

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

ORDER

Under Sections 11(1), 11B and 11(4) 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 Shubham Karoti Foods Private Limited (CIN:U15411PN2011PTC140932) and its Directors, Mr. Somit Kishanchandra Saxena (DIN: 03619568) and Mr. Sudhir Nathuram Pawar (DIN :03644382).

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a reference dated November 20, 2013 from the Reserve Bank of India, Ahmedabad in respect of Shubham Karoti Foods Private Limited (hereinafter referred to as "**SKFPL**") a Pune based company stating that the company engaged in the business of tea, groundnut, soya oil, mineral water etc. in Maharashtra is collecting funds from common people in Silvassa.
2. As a matter of preliminary inquiry, SEBI vide letters dated 28.11.2013 and 07.03.2014, sought the following information from SKFPL in relation to its business activity, viz. –
 - i. Memorandum and Articles of Association of the Company as filed with the Registrar of Companies (**RoC**);
 - ii. Details of the past and present Directors of the company.
 - iii. Brochures/offer document pertaining to the schemes/arrangements;
 - iv. Copies of application forms that are required to be submitted by investors / applicant to participate in the schemes;
 - v. Sample copies of the registration letter and allotment letter issued to the investors who subscribed to the schemes;
 - vi. Sample copies of the agreement letter / contract required to be entered into by investor /applicant under the schemes;
 - vii. Details of the scheme-wise, year- wise, amount mobilized till date along with the number of investors under the schemes;

- viii. Details of the scheme wise, year wise amount paid/redeemed till date along with the number of investors under the schemes;
 - ix. Certified copy of audited financial statement for the past three financial years;
 - x. List of all investors along with the address and contact numbers;
 - xi. Terms and conditions governing cancellation of agreement or default by investor in the payments. List of investors who have cancelled the agreement before maturity and list of investors who have defaulted;
 - xii. Details regarding procurement or production of tea by the company till date alongwith documentary proof;
 - xiii. Whether, actual delivery of tea units happened during the course of the scheme, and details of delivery of tea units along with list of investors to whom tea units were delivered till date;
 - xiv. Bank statements of company since incorporation.
3. During the period between December 2013 to February 2014, SKFPL replied to SEBI vide its letters dated 11.12.2013, 30.12.2013 and 18.01.2014 wherein it *inter alia* submitted the following information, viz.
- i. Certificate of Incorporation;
 - ii. License under Mumbai Shops Act;
 - iii. Certificate of Sales Tax Registration;
 - iv. Certificate of VAT Registration;
 - v. PAN Card of Company;
 - vi. Balance Sheet and Profit & Loss Account for the year ending 31.03.12 and 31.03.13;
 - vii. Brochure of the Company having details regarding various schemes;
 - viii. Memorandum and Articles of Association;
 - ix. Sample copy of Certificate given to investors having general terms & conditions;
 - x. Details regarding its Directors;
 - xi. Direct Tax Challan Report for the Assesment year 2013-14;
 - xii. Sample copy of Business Application form;
 - xiii. Sample copy of Agreement for sale ;
4. I have perused the material available on record i.e. correspondences exchanged between SEBI and SKFPL alongwith the documents contained therein. In this context, the issue

for determination in the instant matter is whether the mobilization of funds by SKFPL under its "*Joint Venture*", is a '*collective investment scheme*' in accordance with section 11AA of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**").

5. On an examination of the materials available on record, it is noted that –
- i. SKFPL was incorporated on September 13, 2011 under the Companies Act, 1956 (CIN:U15411PN2011PTC140932) having its registered office in 154/4, Office No. 2, 1st Floor, Highway Tower, Bombay Pune Road, Kalbhor Nagar, Pune - 411035, Maharashtra –.
 - ii. As per the Memorandum of Association of SPPL, main object of SKFPL is to carry on the business of manufacturing, processing, buying, selling, trading, importing, exporting, packing all types of food and food products like organic foods, processed foods, packed foods, frozen foods, canned and jarred foods, poultry products , groceries including ready to eat preparations, condiments, other ethnic preparations, agricultural produce, soya bean, wheat , rice and rice products, maize, tea and tea products, mineral water, etc.
 - iii. SKFPL has launched various schemes or arrangements in the name and style "*Joint Venture*", whereby it has invited participation from the public. Brochure of SKFPL states that a Joint Venture Agreement deed will be made between Company & Joint Venturer in Single & Monthly Foods Plans and the participation by way of Joint Venture.
 - iv. In pursuance of the "*Joint Venture*", SKFPL enters into an "*Agreement for Joint Venture*" with "*Associates*" or investors who are invited to contribute in the form of monetary payment or contribution (participation) to various plans launched therein. Such contribution is dependent on the plan that an "*associate*" or investor may opt for. In this context, an illustration of Single payment scheme and Monthly payment scheme offered under the "*Joint Venture*" is provided below –

Single Foods Scheme for 1 year (SFS-1)

	Consideration Qty. of tea to be purchased	Bonus 3%	Maturity	Total Maturity in Kg.	Accidental Death Insurance (in ₹)
50	50 Kg	1.50 Kg	57.5 Kg	59 Kg	10000
100	100 Kg	3.00 Kg	115 Kg	118 Kg	20000
250	250 Kg	7.50 Kg	287.5 Kg	295 Kg	50000
500	500 Kg	15 Kg	575 Kg	590 Kg	100000

One Unit = One Kg, rates of 1Kg Tea = Rs 200/-

Monthly Foods Scheme for 1 year (MFS-1)

Unit	Consideration Qty. of tea to be purchased	Monthly instalment	Qty. Instalment	Half Yr Instalment	Yearly Instalment	Bonus 3%	Maturity	Total Maturity in Kg.	Accidental Death Insurance
30	30 Kg	500	1500	2980	5950	1.50 Kg	33.9 Kg	35.40 Kg	Nil
60	60 Kg	1000	3000	5960	11900	3.00 Kg	67.8Kg	70.80 Kg	Nil
90	90 Kg	1500	6000	8940	17850	4.50 Kg	101.7 Kg	106.20 Kg	Nil
120	120 Kg	2000	12000	11920	23800	6 Kg	135.6 Kg	141.60 Kg	Nil
240	240 Kg	4000	16000	23840	47600	12 Kg	271.2 Kg	283.20 Kg	Nil

One Unit = One Kg, rates of 1Kg Tea = Rs 200/-

- v. When an "associate" or investor makes a contribution (participation) as per the instalment payment plan or one-time payment plan offered under the "Joint Venture", wherever applicable, an investor is issued a Certificate of Investment (hereinafter referred to as "**Certificate**") by SKFPL. As against such contribution, the "associate" is promised a return (expected refund of participation) on maturity subject to the fulfillment of terms and conditions of the Certificate. At the end of the maturity period i.e. completion of relevant payment plan, the "associate" or investor will be entitled to withdraw or renew the contribution indicated in the Certificate.

- vi. In addition to the return offered under the relevant plan i.e. expected refund of participation, an "associate" is also offered accidental death compensation under the "Joint Venture".
6. The abovementioned details of the "Joint Venture" offered by SKFPL have to be considered in light of Section 11AA of the SEBI Act, which reads as follows:

"(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) shall be a collective investment scheme.

(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. In this context, I note that –

- (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;*

SKFPL operates investment plans through the "Joint Venture", which it offers to the public. The contribution made by "associates" or investors in response to the plans offered under the "Joint Venture" i.e. participation in the form of instalments (monthly, quarterly, half yearly and yearly) or in single payment scheme for units of tea and each unit is equivalent to one kilo gram of tea. One Kg of tea is stated to be worth ₹200/-. In addition to this, there is also provision for payment of bonus at 3%. Hence, a person who buys 30 units by paying ₹6000/- which is representative of 35.40 kg of tea is eligible to get ₹7080/-. From the above it is seen that contributions received from the investors are pooled for the purpose of the schemes. I, therefore, find that in the instant scheme/plan satisfies the first condition stipulated in Section 11 AA 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;*

The contribution towards plans offered under the “Joint Venture” is made by an “associate” or investor with a view to receive profit or income in the form of expected refund, on maturity. For example, an “associate” or investor opting for subscription to the Single payment scheme is required to make a total contribution of ₹10,000/- at the beginning of the year and the expected return for such investment is ₹11,800/- at the end of the year. “Accidental death Insurance” is also offered under the “Joint Venture”. In addition, a certificate is issued by SKFPL to the investor depicting the extent of contribution made by such “associate” or investor in respect of each plan and term of the plan. The certificate provides details such as amount of consideration paid by the investor and also provides for expected sum payable on expiry of the term. The said factors clearly indicate that the contributions are made by the “associates/investors” with an expectation to earn income/profit/return from such “scheme”/plan. In view of this, I find that the instant “scheme”/plan 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.”*

As per the brochure of SKFPL, it carries out the activities of the scheme on behalf of individual or organization on a contractual/ Joint Venture basis . Hence, contributions made by “associates” or investors under the various plans offered therein, are managed on behalf of SKFPL.

As per the “Agreement to Sell”, SKFPL will procure/manufacture the product by sale/purchase/manufacture or by any other method as it deems fit. Hence, SKFPL exercises complete managerial and administrative control over the plans offered under the “Joint Venture”. SEBI in its letters dated 28.11.2013 and 07.03.2014 sought specific details regarding procurement or production of tea by SKFPL and also details

regarding delivery of tea units along with list of investors to whom tea units were delivered. However, SKFPL did not submit such details. In the absence of such important details, the investors appear to have no role except making payment of the consideration for the plans offered by SKFPL.

The above clause of agreement clearly states that the associates/investors do not appear to have any day to day control or say over the management and operation of the "*scheme*"/plan. I, therefore, find that the instant "*scheme*"/plan also satisfies the conditions stipulated in Section 11AA(2)(iii) and (iv) of the SEBI Act.

8. In view of the above, I find that the "*Joint Venture*" offered by SKFPL has all the ingredients of a '*collective investment scheme*' as defined in section 11AA of the SEBI Act.

9.1 I note that the categorization of any scheme or arrangement as "*Joint Venture*" is not determinative of its nature and character; the same has to be determined with reference to the terms and conditions of such scheme or arrangement, which indicate the intention of parties therein. In this regard, I note that the Hon'ble Supreme Court of India had the occasion to consider the nature of '**joint-venture**' in *New Horizons Ltd vs. Union of India* [1995 (1) SCC 478], wherein the Hon'ble Court observed :

"The expression 'joint venture' ... connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject matter, a right to direct and govern the policy in connection therewith, and duty, which may be altered by agreement, to share both in profit and losses. [Black's Law Dictionary; Sixth Edition, p. 839]."

9.2 Upon analysis of the instant "*Joint Venture*" offered by SKFPL (in terms of the "*Agreement for Joint Venture*") in the context of the abovementioned observations of the Hon'ble Supreme Court of India, I note the following –

- i. The “*Joint Venture*” in question is not a partnership between SKFPL and the “*associate*” for furtherance of a commercial enterprise, etc. but rather an arrangement which provides for a monetary return on the investment made by such “*associate*”. Further, such “*Joint Venture*” stands cancelled after payment of monetary return on the investment made by the “*associate*”/investor.
 - ii. Under the instant “*Joint Venture*”, there is no shared control. The “*associate*”/investor is excluded from the financial aspect of the “*Joint Venture*”. Further, such “*associate*”/investor will have no right to interfere in the “*Joint Venture*” since SKFPL exercises complete managerial and administrative control over the plans offered therein.
- 9.3 In view of the above, I find that the scheme or arrangement offered by SKFPL having nomenclature “*Joint Venture*” is not a ‘**joint-venture**’ in accordance with law but rather such term has been used by SKFPL to camouflage its fund mobilising activity, which is in the nature of a ‘*collective investment scheme*’, in order to mislead and attract investment from the general public.
- 10.1 I note that the main characteristics of a ‘*collective investment scheme*’ are found in the instant scheme offered by SKFPL. In this context, we may refer to the observations of the Hon'ble Supreme Court of India in *P.G.F Limited & Ors. vs. UOI & Anr.* (MANU/SC/0247/2013), wherein it had observed:

“...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.”

- 10.2 In view of the abovementioned observations, I find that the SEBI Act is applicable to '*collective investment scheme*' that engage in inviting investment or contribution from investors for investing in any asset which will *inter alia* result in a return on such investment. In this regard, the activity of fund mobilization by SKFPL under the instant scheme with a resultant promise of returns when considered in light of the other features of such scheme, as discussed in the preceding paragraphs, *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 CIS Regulations provides that no person other than a Collective Investment Management Company which has obtained a certificate under the CIS 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. 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 SKFPL 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 Upon consideration of the aforementioned paragraphs, I am of the view that SKFPL is *prima facie* engaged in mobilizing funds 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.
11. As discussed at paras 9.1 – 9.3 above, I find that the instant scheme offered by SKFPL under the nomenclature "*Joint Venture*" is nothing but a camouflage 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 SKFPL without due registration from SEBI. In this regard, SEBI vide its letters dated 28.11.2013 and 07.03.2014, *inter alia* sought details of the scheme wise, year wise amount paid /redeemed till date along with the number of investors under the schemes. However SKFPL failed to provide such vital information. Considering the fact that no prior registration was obtained by SKFPL, in respect of the aforesaid activities in the nature of collective investment scheme, I am of the view that SKFPL is illegally mobilizing funds from the public, which *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.

12. 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 SKFPL and no investors are defrauded. In light of the same, I find it reasonable to take recourse through an interim action against SKFPL for preventing it from further carrying on with its fund mobilizing activity related to '*collective investment scheme*', without registration from SEBI.
13. 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 Regulation of CIS Regulations, hereby direct SKFPL and its Directors Mr. Somit Kishanchandra Saxena(DIN - 03619568 / PAN - BCQPS5051J and Mr. Sudhir Nathuram Pawar,(DIN - 03644382 / PAN - AIIPP3823E)
 - a. not to collect any more money from investors including 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, kept in bank account(s) and/or in the custody of SKPL or group companies or promoters or LLPs or Proprietary concerns or any person directly or indirectly controlled through shareholding or management by SKPL ;
 - e. furnish all information regarding the schemes with details of the investors and also details of insurance policies and compensation given under the policies as part of the schemes.

13. The above directions shall take effect immediately and shall be in force until further orders.
14. The *prima facie* observations contained in this Order are made on the basis of the materials available on record. In this context, SKPL 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.

Place: Mumbai
Date: August 08, 2014

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