

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

ORDER

Under Sections 11 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 respect of M/s Sai Multi Services and its Proprietor; Mr.Sanjay B Tenginkai (PAN: AFDPT9966L).

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1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a complaint dated November 11, 2013 alleging illegal mobilization of funds from public by the entity M/s Sai Multi Services (hereinafter referred to as “**Sai Multi Services**”) under its scheme “*GFBF and SM Scheme*”. The complainant had also enclosed the following documents in support of the complaint:
 - Copy of ‘*Memorandum of Understanding*’ (MoU) between investors and Sai Multi Services,
 - Copy of sample ‘*Letter of Agreement*’ and ‘*Letter of Acceptance*’,
 - Copy of various ‘*Pay-in-Slips*’ for crediting money into the entity’s bank account,
 - Copies of some cheques issued by Sai Multi Services to the complainants.
 2. As a matter of preliminary enquiry into the alleged mobilization of funds by Sai Multi Services, SEBI, vide letter dated January 7, 2014, advised Sai Multi Services to explain the details of schemes operated by it, with supporting documents. However, the aforesaid letter sent by SEBI was returned undelivered with a remark “*left*”. Subsequently, SEBI issued another letter dated January 10, 2014 to the alternate address of the entity available on records. The said letter was also returned undelivered.
 3. Subsequently, SEBI received similar complaints against Sai Multi Services from various other investors also, wherein it was alleged that Sai Multi Services was

collecting money from the public, offering 10% interest per month and promising the principal amount after 2 years. All the complainants have enclosed similar set of "MOU" and the copies of "Letter of Agreement" and "Letter of Acceptance" along with their complaints.

4. I have carefully perused documents and materials available on record such as complaints received by SEBI against Sai Multi Services along with the documents contained therein; "MoU" executed between Sai Multi Services and investors; Sample "Letter of Agreement" and "Letter of Acceptance". In this context, the issue for determination in the instant matter is whether the mobilization of funds by Sai Multi Services 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 aforesaid material available on record, it is *prima facie* observed that:
 - i. Sai Multi Services is a proprietorship concern located at 1283/1, City Arcade, 3rd Floor, Ramling Khind Galli, Belgaum-590 001, Karnataka. Mr. Sanjay B Tenginkai is its proprietor.
 - ii. Sai Multi Services collects money from the public for its project/"scheme" (**"GFBF and SM Scheme"**), for buying buffaloes of "Morra" breed (stated to produce approx. 7 to 15 litres per day) and the investors are assured guaranteed monthly return by selling the milk produced from these buffaloes.
 - iii. The investors who are interested in the aforesaid project are made to enter into an "MoU" with Sai Multi Services. Following Clauses are noted in the sample copy of "MoU" entered with investors:

1. **THE PROMOTERS**

“The scheme is promoted by Shri Sanjay B Tengnikai. Mr.Sanjay B. Tenginkai Managing Director of the company with structured well diversified portfolio with quality professional advice with guaranteed commitment. The company was started in 2005 at Belgaum, Karnataka....

2. PLACE OF BUSINESS

- a. *The promoters have infrastructure consisting of agricultural land, cattle shed and other facilities at Jamboti and Belgaum. The Promoters have developed infrastructure which can generate huge profits.....*

3. FINANCIAL ASPECTS OF THE PROJECT

- a. *The project is agro based project. The project is based on buying buffaloes of “Morra” breed. The particular breed is known for giving output of milk of approximately 7 to 15 litres per day for a period 5-7 months in a year. The promoters have planned to have 2000 number of buffaloes and expect to generate 1400 litres of milk per day which can be sold in the open market or through a franchisee*
- b. *The Promoters have already invested an amount of Rs.20 lacs besides time and effort to set up the Project. The notional cost of time and effort is calculated as Rs.20 lacs. Besides this, the Promoters are going to spend a lot of time and effort on developing the Project.*

3.1 Requirement of Funds

The project is an agro based project and requires further funds to the tune of Rs.25 crores over a period of 24 months. Looking at the recessionary market and risk factors involved, banks are not willing to finance the project....

After the second year of operation the proprietors will convert the proprietorship concern into a public/private limited company with adequate share capital. The promoter will then offer the equity to the investors for appropriate face value.....

3.2 Anticipated Profit in the Project

The daily milk output is expected to be around 14,000 litres. Looking at present price of milk which is at Rs.20/- to Rs.25/-, there will be generation of revenue of Rs.3 lacs/- per day. The cost of maintenance of the buffaloes, investment, daily expenditure will be approximately Rs.125/- per buffalo. Therefore, the expected cost would be Rs.1, 25,000/-

per day. The expected revenue generation will be approximately Rs.1,75,000/- per day. Therefore, the Anticipated Profit per day is expected to be Rs.150000- per day.....

Based on this Profit, investors are assured monthly returns.

a. Fixed Monthly Return: In the first month of the investment, the investor will be entitled to a return of 2% on investment. From the second month, there will be a minimum return on investment of 2% per month.

b. Profit Sharing returns:

Besides minimum returns as set out hereinabove, there shall be profit sharing. The profit sharing returns are expected to be between 2% to 10% depending on monthly revenue generation. At the end of every month, Promoters will calculate generation of profits in the month. Based on the profit so calculated, additional percentage of return on investments shall be disbursed on monthly basis...

4. LOCK IN PERIOD

The lock-in period of the investment is 12 months from the date of investment. After the period of 12 months, any withdrawal of the amount invested will be subject to certain amount of allocation to be decided by the Promoters at their sole discretion.

7. RISK FACTORS

- a. THE PROJECT IS AN AGRO-BASED PROJECT. THEREFORE, THE PROJECT CARRIES ALL RISKS WHICH ARE ASSOCIATED WITH AN AGRO BASED PROJECT.*
- b. THE PROJECT IS BASED ON PROCUREMENT OF MINIMUM 1,000 BUFFALLOES OF MORRA BREED. THE SAID BREED IS SUSCEPTIBLE TO CERTAIN DISEASES. THEREFORE, THE LIFE OF THE ANIMAL MAY VARY DEPENDING ON THE DISEASES.*
- c. THE PROJECT IS BASED ON MILKING PERIOD OF 7 MONTHS PER ANIMAL. DUE TO VARIOUS REASONS.....*
- d. THE PROMOTER HAS THE RIGHT TO STOP THE BUSINESS AT ANY TIME, NOTWITHSTANDING THE LOCK-IN PERIOD OF 12*

MONTHS WITHOUT GIVING ANY NOTICE TO THE INVESTORS IF THE PROJECT BECOMES UNVIABLE OR RUNNING OF THE PROJECT IS NOT POSSIBLE FOR VARIOUS REASONS...

DISCLAIMER:

“The promoters will not be personally liable for any of the amounts. Therefore, no investors shall have the right to initiate proceeding against the promoter in his personal capacity. Right to raise loans, hypothecate animals, infrastructure, etc shall always remain with the promoters...

The promoters have the right to make any amendments, modifications, alterations or additions to the scheme ...without any notice or previous consent of the investors.”

- iv. The sample “Letter of Agreement” issued after investing in the “GFBB and SM Scheme”, states the following:

“I, ... (Name of the Customer/Investor), have gone through the GFBB and SM Scheme. I have seen the contents of the Scheme. The contents of the Scheme as well as risk factors are explained to me and I have understood the same.

After knowing the risk factors and the fact that returns on my investment depend on various conditions mentioned in the Scheme, I am requesting you to accept an amount of Rs. as an investment in the GFBB and SM Scheme.

I hereby undertake that if I do not get the returns on the investment, I will not hold the promoters as responsible. Accordingly, with full knowledge and understanding, I am investing my money”

6. The aforementioned features and details of the so called “agro-based business” by Sai Multi Services appear to be a “scheme” rather than an agro-based business. In view of this, the aforementioned details of the “scheme” offered by Sai Multi Services have to be considered in light of Section 11AA of the SEBI Act, 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.”*

6.1 In the context of the abovementioned Section 11AA of the SEBI Act, the “*scheme*” offered by Sai Multi Services 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.

Sai Multi Services has launched ‘*GFBF and SM Scheme*’, inviting funds from the public towards the purchase and maintenance of buffaloes under the scheme. The investment made by an investor is in the form of monetary payment in lump-sum in accordance with the *MoU*. It has been stated in the *MoU* that the project launched by Sai Multi Services is based on buying of buffaloes of ‘*Morra*’ breed and the promoters have planned to generate 14,000 litres of milk per day from the buffaloes which can be sold in the open market or through a franchisee and profits will be shared with the ‘*Customer*’/investor. The said *scheme* of buying and maintaining buffaloes require funds to the tune of Rs.25 crores over period of 24 months. (Clause 3.1 of the *MOU*). The said amount is raised by pooling the money collected from various investors and is utilized for the purpose of the project/”*scheme*” i.e purchasing and maintaining buffaloes. In this regard, it is relevant to note Clause 3.1 of the *MOU* “*The project at present can be financed only with the funding by private investors who are willing to invest in the project with returns.*” Further, the “*Letter of Agreement*”, also says, “*After knowing the risk factors and the fact that return on my investment depend on various conditions mentioned in the Scheme, I am requesting you to accept an amount of Rs..... as a investment in the **GFBF and SM Scheme**”.*

In view of the aforesaid, it appears that the contribution or investment received from the 'Customers'/investors is pooled and utilized for the purpose of their "GFBF and SM Scheme" for the purchase and maintenance of buffaloes. 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.***

As has been stated in the preceding paragraph, the contribution or investment made by a investor under the *GFBF and SM Scheme*, is utilized for the purpose of such scheme. It is noted from the various clauses of the *MOU* that an investor in the *GFBF and SM Scheme* is assured of a return in the form of fixed monthly return and profit sharing returns. Clause 3.2 of the "MoU", states:

"Based on this Profit, investors are assured monthly returns

- a. Fixed Monthly Return:** *In the first month of the investment, the investor will be entitled to a return of 2% on investment. From the second month, there will be a minimum return on investment of 2% per month.*
- b. Profit Sharing Returns:** *Besides minimum returns as set out hereinabove, there shall be profit sharing. The profit sharing returns are expected to be between 2% to 10% depending on monthly revenue generation. At the end of every month, Promoters will calculate generation of profits in the month. Based on the profit so calculated, additional percentage of return on investments shall be disbursed on monthly basis..."*

The aforesaid clauses indicate that Sai Multi Services offers "assured returns" out of the operation of the 'scheme' in the form of "Fixed Monthly Returns" and "Profit Sharing Returns". It can be inferred from the above that such contributions are made by the investor with an intention to earn profits from such a 'scheme'. 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.*

The following clauses of the “MoU” and the disclaimer forming part of the “MoU” throw light on the management of the scheme and its day to day control and operation:

- *“The project is based on buying buffaloes of “Morra” breed. for giving output of milk of approximately 7 to 15 litres per day for a period 5-7 months in a year. The Promoters have planned to have 2000 number of buffaloes and expect to generate 14000 litres of milk per day which can be sold in the open market or through franchise.*
- *Right to raise loans, hypothecate animals, infrastructure etc. shall always remain with the promoters*

It is noted from the above clause that the management and operation of the entire scheme, which involves buying buffaloes, selling the milk in the open market and also realization of profit, rests solely with Sai Multi Services and the investors have hardly any role to play therein.

As per aforesaid disclaimers, the promoters have the right to make any amendments, modifications, alterations or additions to the scheme without notice or previous consent of the investors. Further, as a part of risk factor, the “MoU” states that the promoter has the right to stop the business at any time, notwithstanding the lock-in period of 12 months and without giving any notice to the investors, if the project becomes unviable or running of the project is not possible for various reasons

Therefore, it is observed that the contributions/funds collected from the investors for the "scheme" is managed by Sai Multi Services on behalf of the investors and the investors do not have any day to day control over the management and operation of the scheme. I, therefore, find that the instant "scheme" also satisfies the conditions stipulated in Section 11AA(2)(iii) and (iv) of the SEBI Act.

7. The aforesaid observations lead to the *prima facie* conclusion that the ‘scheme’ of agro-based project offered by Sai Multi Services with a resultant promise of returns when considered in light of peculiar characteristics and features of such scheme, as discussed in the preceding paragraphs, *prima facie* satisfies all four conditions specified in Section 11AA (2) of the SEBI Act. Therefore, I find that Sai Multi Services is engaged in the fund mobilizing activity from public, which is in the nature of a ‘collective investment scheme’ as defined in Section 11AA of the SEBI Act. It is noted that Shri Sanjay B Tenginkai is the proprietor of Sai Multi Services.
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”. Regulation 3 of SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as “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 find that Mr. Sanjay B Tenginkai; Proprietor of Sai Multi Services 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. Thus, it has *prima facie* violated Section 12 (1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations read with Section 11AA of the SEBI Act, 1992.
9. Considering the fact that no prior registration was obtained by Mr. Sanjay B Tenginkai; Proprietor of Sai Multi Services in respect of the aforesaid activities in the nature of collective investment scheme, I am of the view that Mr. Sanjay B Tenginkai; Proprietor of Sai Multi Services is illegally mobilizing funds from the public, in the name of its proprietary concern (*viz.* Sai Multi Services), 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. Regulation 4(2) (t) reads as follows:

“Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any collective investment scheme by any person”

10. I observe that the entity has itself failed to provide the details of the total amount mobilized for the purpose of its 'scheme', from the public, till date. From the news reports and information provided by Sai Multi Services Investor's Protection Society, Gulbarga, that Sai Multi Services has collected around ₹4.2 crores from the investors. Protecting the interest of investors is the first and foremost mandate for SEBI. Under the circumstances, SEBI has to take immediate steps to prevent activities of companies or entities defrauding investors and damaging the orderly development of the securities market. I, therefore, note that Sai Multi Services and its proprietor/ promoters have to be prevented from carrying on with the 'collective investment scheme' activities without due registration from SEBI in accordance with law.

11. In view of the forgoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 read with Regulation 65 of CIS Regulations, hereby direct Sai Multi Services and its Proprietor, Mr. Sanjay B Tenginkai, (PAN: AFDPT9966L):

- a. *not to collect any money from investors including under the existing "scheme";*
- b. *not to launch any new schemes or float any new companies/proprietary concern to raise fresh moneys;*
- c. *to immediately submit the full inventory of the assets owned by Mr.Sanjay B Tenginkai and his proprietary concern, Sai Multi Services, out of the amounts collected from the investors under its existing "scheme";*
- d. *not to dispose of any of the properties or alienate the assets of the existing "scheme";*
- e. *not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of Mr.Sanjay B Tenginkai or in the name of his Proprietary concern viz. Sai Multi Services;*
- f. *to furnish all the information/details sought by SEBI within 15 days from the date of receipt of this order, including,*

- i. Details of the scheme along with all the documents/ materials pertaining to the scheme offered by Sai Multi Services viz: copies of MOU, Letter of agreement, etc.*
- ii. Details of the amount mobilized and refunded till date, and,*
- iii. Scheme wise list of investors and their contact numbers and addresses*

12. The above directions shall take effect immediately and shall be in force until further orders.
13. The order is without prejudice to the right of SEBI to take any other action that may be initiated against Sai Multi Services, its Proprietor, Mr.Sanjay B Tenginkai and any other persons/entities in charge of, and was responsible to the firm/concern, for the conduct of the business of the firm/concern, in accordance with law.
14. The *prima facie* observations contained in this Order are made on the basis of the material available on record. This order is without prejudice to the right of SEBI to take any other action that may be initiated against Sai Multi Services and its Proprietor, Mr.Sanjay B Tenginkai in accordance with law.
15. Sai Multi Services and the aforesaid Proprietor may, within 15 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.

Date : December 02, 2014
Place: Mumbai

S RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA