WTM/SR/CIS/२ ४ /10/2013

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

ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999 in the matter of M/s Samruddha Jeevan Foods India Ltd. (PAN-AAICS0865N) and its Directors, viz. Mr. Mahesh Kisan Motewar (PAN-AKMPM3895K), Mrs. Vaishali Mahesh Motewar (PAN-ATTPM4634Q) and Mr. Ghanshyam Jashbhai Patel (PAN-ARJPP0156A).

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1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a complaint against the Company, Samruddha Jeevan Foods India Ltd. (hereinafter referred to as "**SJFIL** ") on November 16, 2011 alleging that *"Sales agent of Samruddha Jeevan Foods India Ltd. have promised more than 12% fixed returns and other unusual returns on investments in cattle and goat farms...."*. Following documents were also forwarded to SEBI along with the said complaint, viz.-

    a) "*Pamphlets*"
    b) Sample copy of "*Business Application Form*"
    c) Sample Copy of "*Sale Agreement*"
    d) Sample Copy of "*Goats/Buffaloes Rearing Contract*"
    e) Visiting Card of one Asst. Branch Manager of SJFIL

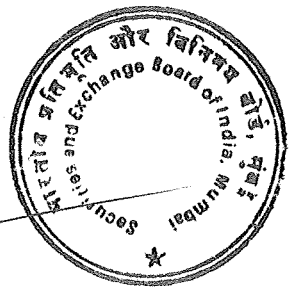
2. As a matter of preliminary enquiry, SEBI, vide several letters, particularly those dated December 8, 2011, February 27, 2012 and March 20, 2013 advised SJFIL to submit the following information in relation to its business activity, viz. -

    a) Memorandum and Articles of Association of SJFIL as filed with the Registrar of companies (ROC);
    b) Structure of the Plans/Schemes;
    c) Number of Plans/Schemes launched;
    d) Main terms and conditions of the plan/schemes;
    e) Details of the scheme wise amount mobilized by SJFIL till date along with the number of investors under the schemes;

f) Details of the past and present directors of SJFIL;
g) Brochures pertaining to the schemes/offers;
h) Application forms that are required to be submitted by investors/applicants to participate in the schemes;
i) Sample copies of the registration letter and allotment letter issued to the investors who subscribed to the schemes;
j) Sample copies of the agreement letter / contract required to be entered into by investors / applicant under the schemes;
k) Details of the regulatory approvals obtained by SJFIL, if any, for provision of accidental death / disability benefits to investor, under the schemes;
l) Copies of Rule Book, Sales Manual, Business Manual of SJFIL in English language;
m) Copy of an executed and stamped agreement, one each for both "*Installment Sale*" and "*Sale against One time payment*";
n) Copy of "*Sales Manual*".
o) *Modus operandi* in which investments are mobilized from the public. (i.e.the details regarding the publicity or advertisement in any form, agent structure and commissions offered, how customers are enrolled etc.);
p) Details of terms of agreement, in case the SJFIL fails to execute the agreement;
q) Number of customers/investors given refund of their investments;
r) Details of the agreement, giving option to the customers for taking refund of money instead of delivery of goats or other livestock at the time of delivery;
s) Details of any permission received/registration obtained from any regulator regarding its activities;
t) Details of Fixed Deposit/Recurring Deposits offered by SJFIL, if any;
u) Any credit rating received by the Company for any of its schemes/plans;
v) Details of inter-corporate transactions among SJFIL and other Samruddha Jeevan group companies;
w) Annual Reports and Financial Statements of SJFIL for the past three years including but not limited to the income statement, balance sheet and cash flow statement along with annexures.

3. SJFIL furnished certain information vide letters dated December 20, 2011, January 25, 2012, May 9, 2012 and April 24, 2013. The information so received included:-

a) Memorandum and Articles of Association of SJFIL as filed with the ROC;
b) Structure of four "*Installment Sales Plans*" and two "*Single Installment Plans*";
c) Copy of "*Application Form cum Agreement to Sale of Livestock*";



d) Details of Plan wise *sale proceeds* collected by SJFIL from the customers, from 2003 till 2012;

e) Details of present and past directors of SJFIL;

f) Sample copy of "*Invoice for sale*" ;

g) Sample copy of "*Payment Receipt*".

h) Copies of "*Rule Book*" and "*Sales Manual*";

i) Copies of executed agreement entered with the customers for both "*installment sale*" and "*sale against one time payment*";

j) Copies of the financial statements for the FY 2009-10, 2010-11, 2011-12;

k) Copies of *Sales Manual*, "*Business Manual*" and "*Rule Book* " of SJFIL in English;

l) Copy of the credit rating certificate received from NSIC -CRISIL Ratings. Particulars of the inter-corporate transactions among SJFIL and other Samruddha Jeevan Group Companies.

4. During inquiry, the SJFIL *inter alia* submitted that:-

i. SJFIL is not engaged in mobilizing funds from general public under one or more schemes. The business of SJFIL is of trading in livestock and other allied products, the consideration for which is received either in *installments* or *one time* at the option of the buyer.

ii. The advance money received from the customers is *sale proceeds* for the sale of livestock to its customers. Therefore, it is a case of simple *sale and purchase transaction*.

iii. SJFIL, as sales promotion policy, provides *accidental death benefit* only to its "*customers*" who purchase livestock from SJFIL.

5. It is pertinent to refer to the Order dated July 13, 2012 passed by the Hon'ble High Court of Madhya Pradesh (Gwalior Bench), in the matter of ***Dharmvir Singh and Anr. vs. Union of India & Ors.*** *[Writ petition No. 3332 of 2010 (PIL)]*, which has been forwarded by Department of Financial Services, Ministry of Finance vide letter dated September 21,

2012. Vide the said Order, the Hon'ble Court directed that copy of the Order shall be forwarded to the various authorities including SEBI to take appropriate action in accordance with law. On perusal of the Order, it is *inter-alia* observed that -

i. The Petitioners therein had filed a Public Interest Litigation (hereinafter referred to as "**PIL**") seeking order of enquiry against various financial companies including SJFIL. The petitioners had pleaded that thousands of persons of various districts in the State of Madhya Pradesh had been cheated by various finance companies under the garb of various schemes, which used to collect deposits from the persons with a promise to pay the money back with higher return of interest, varying between 15%-20%.

ii. Thereafter, the Hon'ble Court vide order dated July 5, 2011, directed the Central Bureau of Investigation (hereinafter referred to as "**CBI**") to conduct the preliminary investigation regarding the activities of such companies.

iii. The findings of the CBI, as stated in the Order, in respect of SJFIL are as follows:

- *It is seen that against a total of 6,48,406 customers, all over India, the company has a live-stock of only 16,876. This is far short of the number of live-stock required to be with the company even against its already existing rearing contracts (with 35,105 customers). The number of live-stock should in fact be more than the number of rearing contracts since there would be some cattle against the sales agreement too. This indicates that the company is not purchasing cattle against every deposit made by the investors.*

- *During the enquiry, 12 customers of the company (against 23 sale contracts) were examined. This included 13 complaints, out of 16 that were referred in the Hon'ble High Court's Order dated 05.07.2011. It was found during the examination of these persons that in most of the cases the individuals were aware that the company will be purchasing cattle against their deposits and will be rearing them in its own farm. But they were told by the company agents that at the end of the agreement period they shall have the option to either take away the cattle or take the amount equal to 'estimated value' as shown in the certificate issued to them by the company. A few of the examined customers were not aware of these options and had only invested for a better rate of return. Few replies received through post from the investors outside Madhya Pradesh also revealed that they had purchased investment policies against the deposits made by them with the company and not the cattle.*

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- *The scrutiny of the certificate provided by the company has revealed that the company mentions the investment as sale agreement/goat rearing contract, against the investment made by the customer but the details/number of the cattle against this agreement are not mentioned. Further, estimated realizable/ maturity value is mentioned at the end of the agreement period. This also indicates that the company is engaged in the business of receiving deposits under various plans and that all the deposits received by it are not for sale of cattle as it being claimed by the company."*

6. SEBI also received another reference dated October 13, 2012 from Economic Offences Cell, C.I.D. Panaji-Goa regarding an inquiry, conducted by them, into activities of SJFIL. It was stated in the said letter that "*....the conducted inquiry and recorded statements reveals that the above company do not have any farm in Goa and there is no rearing site. The company is promising to return the cattle after stipulated period but company has not returned any cattle in Goa till date. The interest paid on the investment of larger period is 16% per annum. The company is also having branch office at Mapusa, Goa. The company is in its initial period of investment and the maturity of most of the scheme will come after 2-3 years. The scheme of the company is suspected to be Investment Scheme or Cumulative Investment Scheme hidden with the concept of livestock buying, rearing and paying the returns.*"

7. The material available on record i.e. the complaint received by SEBI on November 16, 2011 alongwith the documents contained therein; correspondences exchanged between SEBI and SJFIL; the Order dated July 13, 2012 of the Hon'ble Madhya Pradesh High Court, the reference dated October 13, 2012 received from Economic Offences Cell etc. have been perused. In this context, the issue for determination in the instant matter is whether the mobilization of funds by SJFIL is a *'collective investment scheme'* in accordance with Section 11AA of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**").

7.1 On examination of the material available on record, it is *prima facie* observed that:

a) SJFIL (CIN:U15204PN2002PLC016950), having its registered office in 4th Floor, "Landmark", Shirole Road, Shivaji Nagar, Pune, Maharashtra - 411005, was originally incorporated on April 29, 2002 under the name M/s. Gurukrupa Dairy Pvt. Ltd. which was later changed to M/s. Samuruddha Jeevan Foods India Pvt. Ltd. The company became a

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public limited company, and its name was changed to M/s. Samuruddha Jeevan Foods India Ltd. with effect from April 13, 2006. The Directors of SJFIL are Mr. Mahesh Kisan Motewar, Mrs. Vaishali Mahesh Motewar and Mr. Ghanshyam Jashbhai Patel.

b) Main object of SJFIL (as per the Memorandum of Association) is to produce, breed, purchase, sell, transfer all type of livestock/ farm cattle, to establish, organize, promote and run goat/buffalo farm at various places in India, to sell and purchase any and all types and kinds of livestock including goats on outright, cash and installment basis. It is also observed that SJFIL also carries on business of Goat rearers, sheep farmer etc. as incidental or ancillary objects to the attainment of the main objects. SJFIL has offered various schemes under which money is collected from the public in order to carry out the *'business'* of *"Purchase and Rearing of Goats/Buffaloes"*.

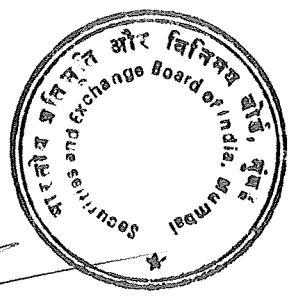
c) The payments to the said *schemes* are collected under two categories;

- Payment towards the "*Sale/purchase of Goats/Buffaloes*" as per the "*Application Form*" and "*Agreement for Sale*" executed between SJFIL and the "*Purchasers*"/investors.

- Payments towards the "*Rearing/breeding of Goats/Buffaloes*" as per the "*Goat/Buffaloes Rearing Contract*" executed between SJFIL and the "*Purchasers*"/ investors (the SJFIL is referred as "*Contractors*" and the "*Purchasers*" are referred as "*Co-owners*" in the said rearing contract).

d) It is observed that both the aforementioned agreements are simultaneously entered into between SJFIL and the "*purchasers*"/investors and the payments towards the "*Rearing/breeding of Goats/Buffaloes*" shall begin only after making the total payments due to SJFIL on the basis of the payment schedules for the "*Sale/purchase of Goats/Buffaloes*".

e) As per the copy of "*Rules for customers*", SJFIL has launched two different sales plans for the "*Sale/purchase of Goats/Buffaloes*". These are divided into two types; Type - I &II;



- *Single Installment Sales Plan* (SIP) and;
- *Installment Sales Plan* (IP).

A few of the sales plans as offered by SJFIL, are illustrated below:

Single Installment Basic Sales Plan No. 5 for 4 years

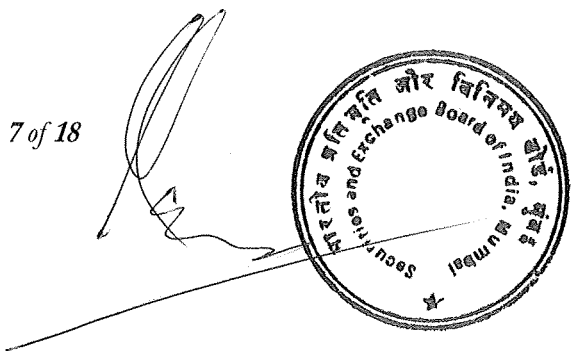
Considered Purchase Contract Value (Rs)	Projected number of developed Goat/ Cattle at the end of the Term (No. of Cattle or Goats equivalent to weight)	Accidental Death Help (₹)
10,000	4 Goats of 87 kgs	15,000
15,000	6 Goats of 113 kgs	22,500
20,000	8 Goats of 150 kgs	30,000
50,000	1 Milking & 1 Child Cattle	75,000
1,00,000	3 Milking Cattle	100,000

Sales Plan No. 02 (Installment Payment Basis Sales Plan for 60 Months/ 5 years)

Purchase Value & Contract Value Consideration	Installment				Projected number of developed Goat/ Cattle at the end of the Term	
	MLY	QLY	HLY	YLY	No. of Cattle or Goats equivalent to weight	Accidental Death Help
6,000	100	295	585	1,160	2 Goats of 44 kgs	9,000
12,000	200	590	1,170	2,320	4 Goats of 87 kgs	18,000
18,000	300	885	1,755	3,480	7 Goats of 131 kgs	27,000
24,000	400	1,180	2,340	4,640	1 Cattle	36,000
30,000	500	1,475	2,925	5,800	1 Milking Cattle	45,000
60,000	1,000	2,950	5,850	11,600	1 Cattle & 1 Milking Cattle	90,000

f) It is pertinent to note the following clauses stated in the "*Application Form*" and the "*Agreement to Sale*" for the "*Sale/purchase of Goats, Buffaloes and Calves*" ,-

- *The Purchaser is hereby purchasing Goats/Buffaloes from the seller on his free will and that he also hereby promises to pay entire/total amount for the said purchases as mentioned herein below to the seller* ***[the payment schedules].*** *Moreover, it is specifically understood that*



along with the Purchaser herein there may be several co-owners of the farming animals, i.e. Goat/Buffalo.

- *The seller hereby agrees to hand over physical custody of Buffaloes/Calves/Goats (which are subject matter of present sale transaction) to purchase only upon receipt of total purchase price as set out in Column(D) above. After payment of all the due installments, seller shall deliver the agreed Buffaloes/Calves/Goats on demand by purchaser or his/her representatives.*
- *The company has a right to establish infrastructure including office premises, farm land, sheds, stables etc. out of the amount/returns received from Purchaser and business. But the purchaser shall not have any right, title, interest or lien on the said property (i.e. infrastructure such as office premises, farm lands, sheds, stables, etc.) purchased by the company. The company shall be the exclusive owner of the said property.*
- *The Purchaser hereby unconditionally authorizes the Seller to take all the necessary decisions in respect of all the aspects of present transactions of sale that have not been specifically set out herein and which are incidental to present transaction of sale and /or arising by virtue thereof without causing financial loss to the purchaser.*
- *The Purchaser after purchasing Goats/Buffaloes from the seller on his own free will and that he also promise/agree, to the seller that after completion of all installment as per the Agreement to Sale, when the purchaser become absolute owner of the Goat/Buffaloes he will give authority to Mr./Ms.....to handover said Goat /Buffaloes to the Samruddha Jeevan Agro India Ltd. and or any other company for rearing purpose."* (Clause 10 of the "*General Terms and Conditions*" in the Sample "*Application Form*" forwarded by the complainant)

g) As per the "*Pamphlet*" provided by the Complainant, SJFIL has launched 18 different sales plans for the "*Rearing/breeding of Goats/Buffaloes*". One such plan is reproduced below for illustrative purpose:-

SALES PLAN No. 07 - Single Installment Basis - 5 1/2 Years.		
Considered Purchase & Contract Value	**Estimation of projected value of developed Livestock (goats & buffaloes) at the end of the term.**	**Accidental death help.**
5000	10000	7500

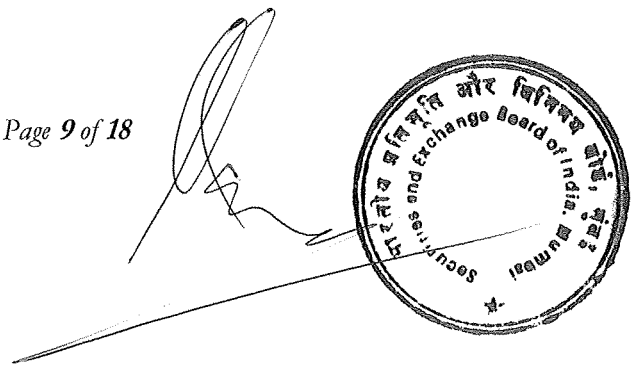


10000	20000	15000
25000	50000	37500
50000	100000	75000
100000	200000	100000

h) Following clauses are noted in the "*Goats/Buffaloes Rearing Contract*" for the "*Rearing/breeding of Goats/Buffaloes*":-

- "*WHEREAS the Contractor* [SJFIL] *is engaged in the business of rearing and breeding of farm animals i.e. Goats/Buffaloes, Sheep etc.*
- *AND WHEREAS the Co-owner* ["*Purchaser*"/ investor] *has inspected the said lands and the animal rearing and economical breeding activities of the Contractor in this highly profitable and unorganized sector.....hence Co-owner is desirous of entering into a contract for economical breeding/rearing of the farm animals belonging to the Co-owner, to be done by the Contractor.*
- *This present Goats/Buffaloes rearing contract shall come into force immediately but the Co-owner shall start paying for the Goats/Buffaloes Rearing contract charges in installments as mentioned in Para 3 above only and immediately after the clearance of payment due to the Company (Contractor) vide the Sales Agreement No. .....dated....*
- *The Co-owner hereby entrust the physical custody of the farm animals ...which are subject matter of this contract agreement, to the contractor so as to avail the relevant expertise .....The Contractor will maintain the said animals from the said funds received from Co-owner vide this present contract agreement.....*
- *The Co-owner will become eligible to receive an estimated amount of Rs. ---/- or the original number of goats/buffaloes given to the contractor, only after the end of this Goats/Buffaloes rearing contract, which being the proceeds due the possible profits likely to be made by the contractor arising due to the accretions mentioned herein above.*

  OR
- *The Co-owner shall become entitled to receive an estimated amount of Rs. -------/- every month/year till the end of this present Goats/Buffaloes Rearing Contract, and Rs. ------/- only, after the end of this Goats/Buffaloes Rearing Contract, or his/her Goats/Buffaloes*



delivered to the Contractor which being the proceeds due to the possible profits likely to be made by the Contractor arising due to the accretion mentioned herein above.

- *All the rights (i.e. title, ownership, possession etc.) of the said Goats/Buffaloes under reference herein shall unconditionally pass on to the contractor and the Co owner shall have no right over the said Goats/ Buffaloes and anything whatsoever in reference /context to the said Goat/Buffaloes. The Contractor shall be entitled to sell the said goats/buffaloes and all its accretions.*
- *The Co-owner hereby unconditionally authorizes the contractor to take all the necessary decisions and to perform any acts irrespective to all the aspects remaining untouched and which are incidental to this Goats/Buffaloes rearing contract and/or arising by virtue of this Goats/Buffaloes Rearing Contract, the Co-owner shall not have to say in all such matter neither shall Co-owner file any proceedings against the any decisions of the Contractor.*
- *..... Only the contractor shall be entitled to all the accretions i.e. ownership and physical custody of the off spring etc. of the said farm animals which are the subject matter of this present Goats/Buffaloes Rearing Contract Agreement and the Co-owner shall have no claim of any nature whatsoever on the said accretions.*

i) From the audited financial statements of SJFIL for the FY 2009-10, 2010-11 and 2011-12, it is observed that the amounts mobilized under the "*Scheme*" *as* advance from customer, amount towards sales of livestock and its utilization are recorded in the relevant Balance Sheet. The same is reproduced below:

Particulars	2011-12 (₹)	2010-11 (₹)	2009-10 (₹)
Sales of livestock	1,96,29,15,563	92,17,36,913	78,42,63,667
Advertisement & sales promotions (inclusive of commission)	53,66,17,865	39,49,03,594	22,27,04,076
% of amount spent on advertisement to sales	**27.34**	**42.84**	**28.40**
Advance from customers	3,31,29,05,497	1,63,77,73,180	36,06,59,927
Addition of Fixed assets.	10,43,73,899	52,56,60,393	20,44,76,338

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- From the above table, it is observed that SJFIL paid substantial amount on advertisements and sales promotions (inclusive of commission). It is further observed that during the FY 2009-10 and 2010-11 substantial amount was invested in fixed assets.
- Further, it is observed from the letter dated April 24, 2013 of SJFIL that there is inter-corporate transaction with other group companies of SJFIL at the tune of ₹12,84,49,530/- during the period April 1, 2011 to March 31, 2012.

7.2 The aforementioned details of the Schemes offered by SJFIL towards the "*Purchase and Rearing of Goats/Buffaloes*" offered by SJFIL, have to be considered in light of Section 11AA of the SEBI Act. The aforesaid Section 11AA, which provides for the conditions to determine whether a scheme or arrangement is a *'collective investment scheme'*, reads as follows:

*"(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (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 the exemptions from CIS sub-section (3), involving a corpus amount of one hundred Crore rupees or more shall be deemed to be a collective investment scheme.**]* *(**Inserted by Securities Laws (Amendment) Ordinance, 2013).*

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

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;

(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;

(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

(iv) the investors do not have day to day control over the management and operation of the scheme or arrangement."

7.2.1 In the context of the abovementioned Section 11AA of the SEBI Act, the *Scheme* offered by SJFIL, is examined as under:

i. ***The contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement***

SJFIL invites funds from public for its schemes towards "*Purchase and Rearing of Goats/Buffaloes*". The "*purchasers*" or investors who are willing to subscribe to the schemes are made to execute two agreements simultaneously, viz., "*Agreement for Sale*" and "*Goats/Buffaloes Rearing Contract*", each of which prescribes two different set of payment schedules as shown in the tables reproduced in preceding paragraphs. From the various clauses of the agreement and the rearing contract, it is noted that SJFIL has the right to establish infrastructure including farmland, sheds, stables etc. and shall maintain the livestock out of the amount/returns received from "*Purchasers*"/investors. Therefore as per the agreement and the contract, SJFIL would collectively rear the livestock from the pooled amount received from the "*Purchasers*"/investors. Further, as per the rearing contract "*Purchaser*"/investor is required to handover the livestock back to SJFIL for rearing purpose and the title, ownership, possession etc. of the goats/buffaloes shall unconditionally pass on to SJFIL. The "*Purchaser*"/investor shall have no rights over the said goats/buffaloes and all its accretion and at the end of the agreement term the "*Purchaser*"/investor is entitled for an estimated amount, which being the proceeds/profits likely to be made by SJFIL due to the accretion. From the aforesaid clauses, it is evident that there is no clear identification of the goats/buffaloes, which are the subject matter of the agreement and further, there is no physical delivery of the goats/buffaloes to the "*purchaser*" as in the case of an ordinary sale and purchase transaction. Therefore, it is clear that the Sale/purchase and rearing of goats/buffaloes as per the "*Agreement for Sale*" and "*Rearing Contract*" are done symbolically on paper and the payments/contributions collected from the "*Purchaser*" under the Schemes towards "*Purchase and Rearing of Goats/Buffaloes*", are being utilized by SJFIL for the purpose of

the scheme. I, therefore, find that the instant *Scheme* satisfies the first condition stipulated in Section 11AA(2) (i) of the SEBI Act.

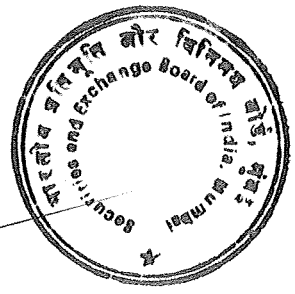
ii. ***The contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement.***

It is observed from various clauses of the "*Agreement for Sale*" and the "*Goats and Buffaloes Rearing Contract*", the livestock stated to have been entrusted to the "*purchaser*", is handed over to SJFIL after the execution of the "*Goats/Buffaloes Rearing Contract*". As has been stated in the preceding paragraphs, the payments collected from the "*purchaser(s)*", for the scheme of the "*Purchase and Rearing of Goats/Buffaloes*" are pooled and utilized for the rearing and breeding of the livestock by using "*relevant expertise*" of SJFIL. As per the terms of the aforesaid contract, the "*purchaser*" is entitled to receive an estimated amount at the end of the contract period or the original number of goats/buffaloes; or an estimated amount every month/year till the end of the said contract and an amount after the end of the contract or the goats/buffaloes as delivered to SJFIL. The estimated amounts are being paid by SJFIL from the profits received from the scheme of the "*Purchase and Rearing of Goats/Buffaloes*"(Clause 8 of the "*Goats/Buffaloes Rearing Contract*"). Hence, it is clear that such contracts are entered by the "*purchasers*", with an intention to earn profits. I, therefore, find that the instant *Scheme* also satisfies the second condition stipulated in section 11AA(2)(ii) of the SEBI Act.

iii. ***The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors, and***

iv. ***The investors do not have day-to-day control over the management and operation of the scheme or arrangement.***

As per the terms of the agreement entered into with "*purchasers*", SJFIL has the right to establish infrastructure including premises, farmlands, sheds, stables etc. and to



maintain the livestock out of the amount/returns received from the "*Purchasers*". Further, as per the terms of the "*Goats/Buffaloes Rearing Contract*", all the rights (i.e. title, ownership, possession etc.) of the said Goats/Buffaloes shall unconditionally pass on to SJFIL and the "*purchaser (s)*" shall have no right or claim of any nature over the said Goats/ Buffaloes and anything whatsoever in reference /context to the said Goat/Buffaloes. SJFIL shall be entitled to sell the said goats/buffaloes and all its accretions. As has been stated in the preceding paragraph, under the scheme the "*Purchaser*" is entitled to receive an estimated amount or the original number of goats/buffaloes at the end of the contract period; or an estimated amount every month/year till the end of the said contract and an estimated amount after the end of the contract or the goats/buffaloes as delivered to SJFIL. This clearly indicates that the "*Purchasers*"/ investors, do not, at any stage, manage the contribution, property or investment forming part of the Scheme of *"Purchase and Rearing of Goats/Buffaloes"*. Further, it is pertinent to note Clause 20 of the "*Goats and Buffaloes Rearing Contract*", which states that "*The Co-owner hereby unconditionally authorizes the contractor to take all the necessary and appropriate decisions in respect to all the aspects remaining untouched and which are incidental to this Goats/Buffaloes rearing contract and/or arising by virtue of this Goats/Buffaloes Rearing Contract. The Co-owner shall not have any say in all such matter neither shall Co-owner contest any decisions of the Contractor*". Therefore, it is clear that the "*Purchasers*"/ investors do not have day to day control over the management and operation of the said scheme of "*Purchase and Rearing of Goats/Buffaloes*" offered by SJFIL. I, therefore, find that the instant *Scheme* also satisfies the conditions stipulated in Section 11AA(2)(iii) and (iv) of the SEBI Act.

7.2.2 In view of the above, I find that the scheme of "*Purchase and Rearing of Goats/Buffaloes*" offered by SJFIL, *prima facie* fulfills the conditions of a '*collective investment scheme*' as defined in Section 11AA of the SEBI Act.

7.3. SFJIL in its letter dated December 28, 2011 contended that ".... *the business of the company is that of sale and purchase of livestock and the advance money received by the company from its customers is sale proceeds for the sale of livestock. Once the installments are paid, the Company*

delivers such livestock to its customers. Therefore, it is a case of simple sale and purchase transaction." In this context, it is observed that "*purchaser (s)*" are made to enter into two agreements with SJFIL, simultaneously, viz. the "*Sale Agreement*" and "*Goats/Buffaloes Rearing Contract*". As per the said agreements the goats/buffaloes are agreed to be sold to the "*purchaser (s)*" and the physical custody of the said goats/buffaloes are entrusted to SJFIL by way of the aforesaid contract. This indicates that there is no physical delivery of goats/buffaloes to the "*purchaser(s)*". It is noted that even after the payment of full installments as per the "*Sale Agreement*" and the "*Goats/Buffaloes Rearing Contract*" the custody of the goats/buffaloes is not given to the "*purchaser(s),* instead the "*purchaser(s)*" become eligible to receive an "*estimated amount*" at the end of every month/ year or at the end of the term as the case may be. The "*purchaser(s)*" shall, at no point of time, have any rights over the said goats/buffaloes. SJFIL shall be entitled to sell the said goats/buffaloes and all its accretion. In this context, it is pertinent to note from the aforementioned contract that "*All the rights (i.e title, ownership, possession etc.) of the goats/buffaloes shall unconditionally pass on to the contractor* [SJFIL] *and the co-owners* [purchasers] *shall have no rights over the said goats/buffaloes and anything whatsoever in reference/context to the said goats/buffaloes. The contractor shall be entitled to sell the said goats/buffaloes and all its accretions*". Further as observed earlier, the financial statements of SJFIL (F.Y 2009-10 and 2010-11) indicate that SJFIL has invested a substantial amount of money collected from the "*Purchaser*"/investors in assets like land and other infrastructures and also expended substantial amount on advertisement and business promotion. Hence, it is observed that SJFIL is diverting a substantial part of the funds mobilized from the public (under the guise of sale and purchase of livestock) for other purposes. From this, it is evident that the fund mobilizing activity of SJFIL, promising an estimated returns/profit, has been camouflaged by SJFIL by way of an ordinary "*sale and purchase of livestock*" only to mislead and attract investment from the general public, which in essence satisfies all the conditions of a '*collective investment scheme*' as defined in Section 11AA of the SEBI Act.

7.3.1 In this context, it is relevant to refer to the observations of the Hon'ble Supreme Court of India in the matter of ***P.G.F Ltd. & Ors. vs. UOI & Anr.*** (MANU/SC/0247/2013)

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

7.3.2 In the context of the aforementioned observations of the Hon'ble Supreme Court of India in the PGFL Case, and in view of the abovementioned analysis and examination, I find that the activity of fund mobilization by SJFIL with a resultant promise of returns when considered in the light of other features of such *scheme(s)* as discussed in the preceding paragraphs, *prima facie* falls within the ambit of '*collective investment schemes*' as defined in Section 11AA of the SEBI Act.

8. I note that in terms of Section 12(1B) of the SEBI Act, "no person shall sponsor or cause to be sponsored or cause to be carried on a 'collective investment scheme' unless he obtains a certificate of registration from the Board in accordance with the regulations". Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "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'. Therefore, a person can launch or sponsor or cause to sponsor a '*collective investment scheme*' only if it is registered with SEBI as a Collective Investment Management Company. Therefore, the launching of 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.

8.1 Upon a consideration of the aforementioned paragraphs, I am of the view that SJFIL is *prima facie* engaged in fund mobilizing activity from the public, by floating/sponsoring/ launching '*collective investment scheme*' as defined in Section 11AA of the SEBI Act without obtaining a certificate of registration from SEBI as required under Section 12(1B) of the SEBI Act and the CIS Regulations.

9. As discussed in the preceding paragraphs, I find that the *scheme or arrangement* offered by SJFIL in the name of sale and purchase of livestock is nothing but a smokescreen for its fund mobilizing activity. I find that such fund mobilizing activity falls within the ambit of '*collective investment scheme*' as defined under Section 11AA of the SEBI Act and the same has been carried on by SJFIL without obtaining registration certificate from SEBI. The protection of interests of investors is the first and foremost mandate for SEBI and therefore, steps have to be taken in the instant matter to ensure that only legitimate investment activities are carried on by SJFIL and no investors are defrauded. It is further noted that Mr. Mahesh Kisan Motewar, Mrs. Vaishali Mahesh Motewar and Mr. Ghanshyam Jashbhai Patel are the directors who are in charge of and responsible for the day to day affairs of SJFIL. Further, in order to ensure that SJFIL and its Directors do not collect further funds under the '*Scheme(s)*' and to safeguard the assets/property, acquired by SJFIL and its promoters/directors from the funds of the investing public until full facts and materials are brought on record, and final decision is taken in the matter, it becomes necessary for SEBI to take preventive action by way of this interim measure. In the light of the same, I find no other alternative but to take recourse through an interim measure against SJFIL and its Directors for preventing them from further carrying on with the fund mobilizing activity by launching "*collective investment scheme*" without registration from SEBI in accordance with law.

10. In view of the above, I, in exercise of the powers conferred upon me under Section 11B and 11(4) of the SEBI Act, 1992 and Regulation 65 of CIS Regulations, hereby direct SJFIL and its Directors, viz. Mr. Mahesh Kisan Motewar, Mrs. Vaishali Mahesh Motewar and Mr. Ghanshyam Jashbhai Patel -

a. not to collect any more money from investors under the existing schemes;

b. not to launch any new schemes;

c. not to dispose of any of the properties or alienate any of the assets of the schemes;

d. not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of SJFIL.

e. to immediately submit the full inventory of the assets owned by SJFIL out of the amounts collected from the "*Purchasers*"/investors under its various schemes.

11. The above directions shall take effect immediately and shall be in force until further orders.

12. This Order shall also be treated as a show cause notice. SJFIL and its abovementioned Directors may show cause as to why appropriate directions under the SEBI Act and CIS Regulations including directions in terms of Regulations 65 and 73 of the CIS Regulations should not be issued against them.

13. SJFIL and its aforementioned Directors shall, within 15 days from the date of receipt of this Order, file their reply, if any, to the prima facie observations made herein. SJFIL and its aforementioned Directors may also indicate, in their reply, whether they wish to avail an opportunity of personal hearing in the matter.

Place: Mumbai
Date: October 31, 2013

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