, the company shall arrange for transfer of the title...in favour of the purchaser in joint holdings with other like purchaser. Upon registration the title deeds shall be handed over to the custodial services company "AIM & Allied Financial Services", which shall be holding the same in trust,*
- *A sum of Rs..... paid by you to company under the scheme....has been appropriated by the company for procuring the said product, conveying it you, development and maintenance of farms, animals, plants the saplings, plants trees, crops etc., management fees and other ancillary expenses thereto."*

17. In the light of the above observations and the submissions of the Company/noticees, it is to be determined whether the schemes of the Company are a Collective Investment Scheme as defined under section 11AA of the SEBI Act. The provisions of section 11AA are referred and reproduced herein below:

***“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) 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”.*

**18.** The first condition, under section 11AA(2) of the SEBI Act, is that the contributions or payments made by the investors by whatever name called are pooled and utilized for the purposes of the scheme or arrangement. The various documents like application form, sale agreement, development agreement amply prove that a customer who subscribes to the scheme has to execute such documents and chose a plan for making payment. It is already mentioned in this Order that the Company had single payment and instalment payment plans. Such payments are made for the purposes of the purported scheme – being purchase of agricultural land or crops/plants or stevia leaves.

The noticees have contended that there was no invitation to the public and that customers who wanted to purchase stevia leaves and other food crops sought facilities for making payment through instalments. Usually credit facilities are extended after the seller has delivered the goods to purchaser. In this case, the customer makes a payment of Rs.3000/- for 22 kgs of stevia leaves and the estimated market value of the product at the end of the term is Rs.3300/-. The investor gets a return of Rs.300/- after one year (Anmol Royal – Single payment sales scheme for 1 year) on his single payment of Rs.3000/-. The Company has also submitted that stevia leaves are planted over several acres of land which cannot be earmarked in accordance with sale agreements of different customers as the customer is given only output of the land which are stevia leaves. It therefore becomes clear that the Company accepts payments from customers under its schemes.

The Company has admitted of launching plans in order to accommodate its customers in buying stevia leaves/crops etc. These plans are made under the garb of selling agricultural/farm lands and stevia leaves. Therefore, it is proved without doubt that the Company has mobilized the payments/contributions from its customers and utilized the same for the purposes of the scheme. I have already noted that each of the payment plans launched by the Company for mobilizing money from public has the inherent provision of payment of “*estimated market value at the end of the term*” on the “*consideration-purchase & contract value*” after the end of the tenure of the plan.

The application itself states that the customer is applying for purchase of farms/animals/plants & development/maintenance from the Company. The agreement executed with the customer also mentions of ‘repurchase’. It is already mentioned above that the Company in its Brochure has represented that the customer would be entitled to the market value at the end of the term. Therefore, it becomes clear that the customers were lured to make investments/contribution with a view to receive return at the end of the term as per the plans opted by them.

The Company in its written submissions has informed that it had collected Rs.141.44 crore from 72,350 investors and has returned Rs.97.34 crore and that Rs.44 crore is the balance lying with the Company. The Company has not submitted documents to show that it has delivered goods/crops/stevia leaves to its customers. Considering the above, it becomes clear that the customers were lured to make investments/contribution with a view to receive return at the end of the term as per the plans opted by them. Therefore, the submissions made by the Company that it did not offer any ‘scheme’ or ‘pooled investments’ do not have any merit.

I accordingly conclude that the aforesaid first condition under section 11AA(2)(i) of the SEBI Act is satisfied.

**19.** The second condition under section 11AA(2) of the SEBI Act 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 mentioned above, all the plans of the Company have indicated that a customer would be entitled to the 'market value at the end of the term' which is higher than his subscription made to the Company. It is observed from the copy of "*Registration Letter*" dated March 03, 2014 issued by the Company to an investor that for an amount of ₹ 90,000/- (single installment) paid by him, he is entitled to an amount of ₹1,80,000/- as the "*estimated realizable value*", after the expiry of the term period (*i.e.* 6 years).

The Company has, with respect to the "*estimated/projected value*", submitted that the customers who did not want to take delivery of stevia leaves or other agricultural produce could opt to sell the produce that they have already paid for, through the Company and arrange for the proceeds to be credited to them. According to the Company, the same cannot be interpreted as obtaining profits from any scheme as erroneously found in the interim order. Any profits earned by such sale of stevia leaves or other produce is only incidental.

