

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with regulations 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 in the matter of G. N. Dairies Limited

In respect of:

(1) G. N. Dairies Limited (AACCG0016B) and its directors, namely, (2) Mr. Satnam Singh Randhawa (ADZPR9322E), (3) Mr. Sunil Dutt (PJCPD2902R), (4) Ms. Sukhjit Kaur (AMWPK0757E), (5) Mr. Hardeep Singh Wahla (AARPW7993D), (6) Mr. Soly Thomas (ADJPT5050F) and (7) Mr. Ranjodh Singh (BJEPS0132F)

-
1. SEBI received investor complaints against G. N. Dairies Ltd. (hereinafter referred to as "G. N. Dairies") alleging that it was operating schemes / plans and mobilising funds from investors / public under its schemes / plans, without being registered with SEBI. From the deposit certificate and first installment receipts enclosed with the investor complaints, it was observed that G. N. Dairies was promising a high return to the investors at the end of the term in lieu of the subscription/investments made in the its schemes / plan.
 2. In order to ascertain whether G. N. Dairies was carrying on the activities of a '*collective investment scheme*' SEBI undertook inquiries and sought information/documents from G. N. Dairies including applications forms, brochures, sample agreements, balance sheets, profit and loss accounts, details of the past and present directors, details of funds mobilized under the scheme etc. SEBI also furnished copies of the investor complaints to G. N. Dairies. After repeated reminders, G. N. Dairies furnished blank proposal / application form cum agreement, balance sheet for the year ended March 31, 2010, annual return for the year ended March 31, 2010 and details of its directors. However, it did not submit information / documents such as brochures pertaining to its schemes which it had claimed to have closed in the year 2007.
 3. SEBI also sought information from Registrar of Companies (RoC), Delhi regarding the registered address of G. N. Dairies, details/tenure of its past and present directors, Memorandum of Association, Articles of Association, annual returns, balance sheets, Form 32 and any other relevant information with respect to the company. RoC forwarded the aforesaid details and documents to SEBI.

4. On examination of material available on record, it was *prima facie* observed that:
- (i) G. N. Dairies was running a scheme/arrangement of cattle/ calf / ghee (hereinafter referred to as "the scheme") and soliciting subscription to the scheme from the public.
 - (ii) As per the scheme, the investors had to:
 - a) apply for the subscription on the prescribed proposal / application form cum agreement;
 - b) The said agreement contained all the terms, conditions and features of the scheme;
 - c) make contribution in the form of installments / down payments as per the payment plan opted.
 - (iii) Under its scheme, G. N. Dairies was accepting the investment in the name of sale of cattle / calf / ghee to the investors. However, possession of the cattle / ghee was not given to the investors. G. N. Dairies was promising a return of 100% on the investment, on maturity of the scheme;
 - (iv) The contribution made in the form of payment for cattle / calf / ghee by the investors was managed by G. N. Dairies on behalf of the investors and the cattle / calf were reared and nurtured by it. For rearing and nurturing the cattle / calf, G. N. Dairies employed its own competent technical experts, doctors and such other personnel, as it considered necessary. It had absolute discretion for sale of produce from rearing of cattle / calf;
 - (v) Investors did not have any day to day control over the scheme as G. N. Dairies reared and nurtured the cattle by exercising its own expertise.
5. In view of the above characteristic of the scheme of G. N. Dairies it was observed that its scheme was in the nature of "*collective investment scheme*", which it had launched without obtaining a certificate of registration from SEBI, as required under section 12(1B) of the SEBI Act and regulation 3 of SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as 'the CIS Regulations'). Accordingly, SEBI issued show cause notice dated May 24, 2012 (hereinafter referred to as "SCN") to G. N. Dairies and its directors namely Mr. Satnam Singh Randhawa, Mr. Sunil Dutt, Ms. Sukhjit Kaur, Mr. Hardeep Singh Wahla, Mr. Soly Thomas and Mr. Ranjodh Singh (hereinafter collectively referred to as "the noticees") calling upon them to show cause as to why appropriate directions under section 11 and 11B of the SEBI Act read with regulation 65 of the CIS

Regulations, should not be issued against them. Vide the SCN all the noticees were also advised to file their reply, if any, within twenty one days from the date of receipt of the SCN and also indicate if they desire opportunity of personal hearing in the matter.

6. G. N. Dairies, filed its reply to the SCN submitting *inter alia* as under—

- (i) Allegations contained in the investor complaints were false. The certificates which were issued by it to the complainants were certificates of purchase and not investment certificates.
- (ii) It was engaged in the trading of cattle/calf/ghee. It had its own dairy farms to keep the calves / cattle sold by it to its clients and to raise them up as per the clients' requirements. The milk obtained from the cattle was sold in the open market and at the end of the contract period the animal was handed over to the clients. In case the clients did not wish to take delivery of the cattle, it provided them marketing services and arranges to sell the cattle and the sale proceeds obtained were given to the client. It had its own dairy farms and branch offices for selling these products and was registered with sales tax department in Delhi and MP.
- (iii) The amount received by it from its clients was the consideration price of cattle/calf/ghee. It was not engaged in any financial business. It did not take investments from the investors. As there was no investment scheme, there was no fund mobilization and it was not carrying out any scheme in the nature of *collective investment scheme*.
- (iv) The customer could always inspect their product and could see whether the said product was nurtured as per their agreement. Therefore, it would be wrong to say that the customers of G. N. Dairies did not have any day to day control over the scheme.
- (v) It was in business since 2003 and it had stopped taking fresh bookings and orders since the year 2007. It was in the process of winding up the earlier business. The amount shown as advance from customers in the balance sheet was in respect of their earlier bookings. The earlier customer's terms were still to expire and year after year, the advance from customers for calf and cattle was decreasing.
- (vi) Mr. Satnam Singh Randhwa, Ms. Sukhjit Kaur and Mr. Soly Thomas had already resigned from the post of directors.

7. Replying to the SCN, Mr. Soly Thomas submitted that he had resigned from the post of G. N. Dairies on November 30, 2005 and he was not aware of G. N. Dairies's activities

and plans. Mr. Soly Thomas also submitted a copy of his resignation letter and copy of form 32 duly attested by the RoC, indicating that he was not associated with G. N. Dairies with effect from December 01, 2005. Ms. Sukhjot Kaur submitted that she remained the director of G. N. Dairies only from April 2003 to March 2004. She further submitted that even when she was director of G. N. Dairies, she was not aware who was conducting the operations of the company. Mr. Satnam Singh Randhawa, replying to the SCN, submitted *inter alia* as under –

- (i) He remained director of G. N. Dairies for the period from April 2003 to December 2006 and May 2010 to October 2010.
 - (ii) G. N. Dairies never indulged into any illegal activities or has launched any *collective investment scheme*.
 - (iii) During his tenure as director of G. N. Dairies it was not engaged into any financial business and was working as traders of ghee, calves, cattle and dairy products on cash and credit basis.
8. All other directors chose not to submit their replies to the SCN issued to them. An opportunity of personal hearing in the matter was granted to the noticees on December 27, 2013. Mr. Soly Thomas appeared on the scheduled date and reiterated his submissions already made in his reply. Further, Mr. Nitin Mittal, Advocate, appeared on behalf of G. N. Dairies, Mr. Sunil Dutt, and Mr. Hardeep Singh and reiterated the submissions already made by G. N. Dairies in its reply. The advocate undertook to submit following documents latest by January 17, 2014:
- (i) Bank Accounts Statements of G. N. Dairies since incorporation.
 - (ii) Details of money collected/mobilized since incorporation
 - (iii) Details of all clients including names and addresses since incorporation,
 - (iv) Delivery receipts of goods since incorporation
 - (v) Details and dates of delivery of goods
 - (vi) Details of all delivery outstanding as on December 27, 2013
 - (vii) Stock on trade summary for preceding five years
 - (viii) Details of all schemes/plans since incorporation
 - (ix) List of directors since incorporation and their directorship in other companies.
 - (x) Details of PAN/DIN of all directors since incorporation
 - (xi) Details of utilization of money mobilized since incorporation
 - (xii) Details of revenue from operation and cost of material consumed as mentioned in Profit and Loss statement for past five years.

9. G. N. Dairies vide its letters dated February 18, 2014 and April 02, 2014 *inter alia* submitted
- (i) Bank balance as on March 31 for the financial years 2010-11, 2011-12 and 2012-13;
 - (ii) Details of Directors;
 - (iii) Details of Revenue from operation and cost of goods sold;
 - (iv) Inventory of goods delivered to customers;
 - (v) List of customers to whom the goods have been delivered;
 - (vi) Outstanding of delivery as on December 27, 2013;
 - (vii) Stock in trade.

10. However, G. N. Dairies chose not to submit other documents which its advocate had undertaken to submit. As considerable time has passed since the advocate had undertook to submit the documents and G. N. Dairies has not yet submitted the remaining documents, I proceed to decide the matter on the basis of the material available on record. I have considered the SCN, written and oral submissions of G. N. Dairies, the documents furnished by G. N. Dairies and the material available on record. In order for the scheme of G. N. Dairies to qualify as a '*collective investment scheme*', the conditions specified in section 11AA of the SEBI Act should be satisfied by the scheme. Section 11AA of the SEBI Act 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."*

11. It is undisputed fact that G. N. Dairies was circulating the proposal / application form cum agreement, inviting general public to subscribe to the scheme by offering lucrative returns. I note that para 2 of the sample proposal / application form cum agreement submitted by G. N. Dairies, reads as "*Payment according to a selected plan can be made by cheques/ demand drafts/ banker's cheques/ cash, separately for each application*". From this, it is clear that the investors willing to subscribe to the schemes had to choose a plan of the scheme and investors were required to make contribution in the form of installments/

down payment as per the payment plans opted. These facts clearly indicate that G. N. Dairies was inviting and accepting subscription (either lumpsum/installments) under its schemes/plans from public. I further note that para 3 of the sample agreement stipulates that:- *“GN or its nominee shall set up dairy farms for proper upbringing & maintenance of calves, subject to the Terms and Conditions laid down elsewhere in this Agreement. Whereas GN is in the process of making arrangements/ has made arrangements for purchasing, procuring the calves and ghee, forming part of various plans launched by GN. GN shall provide such upbringing/ maintenance/ multiplication system, as it may deem appropriate, which shall be part of the overall upbringing/ maintenance/ multiplication systems of plans, depending upon the breed and quality of the SAID PRODUCT”*. Thus, it is clear that G. N. Dairies was utilising the monies collected for the purposes of the scheme. I, therefore, find that the contributions made by the investors were pooled under the scheme of G. N. Dairies and the pooled monies were utilized for the purpose of scheme. Accordingly, the scheme in this case launched by G. N. Dairies satisfies the condition stipulated in section 11AA(2)(i) of the SEBI Act.

12. I note that certificates issued by G. N. Dairies to its investors, mention an indicative "Expected Price of Cattle/ Calf/ Ghee" or "Estimated Price of Cattle/ Ghee" payable at the end of the term of the investment, which is 200% of the investment made. Further, the First Installment Receipt cum Acceptance Letter also mentioned the terms "Unit's Face Value", "Fresh Policy" and "Plan No. and Term" pointing to specific investment plans. I, therefore, find G. N. Dairies had the scheme / investment launched plan and the investors had made the investment with a view to earn profit / return on the expiry of the term of the scheme and the return on the investment was being paid by G. N. Dairies from the profits received from the scheme of sale/upbringing/maintenance of calves/sale of ghee along with multiplication of ghee. I, therefore, find that the scheme of G. N. Dairies satisfies the condition stipulated in section 11AA (2) (ii) of the SEBI Act.
13. The material available on record, clearly indicate that G. N. Dairies was managing its scheme, the contribution / investment of investors and returns, profits, produce etc. therein. It is noted that the proposal / application form cum agreement circulated by G. N. Dairies provided *inter alia* as follows:
 - i. *G. N. Dairies shall have the right to maintain/up-bring/multiply the said product in consultation with experts. G. N. Dairies shall employ its own technical experts, advisor, and such personnel as it may consider necessary.*
 - ii. *During the course of up-bringing/ maintenance/ multiplication of said product, the customer shall not make any claim for any produce during the period of seven years.*
14. From the above declarations by G. N. Dairies and obligation of investors it is clear that it was managing the property, contribution, investment and the scheme, on behalf of the

investors and therefore its scheme satisfies the third condition stipulated in the section 11AA(2)(iii).

15. I further note from clauses in the proposal / application form cum agreement that G. N. Dairies was the sole owner of all produce and had sole discretion to decide as to how to sell or utilise the said produce under the scheme. For example on such clause reads as "*G. N. Dairies shall be the sole owner of all produce, if any, out of the said product. G. N. Dairies shall have the sole ownership & discretion to decide as to how to sell/ utilize the said produce*".
16. It is clear from the above clause in the proposal form that the investors did not manage the contribution, property or investment forming part of the scheme. I, therefore find that investors did not have any day to day control over the management and operation of the scheme. I, therefore, find that the scheme offered by G. N. Dairies satisfies the fourth condition stipulated in the section 11AA(2)(iv).
17. In view of the above analysis, I find that the scheme launched by G. N. Dairies satisfy all four conditions of section 11AA of the SEBI Act. I, therefore, find that G. N. Dairies is engaged in the fund mobilising activity from public through a *collective investment scheme* as defined in section 11AA of the SEBI Act, without obtaining certificate of registration from SEBI.
18. In terms of section 12(1B) of the SEBI Act which provides that 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. I note that regulation 3 of the 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. Since G. N. Dairies has launched '*collective investment schemes*' without obtaining certificate of registration from SEBI, it has contravened provisions of section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations.
19. I note that even after the advocate of G. N. Dairies undertook to submit copies of all the delivery receipts for the delivery made to investors, since incorporation, G. N. Dairies has chosen not to submit the same, instead, it has submitted list of 45,000 names claiming that it has returned calves and *desi ghee* to them. It is noted that the said list is replete with inconsistencies and is incomplete as it does not given address of those investors and date of delivery of calves and *desi ghee*, as claimed. Further, G. N. Dairies has failed to submit the details of money collected/mobilised by it. On examination of three investment

certificates issued by G. N. Dairies, I note that the investment made by the investors range from ₹1 lakh to ₹ 2 lakh. It had promised to pay maturity amounts ranging from ₹ 2 lakh to 4 lakh to the investors. Further, the sample proposal / application form cum agreement submitted by G. N. Dairies stipulates that "*On the expiry of agreement, the customer has the right either to take possession or sale of brought up calf. To facilitate the process, the company provides to customers marketing services for sale of brought up calf*". From this clause, it is clear that the investors had an option to receive the return on their investment in the form of calves or money worth of the calves. Considering the number of investors (i.e. 45,000) to whom G. N. Dairies has claimed to have returned calves and *desi ghee*, substantial amount of money invested by the investors and the option available with the investors to receive 200% return on their investment in the form of monies, I am of the view that unless all the investors were in the business of buying and selling of calves / *desi ghee*, it is highly improbable that those investors would have received / agreed to receive calves / *desi ghee* as the return on their investments. I find that G. N. Dairies has failed to substantiate its claim with necessary evidence and details.

20. From the balance sheets submitted by the G. N. Dairies, I note the amount under the head 'Advance from Customers' has increased from ₹107 crores as on March 31, 2009 to ₹114 crores as on March 31, 2010. The amount under the heading Customers' Calfs & Cattles have also increased from ₹88 crores as on March 31, 2009 to ₹101 crores as on March 31, 2010. From this, it is clear that during financial year 2009-2010 G. N. Dairies has collected subscription/contribution to the tune of ₹7 crores under its scheme from the investors. Therefore, the submissions of G. N. Dairies that it has closed its scheme in 2007 cannot be accepted.
21. In its balance sheet, G. N. Dairies has also shown expenditure of ₹6.15 crore and ₹1.66 crore under the head Commission on Ghee Sale/Booking during Financial Years 2008-09 and 2009-10, respectively. The fact that G. N. Dairies paid commissions to its agents during financial year 2008-09 and 2009-10 for getting business also corroborates the finding that it is still running the business. Further, commission paid to sales/booking agent (₹1.66 crore) is as high as 23.7% of total monies collected (₹ 7 crore) by it during the financial year 2009-10.
22. I note that Ms. Sukjhit Kaur and Mr. Soly Thomas had resigned from the post of director in March 2004 and November 2005, respectively. Further, Mr. Satnam Singh Randhawa was director for the period from April 2003 to December 2006 and from May 2010 to October 2010. I, therefore, am of the view that during the period when Ms. Sukjhit Kaur, Mr. Soly Thomas and Mr. Satnam Singh Randhawa were the directors of G. N. Dairies, it was running a '*collective investment scheme*'. I, therefore, find that Ms. Sukhjit Kaur, Mr. Soly

Thomas and Mr. Satnam Singh Randhawa are responsible for the acts and omissions of G. N. Dairies during the respective periods when they were the directors of the company.

23. Considering the facts and circumstances of the case, I, in exercise of the powers conferred upon me by virtue of section 19 of the Securities and Exchange Board of India Act, 1992 hereby issue following directions under section 11 and 11B of the said Act read with regulations 65 and 73 of Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 :-

- (i) G. N. Dairies Ltd. (AACCG0016B) and its present promoters / directors including Mr. Sunil Dutt (PJCPD2902R), Mr. Hardeep Singh Wahla (AARPW7993D) and Mr. Ranjodh Singh (BJEPS0132F) to wind up its scheme and refund the money collected by it under the scheme with returns which are due to the investors as per the terms of offer within a period of three months from the date of this order and submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, including trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refund, failing which the following actions shall follow:
 - (a) A reference would be made to the State Government/ local police to register a civil/ criminal case against them for apparent offences of fraud, cheating, criminal breach of trust and misappropriation of public funds, and
 - (b) Making a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of G. N. Dairies Ltd.
 - (c) SEBI shall also initiate attachment and recovery proceedings under section 28A of the SEBI Act.
- (ii) G. N. Dairies Ltd., Mr. Sunil Dutt, Mr. Hardeep Singh Wahla and Mr. Ranjodh Singh are directed to not to access the securities market and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market till all collective investment schemes launched by G. N. Dairies Ltd. are wound up and all the monies mobilised through it are refunded to the investors.
- (iii) Ms. Sukhjit Kaur, Mr. Soly Thomas and Mr. Satnam Singh Randhawa are directed to not to access the securities market and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market for a period of one year.

24. Without prejudice to the above, SEBI would examine the feasibility of initiation of prosecution proceedings under section 24 and adjudication proceedings under Chapter VI of the SEBI Act against them.
25. The above directions shall come into force with immediate effect.
26. Copy of this Order shall be forwarded to the stock exchanges and depositories for necessary action.

Date: October 31st, 2014

Place: Mumbai

**RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**