

**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 and Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003, in the matter of M/s JSR Dairies Limited and its Directors, viz. Mr. Rajesh Khera (DIN 02170555), Mr. Rajesh Niranjana (DIN 02633927), Mr. Lalit Kumar Arora (DIN 02625265) and Mr. Praveen Kumar (DIN 02969923).

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a complaint dated December 22, 2010, in which it was alleged that M/s JSR Dairies Limited (hereinafter referred to as “**JSR Dairies**”) was accepting public deposits without requisite statutory approval.
2. As a matter of preliminary enquiry into whether or not JSR Dairies was carrying on activities of '*collective investment scheme*' in terms of Section 11AA of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”), SEBI, vide letter dated December 29, 2010, sought the following information from JSR Dairies in relation to its business activity, viz. –
 - a. Brochure pertaining to the schemes or projects;
 - b. Application Forms required to be submitted by investors or applicants to participate in the schemes or projects;
 - c. Sample Agreements, if any, required to be entered into by investors or applicants with the company in respect of the schemes or projects;
 - d. Balance Sheet alongwith Profit and Loss Account of the company since incorporation, as filed with the Registrar of Companies (hereinafter referred to as “**ROC**”);
 - e. Annual Returns of the company since incorporation, as filed with the ROC;
 - f. Details of past and present directors of the company;
 - g. Details of funds mobilized under various schemes;

3. Vide letter dated January 13, 2011, JSR Dairies sought an extension of one month from SEBI for submission of the abovementioned information. SEBI vide letter dated January 20, 2011, advised JSR Dairies to submit the aforementioned information on or before January 28, 2011.
4. Subsequently, vide letter dated January 28, 2011, JSR Dairies submitted the following information to SEBI, viz. -
 - a. Balance Sheet and Profit and Loss Account of the company since incorporation, as filed with the ROC;
 - b. Annual Return of the company since incorporation, as filed with the ROC;
 - c. Details of past and present directors of the company;
 - d. Name of schemes.
5. Vide letter dated March 11, 2011, SEBI also sought the following information from the ROC, Delhi and Haryana, viz. –
 - a. Latest address of the registered office of the company;
 - b. Any other address for correspondence of the company, available on record;
 - c. Name of all the past and present directors of the company since incorporation alongwith their particulars such as addresses, father's name, etc.;
 - d. Period of directorship of each director;
 - e. Copies of Memorandum and Articles of Association, Annual Returns, Form No. (32), Balance Sheet and any other document filed by the company with the ROC.
6. As JSR Dairies failed to submit the complete information sought vide SEBI letter dated December 29, 2010, SEBI (vide a separate letter dated March 11, 2011) once again advised JSR Dairies to submit the same in addition to the following information, viz. –
 - a. Copy of Schedule and "*General terms & conditions*" as referred to in the certificate issued to investors in the schemes made available to the public;
 - b. Rule Book issued to investors containing terms and conditions of the schemes.
7. Vide letter dated March 21, 2011, JSR Dairies sought an extension of twenty days from SEBI, for submission of the abovementioned information. However, as no information

was submitted even after a period of twenty days, SEBI vide letter dated April 13, 2011, advised JSR Dairies to submit the aforementioned information on or before May 2, 2011.

8. JSR Dairies replied to the aforementioned SEBI letter dated March 11, 2011, vide letter dated May 2, 2011, providing the desired information to SEBI and *inter alia* submitting –

"The company has limited source of funds. To receive the target of sales, the company receives advances from the parties against supply of goods (Milk and milk products) and issues a proper receipt for the same to the parties for their satisfaction and the company provides goods of the value received, to the parties. If the company is not able to provide the goods as per agreement, the amount received as advance from the parties is refunded back alongwith interest as per terms and conditions of the agreement."

- 9.1 The material available on record i.e. correspondences exchanged between SEBI and JSR Dairies alongwith the documents contained therein, correspondences exchanged between SEBI and ROC, Delhi and Haryana alongwith the documents contained therein have been perused. In this context, the issue for determination is whether the mobilization of funds by JSR Dairies through the schemes made available by it, to the public, is a '*collective investment scheme*' in accordance with Section 11AA of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**").

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

- i. JSR Dairies was incorporated on July 16, 2009 with the ROC, National Capital Territory, Delhi and Haryana, New Delhi with CIN No. as U74900DL2009PLC192267, having its Office at 1209, GDIPL Towers, B08, Netaji Subhash Place, Pitampura, Delhi – 110034. The Directors in JSR Dairies are Mr. Rajesh Khera, Mr. Rajesh Niranjana and Mr. Lalit Arora. Mr. Parveen Kumar, who was a Director in JSR Dairies, has since resigned.
- ii. As per the Memorandum of Association, the main objects to be pursued by JSR Dairies on its incorporation were *inter alia* to carry on the business of manufacturer, producer, processor, buyer, seller, distributor, commission agent and dealer in milk, cream, butter, ghee, condensed milk, etc.

- iii. As per the '*Proposal Form*', JSR Dairies has invited investment from the public towards the purchase and allotment of calf/ghee under various subscription plans in the form of installments or lump-sum payment (hereinafter referred to as "**JSR Scheme**"). One of each of the aforementioned monthly installments and lump-sum '*Payment Plans*' (as contained in the Rule Book) is illustrated below:

Table I						
IDS Plan 1 (12 months) (1 year)						
Unit	Forecasted value of Ghee	Instalments ()				Value of Cow/Ghee on maturity
		Monthly	Quarterly	Half Yearly	Yearly	
1	4.80 Litre	100	295	580	1150	5.00 Litre
2	9.60 Litre	200	590	1160	2300	10.00 Litre
3	14.40 Litre	300	885	1740	3450	15.00 Litre
4	19.20 Litre	400	1180	2320	4600	20.00 Litre
5	24.00 Litre	500	1475	2900	5750	25.00 Litre
10	48.00 Litre	1000	2950	5800	11500	50.00 Litre

#(1 unit = 4.80 Litre * price of 1 Litre of ghee 250)

Table II	
One-time Payment Dairy Plans	
Price of Calf/Cows available in JSR Dairy Farms	
Forecasted price of –	Maturity Price of –
i. Sahiwal Cow @ 5000	i. Sahiwal Cow @ 6750 [LDS – II (3 years)]
ii. Jersey Cow @ 5000	ii. Jersey Cow @ 10000 [LDS – III (6 years)]
iii. Holstein Friesian Cow @ 5000	iii. Holstein Friesian Cow @ 15000 [LDS – IV (9 years)]

Table III		
LDS Plan II (36 months) (3 years)		
Unit	Forecasted value of cow/ ghee	Value on maturity of cow/ ghee
1	20.00 Litre	27.00 Litre
2	40.00 Litre	54.00 Litre
3	60.00 Litre	81.00 Litre
4	80.00 Litre	108.00 Litre
5	100.00 Litre	135.00 Litre
10	200.00 Litre	270.00 Litre

#(1 unit = 20 Litre * price of 1 Litre of ghee 250)

- iv. The aforementioned investment may be made by an investor or customer by entering into an agreement in accordance with *inter alia* the following, viz. –

"

AGREEMENT

- Whereas JSR Dairies is engaged in the business of running dairy (farms) with scientifically modern style and managing/dealing in livestock, breeding of high quality cattle fodder production,

animal farm management including animal production, processing and trading of milk products & dairy farming. ...

2. *Whereas JSR Dairies is also engaged in sales of calves to prospective customers and undertake the maintenance & upbringing of the same and sale of ghee alongwith multiplication of ghee.*
3. *Whereas JSE is in the process of making arrangements/has made arrangements for purchasing/procuring the calves and ghee forming part of various plans launched by JSR Dairies.*
4. *And whereas the Customer, by means of an Application bearing number _____ which is the basis of this Agreement and which contains the salient Terms & Conditions of the various plans, has/have expressed his/her/their desire of buying the said calf/ghee.*
5. *And whereas the Customer has/have requested JSR Dairies to arrange for the sale of the said calf/ghee (hereinafter referred to as the **Said Product**) in his/her/their favour and to maintain/up bring/multiply the same by rendering various services in accordance with the said plan.*
6. *And whereas JSR Dairies has agreed to arrange for the sale of the Said Product in favour of the customer and to maintain/up bring/multiply the same by rendering various services as aforesaid.*

...

NOW THEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. (i) Sale & Allotment of Calf

The customer shall be entitled for allotment of the Said Product within such period after receipt by JSR Dairies, of full consideration in case of Lump Sum Payment Plans, as have been set out in the Terms & Conditions contained in the Proposal Form. ... JSR Dairies will hand over the possession of brought up calf or cattle to the customer at the end of the plan.

(ii) Sale of Ghee

The Customer shall pay the agreed value of ghee in installments as has been set out in the plan. JSR Dairies will procure/manufacture/multiply the ghee by sale/purchase or by any other method as it deems fit for the benefit of both the parties. JSR Dairies will hand over the possession of increased quantity of ghee to the customer at the end of the plan.

2. Preliminary Work

(i) ...

(ii) JSR Dairies or its nominees shall set up dairy farms for proper up bringing & maintenance of calves subject to the Terms and Conditions laid down elsewhere in this Agreement.

3. Consideration

The Customer shall pay, in aggregate, sum of Rs. _____ as of the agreed aggregate amount as per payment schedule of Plan opted for by him/her towards Consideration for the acquisition,

sale, maintenance ... for the aforesaid Product by JSR Dairies and for such other allied expenses as may be allocable or appropriate to the Said Product.

4. Maintenance, Up-bringing & Multiplication

JSR Dairies shall provide such up-bringing/ maintenance/ multiplication system, as it may deem appropriate, which shall be part of the overall up-bringing ... of plans, depending upon the breed and quality of the Said Product. ... The Customer shall not ordinarily interfere with the method and mode of maintenance ... of the Said Product...

5. Possession

The Customer shall be owner of the Said Product at all times. JSR Dairies shall be having the possession of the Product only for the limited purposes of maintenance/ ... of the Said Product as per the Terms of the agreement between the customer and JSR Dairies in this regard. ...

6. ...

7. Sale of Produce

Unless specifically written otherwise, JSR Dairies shall be the sole owner of all the produce, if any, out of the Said Product. For the purpose of selling/ utilization of the produce as previously mentioned, JSR Dairies shall have the sole ownership & discretion to decide as how to sell/ utilize the said produce.

8. Net Sale Proceeds

It is agreed that during the course of up-bringing... of Said Product, the Customer shall not make any claim for any produce during the period of first seven years. Thus, only Customers who have opted for the Product beyond the period of seven years would have the right to be credited with sale proceeds of the produce pertaining to the period beyond seven years ...

...

General Terms & Conditions

...

13. During the currency of this agreement, the Customer will be the owner of the calf which would be under the possession of JSR Dairies for its maintenance and upbringing purpose ...

14. Cost of the calf includes its maintenance and miscellaneous charge.

15. On the expiry of agreement, the customer has the right to either take the possession or sell brought up calf. ..."

- v. The sample Certificate issued in lieu of investments in the JSR Scheme, which was provided by JSR, states the following:

"Certified that the person described hereunder is a registered & bonafide customer of the Company in one of its Plans. The said customer has entered into an agreement with the company for purchase of Calf/Cattle/Ghee as described hereunder subject to General Terms & Conditions ... and detailed out in the Agreement ... It is hereby decided that Schedule, Terms & Conditions & Rule Book ... shall be deemed to be a part of this Certificate."

- vi. From the audited financial statements of JSR Dairies for the FY 2009–10 and 2010–11, it is observed that the amounts mobilized under the *Scheme* have been recorded in the relevant Balance Sheet under the head '*Current Liabilities*'. The same is reproduced below:

Particulars	As on March 31, 2011 ()	As on March 31, 2010 ()
<i>Advances from Customers/ Advance Received for Business:</i>	99,76,082	10,78,440

- vii. From the audited financial statements of JSR Dairies for the FY 2009–10 and 2010–11, it is observed that the fixed assets were as follows:

Particulars	As on March 31, 2011 ()	As on March 31, 2010 ()
<i>Fixed Assets</i>	11,03,039	14,463

- 10.1.1 The aforementioned details of the *JSR Scheme* offered by JSR Dairies 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.]
- (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 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."*

10.1.2 In the context of the abovementioned Section 11AA of the SEBI Act, the *JSR Scheme* offered by JSR Dairies, 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.***

JSR Dairies has launched the *JSR Scheme*, inviting investment from the public towards the purchase and allotment of calf/ghee under various subscription plans. The investment made by a 'Customer' or investor is in the form of monetary payment in installments or lump-sum in accordance with *Payment Plans* contained in the Rule Book. As per the *Agreement* contained in the *Proposal Form* (executed between JSR Dairies and the 'Customer', in lieu of investment in the *JSR Scheme*), it has been stated that the company is engaged in sales of calves to prospective customers and undertake the maintenance and upbringing of the same and sale of ghee alongwith multiplication of ghee. Further, arrangements for purchasing calves and ghee forming part of various *Payment Plans* launched by the company, were stated to have been made. Accordingly, upon investment in the *JSR Scheme*, the 'Customer' shall be entitled for allotment of calf within such period after receipt of full consideration in case of lump-sum payment or increased quantity of ghee in case of installment payments. Further, as per the *Agreement*, "*The Customer shall pay, in aggregate, sum of Rs. _____ as of the agreed aggregate amount as per payment schedule of Plan opted for by him/her towards Consideration for the acquisition, sale, maintenance ... for the Product (i.e. calf or ghee) by JSR Dairies.*" In view of the aforesaid, it would appear that the contribution or investment received from the 'Customer' is pooled and utilized for the purpose of the *JSR Scheme*. I, therefore, find that the instant aforementioned schemes or projects satisfy 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.***

As has been stated in the preceding paragraph, the contribution or investment made by a 'Customer' under the JSR Scheme, is utilized for the purpose of such scheme i.e. purchase, maintenance and upbringing of calves; sale alongwith multiplication of ghee. A 'Customer' investing in the JSR Scheme is assured of a return in the form of increase value of cow or ghee. For example, under the *One Time Payment Dairy Plan* reproduced at paragraph 9.2.(v) above, for an investment of 5000 over a period of 36 months (reference may also be made to *LDS Plan II*, as reproduced in that same paragraph), the Customer is assured of a return of 1750 i.e. $[expected\ maturity\ price\ of\ Sahiwal\ Cow\ (6750) - forecasted\ price\ (5000) = assured\ return\ (1750)]$. Similarly, for an investment in accordance with *IDS Plan I* i.e. for a duration of 12 months, upon making an investment of 1 unit, a 'Customer' shall be entitled to an increased value of cow or ghee. On expiry of the *Agreement*, the 'Customer' has the right to either take possession or sell the brought up calf. In view of the aforesaid, it is clear that the contributions or investments are made by the 'Customer' under the JSR Scheme with a view to receive profits or returns. 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.***
- iv. ***The investors do not have day to day control over the management and operation of the scheme or arrangement.***

The *Agreement* alongwith the *General Terms & Conditions* as contained in the *Proposal Form*, indicate that the 'Customer' or investor does not manage the JSR Scheme. Further, the 'Customer' does not have any day-to-day control in respect of the *Product* forming part of such Scheme. In this context, reference may be made to the following clauses of the aforesaid *Agreement* alongwith the *General Terms & Conditions*, viz. –

- **Maintenance, Up-bringing & Multiplication:** JSR Dairies shall provide such up-bringing/ maintenance/ multiplication system, as it may deem appropriate, which shall be part of the overall up-bringing ... of plans, depending upon the breed and quality of the Said Product. ... The Customer shall not ordinarily interfere with the method and mode of maintenance ... of the Said Product...
- **Sale of Produce:** Unless specifically written otherwise, JSR Dairies shall be the sole owner of all the produce, if any, out of the Said Product. For the purpose of selling/ utilization of the produce as previously mentioned, JSR Dairies shall have the sole ownership & discretion to decide as how to sell/ utilize the said produce.
- During the currency of this agreement, the Customer will be the owner of the calf which would be under the possession of JSR Dairies for its maintenance and upbringing purpose ...

In these facts and circumstance, I find that the JSR Scheme offered by JSR Dairies satisfies the conditions stipulated in Section 11AA(2)(iii)–(iv).

- 10.1.3 At this stage, it is relevant to refer to the observations of the Hon'ble Supreme Court of India in the matter of **P.G.F Limited & Ors. vs. UOI & Anr. (MANU/SC/0247/2013)**, wherein it had observed that:

"... sub-section (2) of Section 11AA, 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. ..."

- 10.2 The features of the JSR Scheme offered by JSR Dairies, as discussed in the preceding paragraph 10.1.1–10.1.3, have all the ingredients of a 'collective investment scheme' as defined in Section 11AA of the SEBI Act. Such features when considered in light of the abovementioned observations of the Hon'ble Supreme Court of India, indicate that the activity of fund mobilization by JSR Dairies under such Scheme with a resultant promise of assured returns, *prima facie* falls within the ambit of 'collective investment scheme' as defined under Section 11AA of the SEBI Act.

- 10.3 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 ("**CIS Regulations**") also prohibits any '*collective investment scheme*' activity without registration from SEBI. In my view, therefore, the launching/floating/sponsoring or 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. In this regard, I note that JSR Dairies has not obtained any certificate of registration under the CIS Regulations for its fund mobilizing activity from the public, under the instant *Scheme* offered by it.
- 10.4 I also find that the fund mobilizing activity of JSR Dairies through the *JSR Scheme prima facie* amounts to a fraudulent practice in terms of Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations**").
- 10.5 Upon consideration of what has been detailed in the aforementioned paragraphs, I am of the view that JSR Dairies is *prima facie* engaged in fund mobilising activity from the public, by floating or sponsoring or 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. I find that such fund mobilising 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 JSR Dairies without due registration from SEBI.
- 10.6 Protecting the interests of investors is the first and foremost mandate for SEBI and therefore, steps have to be taken in the instant matter to ensure only legitimate investment activities are carried on by JSR Dairies and no investors are defrauded. From the material available on record, it is observed that JSR Dairies had four Directors, out of which one is no longer a Director in that company viz. Mr. Praveen Kumar. In this regard, it *prima facie* is a reasonable assumption that the aforementioned Director was also involved in the fund mobilising activity carried out by JSR Dairies during the period when he was a Director in that company. In light of the aforesaid, I find it reasonable to

take recourse through an interim action against JSR Dairies and its Directors, for preventing them from further carrying on with fund mobilising activity in the nature of '*collective investment scheme*', without obtaining registration from SEBI.

11. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11B and 11(4) of the SEBI Act read with the CIS Regulations and PFUTP Regulations, hereby direct JSR Dairies and its Directors, viz. Mr. Rajesh Khera, Mr. Rajesh Niranjana, Mr. Lalit Kumar Arora and Mr. Praveen Kumar –
 - a. not to collect any more money from investors including under the existing schemes;
 - b. not to launch any new schemes;
 - c. to give a full inventory of the assets owned by the company;
 - d. not to dispose of any of the properties or alienate any of the assets of the schemes;
 - e. not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of the company.
12. The above directions shall take effect immediately and shall be in force until further orders.
13. The *prima facie* observations contained in this Order are made on the basis of the material available on record. In this context, JSR Dairies and its abovementioned Directors may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
14. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against JSR Dairies and its abovementioned Directors in accordance with law.

Place: Mumbai
Date: June 5, 2014

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