I had already observed that the Company had claimed to have returned around 70% of the funds it collected. According to the Company, only 12,365 investors had taken delivery. However, this has not been substantiated by evidence. The Company has also stated that it has around Rs.44 crore with it. All the above, would prove that the Company had launched a scheme with an objective of collecting money from the public and return the same with interest and the stevia leaves/crops were used as a camouflaged underlying for such transactions.

The Company has contended that when a customer was unable to complete his payments, he could seek refund of the payments made and on such request, the Company correctly paid interest and deducted charges and expenses incurred by it. Considering that every plan envisaged a return on the monies paid by the customer and the higher number of refunds sought by the customer, it appears that the scheme is only for deriving profits. I accordingly conclude that the second condition is also satisfied.

**20. The third and fourth conditions 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.** The interim order has made the following observation:

*“As per the "Sale Agreement" entered into with the "Purchaser"/ investor, Anmol Agro has the right to Development and Maintenance/Rearing of Farms/Animals/Plants in consultation with agro consultants and experts, and the "Purchaser"/ investor is not allowed to interfere with the method and mode of Development and Maintenance/ Rearing of the said Farms/ Animals/ Plants. As per the "Development and Maintenance/ Rearing Agreement", "all the rights (i.e. title, ownership, possession etc.) of the said Farms/ Animals/ Plants under reference herein above shall unconditionally pass on to the Company and the Contractee shall have no rights over the said Farms/ Animals/ Plants and anything whatsoever in reference/ context to the said Farms/ Animals/ Plants". It is also observed that as per the "Letter of allotment of farm/animals/plants" issued by the company, they even have the right to change, not only the location of the land so allotted but also the product (i.e animals, plants etc.). Therefore, it is clear that the "Purchasers"/ investors do not have day to day control over the management and operation of the said scheme offered by Anmol Agro. In view of the above, I find that the instant 'Scheme' satisfies the third and fourth conditions stipulated in Section 11AA(2) (iii) & (iv) of the SEBI Act, 1992”.*

The Company in its submissions has submitted that the relevant clauses referred in the interim order was to prevent customers who availed the facility of making payments in instalments from claiming ownership or control over the Company. The Company also submitted that mere incorporation of the restrictive covenant in the contracts would not mean that it is managing the farms/plants sold to the customers and has been wrongly alleged that the customers do not have day to day control over the management and operation of farms/plants. The identifiable farms/plants are being delivered to the customers on the completion of development/maintenance. The same does not amount to management of such property.

A reading of various clauses of the sale agreement and the development agreement entered by the customer with the Company is one-sided favouring the Company in terms of management of the schemes. The customers cannot have any say in the day-to-day functioning of the Company. It is very important to note that as per the scheme-related documents, the Company has the right to develop/maintain/rear farms/animals in consultation with experts and the customer cannot interfere with the method and mode of development. It is also stated that any produce during the

maintenance period shall vest on the Company and the customer shall have no right on such produce.

From the features of the 'scheme', it can therefore be noticed that the Company/its management have the sole right to manage the contribution or property/investment forming part of the scheme and the investors do not have any day-to-day control over the management and operation of the scheme or arrangement. I accordingly conclude that the 'scheme' satisfies the third and fourth conditions stipulated in section 11AA(2) of the SEBI Act.

**21.** From the above findings and observations, I conclude that the 'scheme' offered by the Company with a promise of 'return' satisfies all the four conditions specified in section 11AA (2) of the SEBI Act and therefore qualify as a Collective Investment Scheme as defined under the said section read with the CIS Regulations. I also refer to the following observation of the Hon'ble Supreme Court in the matter of PGF Limited vs. UoI and another (ref. MANU/SC/0247/2013):

*".....the Parliament thought it fit to introduce Section 11AA in the Act in order to ensure that any such scheme put to public notice is not intended to defraud such gullible investors and also to monitor the operation of such schemes and arrangements based on the regulations framed under Section 11AA of the Act."*

The requirement of registration and regulation of collective investment schemes as mandated under section 11(2)(c) and 12 of the SEBI Act therefore assumes much importance. The Hon'ble Supreme Court further observed "*Inasmuch as the said Section 11AA seeks to cover, in general, any scheme or arrangement providing for certain consequences specified therein vis-a-vis the investors and the promoters.....*". The Hon'ble Supreme Court further observed "*A reading of sub-Section (3) of Section 11AA also throws some light on this aspect, wherein it is provided that those institutions and schemes governed by sub-clause (i) to (viii) of sub-Section (3) of Section 11AA will not fall under the definition of collective investment scheme. .... Therefore, by specifically stipulating the various ingredients for bringing any scheme or arrangement under the definition of collective investment scheme as stipulated under sub- Section (2) of Section 11AA, when the Parliament specifically carved out such of those schemes or arrangements governed by other statutes to be excluded from the operation of Section 11AA, one can easily visualize that the purport of the enactment was to ensure that no one who seeks to collect and deal with the monies of*

any other individual under the guise of providing a fantastic return or profit or any other benefit does not indulge in such transactions with any ulterior motive of defrauding such innocent investors and that having regard to the mode and manner of operation of such business activities announced, those who seek to promote such schemes are brought within the control of an effective State machinery in order to ensure proper working of such schemes."

**22.** To launch or carry on the activity of CIS and mobilize public funds from such schemes, it is mandatory under law to obtain a certificate of registration from SEBI. Section 12(1B) of the SEBI Act mandates that no person, shall sponsor or cause to be sponsored or carry on or caused to be carried on any CIS unless it obtains a certificate of registration from SEBI in accordance with the CIS 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 said regulations shall carry on or sponsor or launch a 'collective investment scheme'. 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. Therefore, the launching/ floating/ sponsoring/ 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. The Company does not have a certificate of registration as mandated under law and has launched CIS without obtaining certificate of registration from SEBI, thereby contravening the provisions of section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations. Therefore, having concluded that the activities of the Company are CIS in terms of section 11AA of the SEBI Act and that the same were carried out without obtaining registration from SEBI, suitable enforcement action should necessarily follow in the interest of investors.

**23.** 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. 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.

**24.** Therefore, having concluded that the activities of the Company are CIS in terms of section 11AA of the SEBI Act and that the same were carried out without obtaining registration from SEBI, suitable enforcement action should necessarily follow in the interest of investors. In view of such unregistered CIS activities carried on by the Company, it becomes necessary to issue suitable directions in the interest of investors and the securities market. In this regard, regulation 65 provides for various directions by SEBI. The said provision is reproduced below for reference:

*“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.”*

**25.** As the Company is carrying out unregistered CIS activities, it becomes necessary to direct the Company to wind up the CIS and refund its investors' money or assets along with requisite interest along with other necessary directions. The Company in its submissions has submitted that it had refunded 68% of the monies mobilized by it from customers. In this regard, I note that the Company has not provided any verifiable proof to SEBI. The Company has not provided evidence to substantiate its claim that it had given delivery to 12,365 investors. What has been delivered has

also not been stated by the Company. In view of the same, the veracity of the claim regarding refunds is not supported.

26. The interim order has observed that Mr. Mohammad Khalid Memon, Mr. Mohammad Junaid Memon, Mr. Mohammad Javed Memon and Mr. Mohammad Umar Memon are the directors of Anmol Agro. All the above persons are admittedly the promoters of the Company also.

As per data in the MCA website accessed on May 17, 2016, the present directors of the Company are Mr. Mohammad Khalid Memon, Mr. Mohammad Junaid Memon and Mr. Mohammad Umar Memon. However, it is noted that Mr. Mohammad Javed Memon was one of the directors of the Company when it had launched and carried on unregistered CIS activities as found in this Order and admittedly a promoter who has subscribed to the MoA of the Company.

Regarding the liability of the above persons, I note that –

- (a) In terms of section 291 of the Companies Act, 1956, the board of directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the board of directors being responsible for the conduct of the business of a company shall be liable for any non-compliance of law and such liability shall devolve on individual directors also. Accordingly, a director who is part of a company's board shall be responsible and liable for all acts carried out by a company unless exemptions are provided. The present case involves a Company that has mobilized public funds from gullible investors through its unregistered collective investment schemes. In this regard, the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs Registrar of Companies* (2002 108 Comp Cas 1 Mad) are important to note:

"13. .... A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.

14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956."

(b) The above said persons are also said to be the promoters of the Company. These persons are on the board from the date of incorporation of the Company. The Company was incorporated on October 04, 2007. The Company had given the numbers of investors as on December 31, 2015. From the submissions of the Company, it can be inferred that it commenced mobilizing monies under the scheme pursuant to its incorporation and therefore the persons who were the directors from such date would be liable for the contravention as found against the Company.

(c) I therefore, find Mr. Mohammad Khalid Memon, Mr. Mohammad Junaid Memon, Mr. Mohammad Javed Memon (irrespective of whether he has presently resigned or not) and Mr. Mohammad Umar Memon, liable for the contraventions committed by the Company in launching and operating unregistered CIS, in violation of section 12(1B) of the SEBI Act, regulation 3 of the CIS Regulations and regulation 4(2)(t) of the PFUTP Regulations.

**27.** In view of the foregoing, in the interest of investors and the securities market, 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(1), 11B and 11(4) thereof and regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby issue the following directions:

(a) Anmol India Agro-Herbal Farming and Dairies Care Company Limited, Mr. Mohammad Khalid Memon, Mr. Mohammad Junaid Memon, Mr. Mohammad Javed Memon and Mr. Mohammad Umar Memon shall abstain from collecting any money from the investors or launch or carry out any Collective Investment Schemes including the scheme which have been identified as a Collective Investment Scheme in this Order.

(b) Anmol India Agro-Herbal Farming and Dairies Care Company Limited, Mr. Mohammad Khalid Memon, Mr. Mohammad Junaid Memon, Mr. Mohammad Javed Memon and Mr. Mohammad Umar Memon shall wind up the existing Collective Investment Schemes and refund through 'Bank Demand Draft' or 'Pay Order', the money collected by the said company under the schemes with returns which are due to its investors as per the terms of

offer 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, including the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds.

In case the Company has made refunds as claimed in its submission, it shall produce the proof for such repayment as directed above and also submit a certificate from Chartered Accountant as directed in sub-paragraph (d) below.

- (c) Anmol India Agro-Herbal Farming and its directors/present management are permitted to sell their assets only for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalised Bank.
- (d) After completing the aforesaid repayments in terms of sub-paragraph (b) above, the **Company** shall file a certificate of such completion with SEBI, within a period of 15 days, from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ('ICAI').
- (e) Anmol India Agro-Herbal Farming and Dairies Care Company Limited, Mr. Mohammad Khalid Memon, Mr. Mohammad Junaid Memon, Mr. Mohammad Javed Memon and Mr. Mohammad Umar Memon are also directed to provide a full 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.
- (f) Anmol India Agro-Herbal Farming and Dairies Care Company Limited, Mr. Mohammad Khalid Memon, Mr. Mohammad Junaid Memon, Mr. Mohammad Javed Memon and Mr. Mohammad Umar Memon are restrained from accessing the securities market and are

prohibited from buying, selling or otherwise dealing in securities market for a period of 4 years.

(g) In the event of failure by Anmol India Agro-Herbal Farming and Dairies Care Company Limited, Mr. Mohammad Khalid Memon, Mr. Mohammad Junaid Memon, Mr. Mohammad Javed Memon and Mr. Mohammad Umar Memon to comply with the above directions, the following actions shall follow:

- Anmol India Agro-Herbal Farming and Dairies Care Company Limited, Mr. Mohammad Khalid Memon, Mr. Mohammad Junaid Memon, Mr. Mohammad Javed Memon and Mr. Mohammad Umar Memon shall remain restrained from accessing the securities market and would further be prohibited from buying, selling or otherwise dealing in securities, even after the period of 4 years of restraint imposed in sub-**paragraph (f)** above, till all the Collective Investment Schemes of **the Company** are wound up and all the monies mobilized through such schemes are refunded to its investors with returns which are due to them.
- SEBI would make a reference to the State Government/ Local Police to register a civil/ criminal case against **the Company**, 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 misappropriation of public funds;
- SEBI would also make a reference to the Ministry of Corporate Affairs to initiate appropriate action as deemed fit.
- SEBI would make a reference to the Ministry of Corporate Affairs to restrain above-mentioned noticee directors from being directors in other companies.
- SEBI shall initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder against the Company and others responsible.

28. This order shall come into force with immediate effect.

29. 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 Anmol India Agro-Herbal Farming and Dairies Care Company Limited, Mr. Mohammad Khalid Memon, Mr. Mohammad Junaid Memon, Mr. Mohammad Javed Memon and Mr. Mohammad Umar Memon including other persons who are in default, for the violations as found in this Order.

30. 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: May 19<sup>th</sup>, 2016**

**Place: Mumbai**