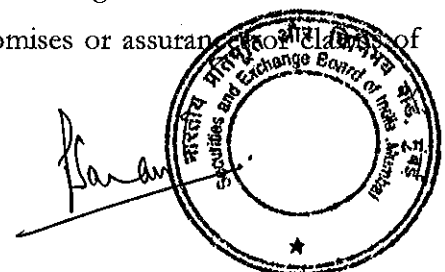


SECURITIES AND EXCHANGE BOARD OF INDIA

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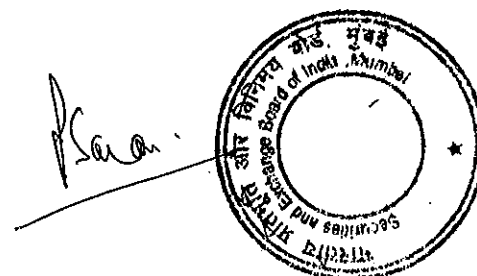
UNDER SECTION 11B OF SEBI ACT 1992 READ WITH SEBI (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 1999 IN THE MATTER OF SUN-PLANT AGRO LIMITED

1. Securities and Exchange Board of India (SEBI) received a letter dated December 7, 2009 from the Director of the Economic Offences Investigation Cell, Government of West Bengal stating that M/s. Sun-Plant Agro Limited (hereinafter referred to as the company/ Sun Plant) had been raising funds in certain districts of West Bengal, and as such was allegedly running a CIS scheme without obtaining a Certificate of Registration from SEBI. Preliminary enquiries in this regard were made with the company. Details of mobilization of funds were sought to examine the applicability of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as the CIS Regulations) and to ensure that the interest of investors is adequately protected. In the course of the enquiry, it was observed that the company has been inviting contributions from the general public.
2. The said company had filed an application with SEBI for grant of provisional registration pursuant to the notification of the CIS Regulations on October 15, 1999. The application of the company for provisional registration under the said Regulations was rejected by SEBI. Following this, on July 09, 2003 the company submitted a Winding Up and Repayment Report in terms of Regulation 73 of the CIS Regulations stating that it has repaid the money to investors in its schemes.
3. Information/ documents were sought from the company vide separate letters dated January 8, 2010, April 13, 2010, and June 11, 2010. The company was asked to provide information regarding the terms and conditions of the schemes, whether instruments were issued to the investors after receipt of fund, whether such instruments are transferable, options available to the investor if he did not want to own the tree till maturity, quantum of funds raised through the schemes from the public along with period of such schemes, and promises or assurance given to investors.



assured returns made in the schemes. Further, SEBI asked for certified copies of offer documents, application forms, pamphlets, brochures of the schemes launched and copies of the executed agreements between the company and its investors.

4. The company, vide its letters dated February 22, 2010, May 07, 2010, July 19, 2010 provided the information about its nature of business. The company submitted that it is involved in the sale of trees to investors and that they were maintaining the same on behalf of the purchasers as per a Memorandum of Understanding (MOU) between the purchasers and the company. The company also said that it was involved in the cultivation of Jatropha trees for production and sale of Bio Diesel.
5. Based on the submissions made by the company, I note the following:
 - a. An investor can purchase any number of trees at a price of Rs. 1050/- per tree. The receipt for purchase carries "Tree Maintenance & Sale Agreement".
 - b. The terms of the Scheme make it mandatory for purchasers to execute a Mutual Memorandum of Understanding (MMOU) setting out obligations of the purchasers of tree and Sun Plant.
 - c. As per the MMOU, the purchasers have authorized the company to supervise and look after the trees, subject to natural calamities, as they live at locations far from the project site and it will be difficult to look after the day to day growth and maintenance of the trees.
 - d. The total period of such supervision maintenance and taking care of the growth for the plant is fixed for seven years.
 - e. The purchaser is entitled to 15 Cft wood at the end of seven years and the rest will be retained by the company.
 - f. From the audited accounts submitted by Sun Plant, it is found that the company has received 21.48 crore from sale of plant and jatropha seed in the year 2007-08 and the amount for the same is 22.5 crore for the year 2008-09. The audit for the year 2009-10 is yet to be completed.



- g. The company had received the following amount against the cost of trees since 2003-04.

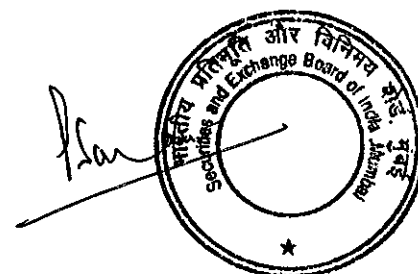
<u>Year</u>	<u>No of Customers</u>	<u>Amount Received Against Cost of Trees (Rs.)</u>
2003-04	25554	5.57 crore
2004-05	22600	7.47 crore
2005-06	23367	9.77 crore
2006-07	19800	10.59 crore
2007-08	29537	11.73 crore
2008-09	30470	24.21 crore
2009-10	40654	Yet to be audited.

6. I have carefully considered the various documents on record, including the submissions made by the company. I note that:-

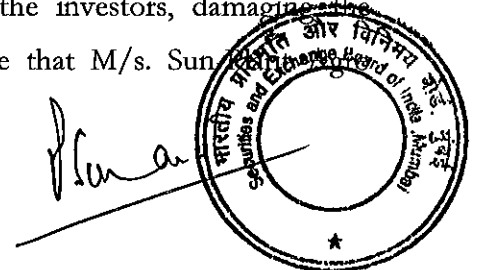
- i. The documents submitted do not at any point indicate whether a particular tree/ group of trees are demarcated for a particular purchaser, i.e. title is not distinctly identifiable
- ii. As per the MMOU, the purchaser is entitled to 15Cft wood or its present market value of Rs 2500 at the end of seven years. Hence return on investment is being provided at the end of the scheme in the form of wood or in cash at present value.
- iii. The MMOU is a prerequisite for investment in the product. The MMOU provides for the purchaser appointing the company 'to supervise, look after' the trees. Thus the management of the properties lies with Sun-Plant, and investors do not have any day to day or direct control on the management of the trees.

7. Section 11AA of the SEBI Act, 1992 provides that any scheme or arrangement which satisfies the following conditions shall be a collective investment scheme

- a. 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;



- b. 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;
 - c. the property, contribution or investment forming part of the scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;
 - d. the investors do not have day to day control over the management and operation of the scheme or arrangement.
8. Thus, the company is raising funds in the name of sale of plants. It allegedly sells plants to a purchaser, maintains the plants and thereafter provides return on the amount invested at the end of the scheme in the form of wood, even though no identity or marking of the particular plant, which is sold is provided to the purchaser. These activities of the company carry the features of a CIS, specified under Section 11AA of the SEBI Act read with Regulation 3 of the CIS Regulations. The company ought to have wound up the scheme pursuant to rejection of the application for provisional registration by SEBI and the filing of Winding Up and Repayment Report by the company. However, the said activities of the company and the details of amount received by it against cost of trees over the period 2003-2010 *prima facie* indicate that even after submission of Winding Up and Repayment Report in 2003, the company has been carrying out activities of a CIS without obtaining a Certificate of Registration from SEBI.
9. In view of the foregoing, it *prima facie* appears that the company is running CIS schemes without obtaining a certificate of registration from SEBI. Thus, M/s. Sun-Plant Agro Limited has *prima facie* violated Regulation 3 of the CIS Regulations read with Section 11AA of the SEBI Act, 1992.
10. The interest of investors is the first and foremost mandate for SEBI. Under the facts and circumstances of the case, SEBI has to take emergent steps to prevent activities indulged into by companies or entities defrauding the investors, damaging the orderly development of the securities market. I note that M/s. Sun-Plant Agro Limited



Limited has to be prevented further, from carrying on the activities of a CIS, including soliciting money from the public, without due registration from SEBI.

11. In view of the same, I, in exercise of the powers conferred upon me under Section 11B of the SEBI Act, 1992 and Regulation 65 of CIS Regulations, hereby direct the company:

- a. not to collect any money from investors or to launch any scheme;
- b. not to dispose of any of the properties or alienate the assets of the scheme;
- c. not to divert any fund raised from public at large kept in bank account and/or in the custody of the company.

12. The above directions shall take effect immediately and shall be in force until further orders. The company may file its objections, if any, to this order within 15 days from the date of this order, if it so desires, avail itself of an opportunity of personal hearing at the Securities and Exchange Board of India, Eastern Regional Office, Fifth Floor, L&T Chambers, 16, Camac Street, Kolkata – 700017 on a date and a time to be fixed on specific request, to be received in this behalf from the company within 15 days from the date of this order.

DATE: 21/OCT/2010
PLACE: MUMBAI



PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA