

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

In respect of SEBI Order dated June 16, 2015, and Hon'ble Securities Appellate Tribunal Order dated November 07, 2017, in the matter of Capacious Farming Pvt. Ltd.

In respect of:

SL NO.	NOTICEE	PAN
1.	Capacious Farming Pvt. Ltd.	AAECC3138N
2.	Gaurav Yadav	ACQPY5145E
3.	Gurbaksh Singh	BCLPS1117G
4.	Narmin Kaur Yadav	---

BACKGROUND

1. Securities and Exchange Board of India (SEBI) had passed an order dated June 16, 2015, against Capacious Farming Pvt. Ltd. (Capacious/Company) and its directors - Gaurav Yadav, Gurbaksh Singh and Narmin Kaur Yadav (collectively referred to as 'Noticees'), holding that the Company had launched a 'Collective Investment Scheme' without obtaining a certificate of registration from SEBI, and had thereby contravened the provisions of Section 12(1B) of the SEBI Act read with Regulation 3 of the SEBI (Collective Investment Scheme) Regulations, 1999 (CIS Regulations). The Noticees were restrained from collecting money from the investors and also directed to wind up the existing Schemes and refund the money collected.
2. The Noticees preferred an appeal (Appeal No. 405 of 2015) against the said order before the Hon'ble Securities Appellate Tribunal (SAT). The Noticees primarily contended before the Tribunal that SEBI had passed the Order without granting an opportunity to the Noticees to furnish relevant documents. SAT vide order dated November 07, 2017, set

aside the order passed by SEBI; directed the Noticees to file their submissions before SEBI within four weeks from the date of the SAT order; and directed SEBI to pass a fresh order taking into consideration the fresh submissions made by the Noticees. The Noticees in compliance with the SAT order filed their submissions before SEBI vide letter dated November 11, 2017.

3. In view of the above, I note that the scope of the present proceedings would be limited to examining the findings made by SEBI in the order dated June 16, 2015, in light of the submissions made by the Noticee vide letter dated November 11, 2017. Therefore, before moving forward, I think it would be appropriate to reproduce the main findings in the SEBI Order dated June 16, 2015, against the Noticees:

“Let me now, proceed to test the characteristics of the impugned schemes/ plans floated and carried on by the Company against the four conditions under Section 11AA(2) of the SEBI Act.

- i. *The first condition 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. Capacious accepts funds from the public for its schemes towards the sale/ upbringing of goats/ pigs. The customers/ investors of Capacious willing to subscribe to the schemes get the option of payment i.e. part payment or one time.*

The 'sale agreement' states that "the SELLER has already purchased/ made arrangements for purchasing/ procuring the goat(s) for its PURCHASER", 'the arrangement for purchasing' points towards the pooling of resources. Further, the 'scheme brochure' states that "...can purchase live stock (Goats/Pigs) from Capacious Farming Pvt. Ltd. at part payment option instead of one time advance payment plan and you can do an agreement for rearing of your already purchased animal and can get following benefits ...". The same hints that the objective for a customer would be to subscribe to one of the plans offered by the Company for the purchase of goat/ pig. Further, the

'sale agreement' as provided by Capacious, does not specify the details of the breed of the goat/ pig sold to the customer in order to identify the animal. The Company despite its assertion that all sales were made on outright basis, failed to give any evidence of sale. It even failed to give names of its customers. In the light of the above and also the provisions in the sale agreement, it can be concluded that the 'contributions, or payments made by the investors, are pooled and utilised by Capacious for the purposes of the scheme or arrangement', the scheme being sale of goat/ pig. Thus, satisfying the first condition as stipulated in Section 11AA(2)(i) of the SEBI Act.

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 discussed above, in Table A and B the 'scheme brochure' provides for the estimated cost of the developed animal after 48 months and 72 months in the case of part payment option and cost of the animal after 4 years in one time payment option. From the same, it can be said that the same assures the customers/ investors of 'the expected cost' which means nothing but profits. Further, the scheme brochure also stated that "On quarterly advance instalment you will get 2% extra benefit on end of agreement. On half yearly advance instalment you will get 5% extra benefit on end of agreement. On yearly advance instalment you will get 10% extra benefit on end of agreement" indicating another element of return. This makes it clear that the customers/ purchaser had made the contribution/ payment with a view to receive the profits/ income/property/ return on their initial investments that may accrue to them as applicable, thus attracting the second condition as stipulated in Section 11AA(2)(ii) of the SEBI Act.

iii. The third condition is that the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors. The fourth condition is that the investors do not have day to day control over the management and operation of the scheme

or arrangement. In this regard, I note the relevant clauses from the 'scheme brochure' i.e. "...you can do an agreement for rearing of your already purchased animal'. The same points that Capacious was engaged in the rearing of the animals, which had been sold to the customers. In view of the same, it can be said that the customer/ investor does not take part in the acquisition or rearing of the animal. Further, it can also be concluded that the goats/ pigs pertaining to the plan/ scheme were managed by the Company and the customers do not have day to day control over the scheme.

As all the four conditions specified under section 11AA(2) of the SEBI Act are satisfied in this case, the schemes/ plans promoted, launched, carried on and operated by the Company are in the nature of CIS in terms of section 11AA(1)."

4. It can be noted from the above, that SEBI vide the said order had held that the Noticees were running a "collective investment scheme" (CIS) related to the rearing of pigs and goats wherein investors could make part or one-time payments and make returns on their investments in the range of 2% quarterly to 10% per annum. The modus operandi of the Company in a nutshell, as per the SEBI order, involved running a scheme wherein investors could make payments – onetime or in instalments – towards the purchase of pigs or goats. The Company would rear the animals and the investors would get returns based on the purported increase in value of the reared livestock.
5. The Noticees in their reply, on the other hand, claimed that the company was running a dairy farm and was in the business of selling livestock and related products. It was claimed that customers took possession of the livestock at the time of the sale itself and the Company was not in any way involved in the rearing of the livestock post the sale. It was submitted that initially the company was executing agreements for every sale but the practice was discontinued as the clientele of the company was predominantly rural and the customers were reluctant to enter into such agreements for the purchase of livestock. It

was also submitted that even though the company had initially contemplated the sale of livestock on payments made in instalments, the scheme was never launched as there were no takers for the same. The Company also reiterated its submission that there was no question of returning funds to any clients/investors as the Company had never solicited any investments and had only engaged in outright sale of livestock and related products. Further, the instalment scheme which was initially envisaged was also not operationalised and therefore the question of refunds did not arise in this respect also. In support of the contentions made in the reply, the Capacious submitted the following documents:

- a. Copy of seven sale agreements entered with clients.
 - b. Copy of the sales ledger account of the company for the financial years 2011-12, 2012-13, 2013-14. It was submitted by the Company that it did not maintain any separate account of sales return and the sales return and discounts offered are reflected in the sales ledger account.
6. Pursuant to the reply submitted by the Noticees, the matter was placed before me for consideration on October 22, 2020, upon which the Noticees were granted an opportunity of personal hearing initially on February 14, 2021, which was later postponed to April 22, 2021, due to certain official exigencies. Vide email dated April 22, 2021, Noticee No. 2, however, sought an adjournment of the hearing on grounds that his legal representative had contracted COVID. The said request was accepted and date of hearing was postponed to May 18, 2021. On the said date, Mr. Summet Singh Dhir, Chartered Accountant, appeared on behalf of Noticee No. 1, Noticee No. 2 and Noticee No. 4. No appearance was entered on behalf of Noticee No. 3.
7. Pursuant to the personal hearing, the authorised representative made written submissions vide email dated June 09, 2021. Submissions made during the oral hearing and in writing

were on the same lines as the earlier submissions made by the Noticees, which have been captured in paragraph 5 of this order.

8. I have considered the SEBI Order dated June 16, 2015, the written and oral submissions made on behalf of the Noticees and other material available on record. I note that the only issue that arises for consideration is whether the Noticees have submitted sufficient documents and records to rebut the finding in the SEBI order that the Company was running a CIS, and to support the claim of the Noticees that the Company was engaged in outright sale of livestock and related products.
9. I would, therefore, proceed to examine the documents submitted by the Noticees. As stated in earlier paragraphs, it is the contention of the Company that it was engaged in outright sale of livestock and related products. In support of this claim, the Company has submitted a copy of seven lease agreements entered into with clients. I further note that as per the submission of the Company, agreements were entered into with only a few initial clients and this practice was discontinued later. It is also noted that the copy of these agreements was available on record at the time of passing the earlier SEBI order and the arguments made by the Company taking support of the sale agreements have already been addressed in the said order. In view of the same, I do not find any merit in revisiting the findings in the earlier SEBI order on the basis of the agreements submitted by the Noticee.
10. Now I move on to examine the other set of documents submitted by the Noticees - Copy of the sales ledger account of the company for the financial years 2011-12, 2012-13, 2013-14. Before I proceed with the examination, I consider it appropriate to reproduce a portion of the sales ledger account to put in context the nature of the information contained therein.

Capacious Farming 01.04.2011 to 31.03.2012

#9144, Bikker Singh Ahluwalia Complex

Mini Secretariat Road Bathinda

Live Stock Sales

Ledger Account

01-Apr-2011 to 31-Mar-2012					
<i>Date</i>	<i>Particulars</i>	<i>Vch Type</i>	<i>Vch No.</i>	<i>Debit</i>	<i>Credit</i>
04-04-2011 Dr	Cash	Sales	1		6000.00
04-04-2011 Dr	Cash	Sales	2		6100.00
06-04-2011 Dr	Cash	Sales	3		6200.00
06-04-2011 Dr	Cash	Sales	4		6200.00
06-04-2011 Dr	Cash	Sales	5		6100.00

11. As can be noted from the table above, the ledger statement contains certain figures under the head 'Credit' corresponding to a particular voucher number. The only other information that is available is the date and that the transaction was in cash. Even basic information like the name and address of the customer is not available. Further, the amounts recorded in the ledger statement does not correspond to the amounts mentioned in the complaint on the basis of which the proceedings against the Noticee was initiated. I note from the records that other than submitting that the complainant is motivated and filed on behalf of business rivals, the Noticee has not addressed any of the allegations contained therein. I note that the Complainant had annexed copies of the receipts given by the Company and the cheques through which payments were made. However, the Company has failed to provide any explanation or rebut the allegations raised therein in any meaningful manner.

12. I further note from the records that subsequent to the order of the Hon'ble Securities Appellate Tribunal remanding the matter back to SEBI, another complaint was received against the Company vide email dated June 17, 2021. The Complainant had enclosed copies

of receipts given by the company and the cheques through which payments were made. The complainant had alleged that he had invested an amount of Rs. 13,25,000 in the Company in 2013.

13. After considering the documents submitted by the company, I am of the view that if the company was only engaged in outright sale of livestock and related products, as claimed, then there would have been no occasion for entering into detailed agreements for the same with customers. The very existence of these agreements leads to a presumption that the entity was not engaged in sale of livestock and related products. It is further noted that SEBI had received investor complaints alleging that the Company had not paid back money they had invested. It is noted that the complainants had enclosed copies of the receipts given by the Company acknowledging the payments received from them. The complainants had also submitted copies of the cheques through which payments were made. Further, the amounts mentioned in the complaints and the receipts issued by the Company do not match with the sales ledger or other documents submitted by the Company.
14. In view of the above, I am of the opinion that the details furnished in the form of the sales ledger account and copies of agreements entered into with customers are not sufficient to come to a conclusion that the Company was engaged in the outright sale of livestock and related products as opposed to running a CIS scheme as held in the SEBI Order. I am therefore inclined to ratify the findings in the SEBI order dated June 16, 2015.

Order

15. In view of the above, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(1), 11(4) and

11B thereof and Regulation 65 of the SEBI (Collective Investment Scheme) Regulation, 1999, hereby issue the following directions:

- a. Capacious Farming Pvt. Limited and its directors viz., Gaurav Yadav, Gurbakhsh Singh and Narmin Kaur Yadav 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.
- b. Capacious Farming Pvt. Limited and its directors viz., Gaurav Yadav, Gurbakhsh Singh and Narmin Kaur Yadav are restrained from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities market for a period of four years.
- c. Capacious Farming Pvt. Limited and its directors viz., Gaurav Yadav, Gurbakhsh Singh and Narmin Kaur Yadav shall wind up the existing Collective Investment Schemes and refund 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.
- d. Capacious Farming Pvt. Limited and its directors viz., Gaurav Yadav, Gurbakhsh Singh and Narmin Kaur Yadav shall not alienate or dispose off or sell any of the

assets of Capacious Farming Pvt. Limited except for the purpose of making refunds to its investors as directed above.

- e. Capacious Farming Pvt. Limited and its directors viz., Gaurav Yadav, Gurbakhsh Singh and Narmin Kaur Yadav 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.
16. While reckoning the period of restraint directed under paragraph 15(b), the period of restraint already undergone by the Noticees from the date of passing of the SEBI order (June 16, 2015) to the date of the SAT order (November 07, 2017) shall be excluded.
17. In the event of failure by Capacious Farming Pvt. Limited and its directors viz., Gaurav Yadav, Gurbakhsh Singh and Narmin Kaur Yadav to comply with the above directions, the following actions shall follow:
- a. Capacious Farming Pvt. Limited and its directors viz., Gaurav Yadav, Gurbakhsh Singh and Narmin Kaur Yadav 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 four years of restraint imposed in paragraph 15(b) above, till all the Collective Investment Schemes of Capacious Farming Pvt. Limited are wound up and all the monies mobilized through such schemes are refunded to its investors with returns which are due to them.
 - b. SEBI would make a reference to the State Government/ Local Police to register a civil/ criminal case against Capacious Farming Pvt. 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 misappropriation of public funds;

c. SEBI would make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the company, Capacious Farming Pvt. Limited; and

d. SEBI shall initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder.

18. 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 Capacious Farming Pvt. Limited and its directors viz., Gaurav Yadav, Gurbakhsh Singh and Narmin Kaur Yadav, including other persons who are in default, for the violations as found in this Order.

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

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

Place: Mumbai

Date: July 12, 2021

G. MAHALINGAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA