

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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 Regulations 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 in respect of :

1. Parivar Dairies and Allied Limited (CIN: U01211MP2002PLC015368) and its Directors viz., Shri Basant Lal Sharma (DIN: 00594879), Shri Ahibaran Singh (DIN: 00625418), Shri Chandra Bhan Yadav (DIN: 02706029) and Pradeep Kumar Sharma (DIN: 02706065).
2. PDA Foundation and its trustees viz., Shri Neeraj Singh(R/o G-4/25-26, Sector 16, Rohini, Delhi-110085 and Shri Bhanu Pratap Singh (R/o Shiv Nagar, Birla Nagar, Gwalior, (Madhya Pradesh)-456004).

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(1) Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a letter dated September 21, 2012 from the Department of Financial Services, Ministry of Finance enclosing an Order dated July 13, 2012 passed by the Hon'ble High Court of Madhya Pradesh (Gwalior Bench), in the matter of Dharmvir Singh and Anr. Vs. Union of India & Ors. [Writ petition No. 3332 of 2010 (PIL)]. From the aforesaid order, it was observed that:

- i. The Petitioners therein had filed a Public Interest Litigation (hereinafter referred to as "**PIL**") against various companies including **Parivar Dairies & Allied Limited (hereinafter referred to as 'PDAL')**, alleging that thousands of persons of various districts in the State of Madhya Pradesh had been cheated by these companies, under the garb of various schemes, which used to collect deposits from the persons with a promise to pay the money back with higher return of interest from 15%-20%.*
- ii. The Hon'ble High Court vide order dated July 5, 2011, directed the Central Bureau of Investigation (hereinafter referred to as "**CBI**") to, conduct the preliminary investigation regarding the activities of such companies and file a Status Report. As per the aforesaid directions of the Hon'ble Court, CBI filed its final "Status Report" before the Hon'ble Court on January 13, 2012.*

*iii. The Hon'ble Court, vide the said Order dated July 13, 2012, inter alia directed that copy of the said Order be forwarded to the various authorities including SEBI to take appropriate action in accordance with law.*

(2) As a matter of preliminary inquiry into whether or not PDAL was carrying on activities of 'collective investment scheme' in terms of Section 11 AA of the SEBI Act, 1992 ("**SEBI Act**"), SEBI vide letters dated November 22, 2012, *inter alia*, sought the information/documents from PDAL viz., :-

- a. "Memorandum and Articles of Associations of the company as filed with the Registrar of Companies ('RoC').*
- b. Details of the past and present directors of the company.*
- c. Brochures pertaining to PDAL's schemes/ offers which were made available to the public.*
- d. Copies of applications forms that are required to be submitted by investors/applicants to participate in the schemes.*
- e. Sample copies of the registration letter and allotment letter issued to the investors who subscribed to the schemes.*
- f. Sample copies of the agreement letter/ contract required to be entered into by investor/applicant under the schemes.*
- g. Details of the scheme wise amount mobilized till date along with the number of investors under the schemes.*
- h. Certified copy of audited financial statement for the FY 2009-10, 2010-11 and 2011-12.*
- i. Copy of Income Tax Return filed by the company for the last three years.*
- j. Details of any other similar scheme(s), if any, floated by the company or its group/ associates company".*

(3) The aforesaid letter was, however returned undelivered by the postal authorities. Thereafter, SEBI issued another letter dated July 15, 2013. In response thereto, PDAL vide its reply dated September 18, 2013 submitted that it is engaged in lawful business as per the objects i.e. "*selling cattle, cow, buffalo, sheep, goats etc., and dairy products to its customers on receipts of sale price of goods from the customers*". As regards furnishing of documents, PDAL stated that the registered office had been sealed by the Gwalior Administration, vide Order dated May 04, 2011 and their entire records were in police custody. They were, hence unable to provide the requisite information as desired by SEBI.

- (4) In view of this, SEBI, vide letters dated November 07, 2013, February 07, 2014 and reminders dated June 06, 2014 and July 10, 2014, requested the Collector - Gwalior to provide the aforesaid relevant materials/records (as sought by SEBI from PDAL vide letter dated November 22, 2012). However, no information has been received till date.
- (5) Meanwhile, SEBI came across two certificates dated January 16, 2009 and June 07, 2010 issued by PDAL to its investors, as mentioned below;-
- (a) “Joint Venture” Certificate issued to an investor viz., Shri Brajesh Kumar Sharma for a 5 year plan (for monthly payment) towards cost of cattle and product. The date of commencement of the plan is January 16, 2009. The customer service center for investor is shown as at Baldev Bhawan, Behind Jagan Talkies, Bhamtipura Road, Dholpur (Rajasthan).
- (b) “*Cattle booking certificate*” of the company issued to an investor viz., Shri Arun Pratap Singh dated June 07, 2010. The plan opted by investor was A-3 for 6 years & 3 months. The customer service center for investor is shown as at RS Complex, 3<sup>rd</sup> Floor, MS Road, Bareer Chouraha, Morena (Madhya Pradesh).
- (6) It is noted from a search on internet that ([www.consumercomplaints.in](http://www.consumercomplaints.in)) there are many investor grievances against PDAL. For instance, an investor viz., Shri R. Baskaran, vide complaint dated November 15, 2012 alleged that PDAL changed its name to PDA Foundation. It is alleged that company’s official had taken his PDAL policy documents for investment from 2011 onwards and switched the same with new PDA Documents showing investment from 2012 onwards. This fact of switching/swapping the documents from PDAL to PDA Foundation is also confirmed by another investor viz., Ms. Sunaina in the said complaint forum. It is further observed that many of the investors who lodged complaints were from Tamil Nadu.
- (7) It is observed from the website [www.justdial.com](http://www.justdial.com) that PDAL and PDA Foundation are having same address of office no.7, KRJ Building, 1<sup>st</sup> floor, Welder Street, Tiruvatiswaranpet-Anna Salai, Chennai (Tamil Nadu). However, perusal of website of PDA foundation

<http://pdafoundation.com> shows that its head office is in No.25,26, G-4, Ground Floor, Sector 16, Rohini, Delhi-110085.

- (8) In order to verify the activities of PDA Foundation, SEBI conducted a physical verification at Delhi's head office of PDA Foundation on May 06, 2014. It was gathered that neither PDAL nor PDA Foundation are available at its head office at No.25,26, G-4, Ground Floor, Sector 16, Rohini, Delhi-110085.
- (9) SEBI also conducted physical verification at the address of PDAL/ PDA Foundation at No.7, KRJ Building, 1<sup>st</sup> floor, Welder Street, Tiruvatiswaranpet-Anna Salai, Chennai (Tamil Nadu) on July 25, 2014. The following facts were observed: -
- At the premises, PDA Foundation was found operating.
  - At the same time, a display of PDAL was also noticed.
  - The officer noticed many cash counters (close to a dozen) wherein “Field Staff and “customers” were depositing the money & collecting receipts.
  - During the visit, officer collected following documents pertaining to PDA Foundation:-
    - “Cattle / Product booking application form”.
    - “Agreement with Customers”.
    - Field associate application form and the terms & conditions for field agents.
- (10) It is noted that the brochure of PDA Foundation refers to a certificate of registration issued by TVE Certification Services Private Limited. In the said certificate it is stated "*PDA Foundation having address of A.P. Towers, No. 1, D.S.P. Nagar, Bye-Pass road, Madurai has complied quality management system for “Promotion of Dairy Development Activities and Social Empowerment”*". Thus, an e-mail dated December 03, 2014 was sent to this company seeking copy of report on the basis of which this certificate was issued. The company was also advised to provide copy of Trust Deed of PDA Foundation. In response, TVE Certification Services Private Limited informed that their scope of audit covers promotion of dairy farming, awareness training & workshops conducted by the company. The audit scope did not cover financial & insurance activities. However, it was informed by TVE Certification Services Private Limited that PDA Foundation's certificate was already under suspension with effect from October 25, 2014 for non-fulfillment

of the audit requirements. The registered Trust Deed of PDA Foundation was also furnished to SEBI.

- (11) In view of the apparent fund raising activity of PDA Foundation from public, SEBI vide letter dated January 19, 2015 sought the following documents/ information from PDA Foundation & its Trustees:

- a) *"Copy of trust Deed.*
- b) *Details of the past and present Trustees of the company. Details should contain name, address, PAN and contact details (Email/fax/contact no.) of the Trustees.*
- c) *Brochures pertaining to schemes/ offers which were made available to the public.*
- d) *Copies of applications forms that are required to be submitted by investors/ applicants to participate in schemes.*
- e) *Sample copies of the regulations letter and allotment letter issued to the investors who subscribed to schemes.*
- f) *Sample copies of the agreement letter/ contract required to be entered into by investor/applicant under schemes.*
- g) *Details of the scheme wise amount mobilized by the Trust (from start till date) along with the number of investors under the schemes.*
- h) *Name & address of all investors who put in their money.*
- i) *List of all branches with their address.*
- j) *What is the commission structure of the agents. Please provide details.*
- k) *Also, inform whether agents are paid directly or they deduct their commission from money mobilized and deposit net amount on behalf of investors.*
- l) *List of all the properties acquired by Trust from the money of investors held in Trust's name or in name of any other person.*
- m) *Certified copy of audited financial statement for the FY 2011-12, 2012-13 & 2013 and copy of detailed trial balance from April 2014 till date.*
- n) *Copy of Income Tax Return filed by the Trust for financial year 2011-12 till date.*
- o) *Details of the regulatory / Government approvals obtained by Trust as well as for schemes.*
- p) *Details as regards Trust/ its trustees association including financial dealings with PDAL and or its directors Mr. Basant Lal Sharma, Mr. Abibaran Singh, Mr. Chandra Bhan Yadav, Mr. Pradeep Kumar Sharma, Mr. Rakesh Singh Narwaria and Mrs. Girja Narwaria.*

- q) *Details of any other similar scheme(s), if any, floated by the Trust or its group/ associates entities in which Trustees are also directors.*
- r) *Whether Trust/ its Trustees have been charged by Police of any State wherein it operates in respect of complaints made by investors of Trust. If yes, please provide copy of all FIRs, all charge-sheets filed by police and all court order(s) against Trust/ its Trustees."*

- (12) It is noted that letter sent to PDA Foundation and its Trustee Shri Neeraj Singh resident of G-4/25-26, Sector 16, Rohini, Delhi-110085 were returned undelivered by postal authorities with remarks "*shifted*". The letter addressed to Shri Bhanu Pratap Singh (Trustee) having address at Shiv Nagar, Birla Nagar, Gwalior, (Madhya Pradesh)-456004 was duly acknowledged. However, no reply has been received till date.
- (13) Subsequently, vide letter dated January 28, 2015, PDA Foundation sought additional time upto one month to submit the desired information. In response, SEBI vide letter dated February 19, 2015 granted final opportunity to submit reply by February 27, 2015 to PDA Foundation/ its Trustees. However, no reply has been received till date. It is noted that letters to PDA Foundation/ Trustee at their Delhi address were returned undelivered by postal authorities.
- (14) In view of the above, it is apparent that PDAL and its Directors/PDA Foundation and its Trustees are not providing complete documents to SEBI as sought vide various letters issued to them. In view of the same, I am left with no option but to proceed on the basis of the documents available with us. I have carefully considered the material available on record such as complaints received by SEBI, correspondence exchanged between SEBI and PDAL and PDA Foundation, information available on *MCA21 portal*, documents gathered during physical inspection, information available on websites, etc. In this context, the issue for determination is whether the mobilization of funds by PDAL and PDA Foundation under its schemes falls under the ambit of '*collective investment scheme*' in accordance with Section 11AA of the SEBI Act.
- (15) On an examination of the material available on record, it is *prima facie* observed as under:
- (I) Parivar Diaries and Allied Limited (CIN U01211MP2002PLC015368) was incorporated on October 31, 2002 having Registered Office at 302, Ganesh Plaza, Gola Ka Mandir, Gwalior, Madhya Pradesh. The details of the Directors of PDAL are as under:-

| Sl No | Name of the Directors                 | Address                                                                              |
|-------|---------------------------------------|--------------------------------------------------------------------------------------|
| 1     | Shri Basant Lal Sharma                | Behind Oil Mill, Indra Nagar, Char Shahar ka Naka, Gwalior, Madhya Pradesh :- 474001 |
| 2     | Shri Ahibaran Singh                   | 62, Shiv Nagar Birla Nagar, Gwalior, Madhya Pradesh:-474004                          |
| 3     | Shri Chandra Bhan Yadav               | Nakasa No. 114, Indra Nagar, Char Shahar Ka Naka, Gwalior, Madhya Pradesh:- 474003   |
| 4     | Shri Pradeep Kumar Sharma             | Village Fathepur, Tehsil Bansur, Alwar, Rajasthan:- 301402                           |
| 5     | Shri Phool Singh Rajput               | Bambay Vale Chal, Pratappura, Malaviyaganj, Itarsi, Madhya Pradesh:-461111           |
| 6     | Shri Rakesh Singh Narwaria (resigned) | 72, Shiv Nagar, Birla Nagar, Gwalior, Madhya Pradesh:- 474004                        |
| 7     | Smt. Girja Narwaria(resigned)         | 72, Shiv Nagar, Birla Nagar, Gwalior, Madhya Pradesh:- 474004                        |

(II) As per the MoA, the main objects of PDAL is "*to carry in India or elsewhere the business to own, lease, manage, run establish and develop dairy and dairy farms and for this purpose to buy, sell, trade, breed, provide financial assistance, import, export, grow, produce, keep and deal in all types of cattle including cows, buffalos, she goats, sheep and to nourish, cherish and nurse them to extract milk and also to act as dairyman, gardner, breeder, milk coolecter, milk vendor, and to use the milk for manufacturing various dairy products and to do all other acts and kinds for the attainment of the foregoing objects.*"

(III) As per the 'Certificate' issued to investors viz., Shri Brajesh Kumar Sharma and Shri Arun Pratap Singh, it is noted that PDAL launched *lump-sum payment plans and installment payment plans viz., 5 years plan (for monthly payment) towards cost of cattle & product and Cattle Booking Plan A-3 for 6 years & 3 months.*

(IV) It is noted from the website of Ministry of Corporate Affairs (MCA) that PDAL uploaded annual report for financial year 2007-08. As per the same, as on March 31, 2008, PDAL had collected ₹4,62,08,962/- towards "*Sundry Advances under cattle sales scheme*". This figure was ₹3,96,46,558/- as on March 31, 2007. The annual report/ balance sheet for subsequent financial years are not available.

- (V) It is noted from internet search that there are investor complaints alleging that PDAL has changed its name to PDA Foundation switched the PDAL policy documents with new PDA Foundation documents. It is also noted that PDAL and PDA Foundation are having same address of office no.7, KRJ Building, 1st floor, Welder Street, Tiruvatiswaranpet-Anna Salai, Chennai (Tamil Nadu).
- (VI) It is noted from the website of PDA foundation viz., <http://pdafoundation.com> that its head office is at No.25,26, G-4, Ground Floor, Sector 16, Rohini, Delhi-110085. The business activities of PDA foundation are as under-

***“Dairy Farm***

*The trust currently has a well managed clean and hygienically maintained dairy farm and managed by experts which can accommodate 500 to 1000 cattle from where currently 10000 to 40000 litres of milk is produced and sold by which the Trust earn large income. Hundreds of cattle are sold and purchased in a day for which maximum income is derived.*

***Dairy Products***

*Within a very short period from the date of its commencement the trust has managed to establish a well developed and scientifically designed dairy farm and agricultural farms and its production of various dairy product are attaining prominence. This shows the excellent capability management of the Trust.*

***Agriculture farm***

*Trust has agricultural farms for the best crops which are monitored by agricultural experts. The trust derive good profit through the agricultural products. Currently farms cultivate chilies, coriander, turmeric, mangoes etc. which are used as species.”*

- (VII) On perusal of the brochure of PDA Foundation the following are noted:-

- PDA Foundation is established under Trust Act and is registered as a Public Trust.
- There were many photographs of various conferences held by PDA Foundation.
- One sample Product Allotment Advice issued to one customer viz., Shri M. Saravanan towards product/ cattle purchase plan no. A-2 for 5 years dated April 30, 2013 is depicted.
- It has branches in Tamil Nadu are at Chennai, Kanchipuram, Thiruthani, Thanjavur,

Madurai, Theni, Erode, Ramanathapuram, Virudhunagar, Perambalur, Marthandam and Sivagangai.

- The brochure also mentions circulars issued by PDA Foundation wherein incentives/ awards given to agents for targets achieved in respect of *Cattle booking business*.
- The brochures mentions about plans offered by the company viz., *Down Payment Plan and Instalment Plans viz., IPP-A3 (for 75 months), A6 (for 48 months), A-2 (for 60 months)*.

The details of *Instalment Payment Plan* is illustrated as under:-

**Instalment Scheme IPP - A3 6 years & 3 months (75 Months)**

| Initial Amount | 75 Months | 25 Quarterly | 12 Half-yearly | 6 Years | Maturity Amount | Accident Benefit |
|----------------|-----------|--------------|----------------|---------|-----------------|------------------|
| 300000         | 4000      | 11750        | 24000          | 47500   | 475000          | 100000           |
| 240000         | 3200      | 9400         | 19200          | 38000   | 380000          | 100000           |
| 180000         | 2400      | 7050         | 144090         | 28500   | 285000          | 100000           |
| 150000         | 2000      | 5875         | 12000          | 23750   | 237500          | 100000           |
| 120000         | 1600      | 4700         | 9600           | 19000   | 190000          | 100000           |
| 60000          | 800       | 2350         | 4800           | 9500    | 95000           | 60000            |
| 54000          | 720       | 2115         | 4320           | 8550    | 85500           | 54000            |
| 48000          | 640       | 1880         | 3840           | 7600    | 76000           | 48000            |
| 42000          | 560       | 1645         | 3360           | 6650    | 66500           | 42000            |
| 36000          | 480       | 1410         | 2880           | 5700    | 57000           | 36000            |

- In addition to the "*maturity amount*" as per the plan, PDA Foundation also offers accidental benefit to its customers/ investors.

(VIII) The following are noted from the Cattle / product booking *Application form & Agreement*:

- As per the application, an investor who is desirous of investing in the aforesaid scheme has to give personal details and mention that Cattle/ product name, Value of cattle/ product, date of commencement, mode of payment, amount of installment, etc. The application has to be signed by the applicant and the field associate of PDA

Foundation.

- As per the *Agreement*, PDA Foundation is engaged in development of dairy farms, breed & maintain all kinds of live stocks (including cows, buffalos, bulls, goats, sheep etc.) and to obtain milk from the said animals for selling, processing and value addition of milk based products for sale and marketing of the cattle, etc. It is mentioned that "*second party (investor) has expressed his/ her desire to purchase the cattle / goods/ products of Rs.--- as per the plans of the first party (PDA Foundation) by remitting Lump sum payment and/ or Installments of yearly/ half-yearly/ quarterly/ monthly to first party (PDA Foundation)*".
- Upon expiry/ completion of payment terms of the agreement, *the second party (investor) is free to take the cattle or if the second party (investor) opts can sell the said cattle to the first party (PDA Foundation) for estimated realizable value.*

(IX) The following are noted from the Trust Deed of PDA Foundation furnished by TVE Certification Services Private Limited:

- a) The name of Trust is PDA Foundation and office situated at G-4/25-26, Sector 16, Rohini, Delhi-110085.
- b) The Trust Deed was executed on November 08, 2011 by Shri Neeraj Singh resident of G-4/25-26, Sector 16, Rohini, Delhi-110085 (Settlor) and Shri Bhanu Pratap Singh resident of Shiv Nagar, Birla Nagar, Gwalior, Madhya Pradesh and Shri Neeraj Singh resident of G-4/25-26, Sector 16, Rohini, Delhi-110085 (Trustees). Settlor had given ₹5,000/- for creating Public Charitable Trust to trustees. The property of the Trust was registered by Sub-Registrar VI, Rohini Sector 16, Delhi vide certificate No. 6765 in Book No. 4 Vol. 1707 on page 115 to 124 on November 29, 2011.
- c) The objects mentioned in Trust Deed are as under:
  - i. *to promote the activity of dairy farming and its allied activities and for this purpose to buy, sell, trade, breed all kinds of live-stocks.*
  - ii. *to appoint agents and to open branches in any place*
  - iii. *to receive monies under any sales scheme of the Trust through issuance of receipts or other instruments*

*iv. to carry on all types of selling and purchasing activities directly or indirectly.*

(X) The following are noted from the analysis of the documents/ information pertaining to PDAL and PDA Foundation:

- (i) The address of directors of PDAL namely Shri Ahibaran Singh is 62, Shiv Nagar, Birla Nagar, Gwalior, Madhya Pradesh and Shri Rakesh Singh Narwaria is 72, Shiv Nagar, Birla Nagar, Gwalior. Though, the specific house number has not been given in Trust Deed, the address of Shri Bhanu Pratap Singh (Trustee of PDA Foundation) is Shiv Nagar, Birla Nagar, Gwalior, Madhya Pradesh. This aspect read with complaints of investors alleging switching of certificates from PDAL to PDA Foundation (as detailed earlier), clearly indicate the linkage between directors of PDAL and Trustees of PDA Foundation.
- (ii) From the physical verification conducted by SEBI at Delhi address of PDA Foundation, it is noted that PDA Foundation did not operate from the said premises. This indicates that the Delhi address was merely used for getting registration of Trust Deed from Sub-Registrar, Delhi.
- (iii) PDAL was mobilizing funds from members of public towards *its Cattle booking scheme*. The Company failed to submit details of funds mobilized despite repeated reminders from SEBI, contending that its offices are sealed by order of Collector of Gwalior in May 2011.
- (iv) PDA Foundation has been actively mobilizing fund through its cattle booking schemes. Further, the investors of PDAL in their complaints alleged that certificates of PDAL were exchanged/swapped with certificates of PDA Foundation.

(12) In light of the facts and circumstances narrated above, the fund mobilising activity of PDAL and PDA Foundation through their '*Cattle Booking Schemes*' 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 subsection (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.”*

- (13) In the context of the abovementioned Section 11AA of the SEBI Act, the “Scheme” offered by PDAL and PDA Foundation 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.***

It is apparent from the ‘Certificate’ issued to investors of PDAL, that the company is collecting funds from general public towards its ‘cattle booking schemes’. PDAL has Lump sum Payment Plans and Instalment Payment Plans viz., 5 years plan (for monthly payment) towards cost of cattle & product and Cattle Booking Plan A-3 for 6 years & 3 months. It is noted from the ‘Cattle booking Certificate’ and the general terms and conditions of ‘Cattle Booking Agreement’ that an investor who is interested in any of the schemes of PDAL can purchase the cattle as per the Lump sum Payment Plans or Instalment Payment Plans of the company. As per the ‘Cattle Booking Agreement’, the cattle are allotted to the investors and the company undertakes to maintain, develop and feed the cattle till the expiry of the term/period opted. It is noted from the Certificate or Agreement that the details of plan, term period and the expected market value of cattle at the end of the term are mentioned.

Similarly, it is noted from the Cattle/product booking Application form & Agreement, an investor who is desirous of investing in the aforesaid scheme has to mention personal

details, Cattle/ product name, Value of cattle/ product, date of commencement, mode of payment, amount of instalment, etc. The detailed specifications of the cattle purchased is nowhere mentioned in the application form or registration certificate of PDA Foundation. The investor cannot identify the product for which money is paid. Moreover, it is apparent from the financial statements of PDAL that funds received from investors are pooled together as "*Sundry Advances under cattle sales scheme*". As on March 31, 2008, PDAL collected ₹4,62,08,962/- towards "*Sundry Advances under cattle sales scheme*". Apparently, funds from investors are pooled and utilized for the purpose of the scheme offered by PDA Foundation as well as by PDAL. In view of the aforesaid it is evident that the instant '*schemes*' satisfy the first condition of "*pooling of contribution or payments*", stipulated in Section 11AA(2) of the SEBI Act.

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

It is noted from the *Cattle Booking Certificate* issued by PDAL that an investor who is investing in *Plan A-3 for 6 years and 3 months* by making payment of consideration of ₹60,000/-, is offered an amount of ₹95,000/- as expected market value of the cattle at the end of the term. Hence, an investor is entitled to return of ₹35,000/- on maturity. Similarly, in the case of an investor investing in the '*cattle booking schemes*' of PDA Foundation for a consideration of ₹3,00,000/-, on maturity he/she is entitled to receive ₹4,75,000/-. In addition to the aforesaid, PDA Foundation is also providing an amount of ₹1,00,000/- as accidental benefit. It is also noted that Clause 4 of the '*Agreement with Customer*' states "*that on expiry/completion of payment terms of this agreement the second party(customer) is free to take the cattle or if the second party opts can sell the said cattle to the first party (PDA Foundation) for estimated realisable value*". Thus, it is apparent that contributions by customers (whether by instalments or lump sum payment) are made to such scheme or arrangement with a view to receive expected sum payable in form of cash/ or cattle and also accidental help in time of need from such scheme or arrangement. I, therefore, find that the instant schemes satisfy the second condition stipulated in Section 11AA 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.***

It is apparent from brochure, application form and registration certificate that contributions by customer (whether by installment or lump sum payment) are given to the entity who in turn manage these funds on behalf of investors during agreed term of plan. Clause 4 of the '*Agreement with Customer*' states "*that on expiry/completion of payment terms of this agreement the second party(customer) is free to take the cattle or if the second party opts can sell the said cattle to the first party (PDA Foundation) for estimated realisable value*". It is noted from the general terms and conditions of '*Cattle Booking Agreement*' that PDAL "*reserves the right to discontinue/change/amend/modify or alter any of the terms and conditions at any time at its sole discretion without any notice*". Thus, it is apparent that cattle purchased/booked by the investors are managed on behalf of investors as per the Schemes by the companies till the end of the term. As per the terms of the Agreement, the cattle are reared in the farms of PDA Foundation and PDAL and also in the custody of the companies, it is apparent that the investors do not have any say whatsoever in management of the schemes.

In light of the above facts and circumstance, it is clear that the '*customer(s)*'/investors do not have day-to-day control over the management and operation of the schemes offered by PDAL and PDA Foundation and that the '*customer(s)*/' investors do not, at any stage, manage the property, contribution or investment forming part of the '*Schemes*'. In view of the above, I find that the instant '*Scheme/ Plan(s)*' satisfy the third and fourth conditions stipulated in section 11AA(2) of the SEBI Act.

(14) In view of above analysis and examination, I find that the schemes offered by PDAL and PDA Foundation inviting investments from public, when considered in the light of peculiar characteristics and features of such schemes, as detailed in the preceding paragraphs, *prima facie* satisfy all the four conditions of a '*collective investment scheme*' as defined in Section 11AA of the SEBI Act.

(15) I note that Hon'ble Supreme Court of India in *P.G.F Limited & Ors. vs. UOI & Anr.* (MANU/SC/0247/2013) (hereinafter referred to as "*PGFL Case*"), while analyzing the scope of

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

- (16) I note that in terms of Section 12(1B) of the SEBI Act *"no person shall sponsor or cause to be sponsored or cause to be carried on a 'collective investment scheme' unless he obtains a certificate of registration from the Board in accordance with the regulations"*. Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as **"CIS Regulations"**) also prohibits carrying on CIS activities without obtaining registration from SEBI. Therefore, the launching/ floating/ sponsoring/ 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 PDAL and PDA Foundation have not obtained any certificate of registration under the CIS Regulations for its fund mobilizing activity from the public under its schemes of land/plot.
- (17) I also find that the activity of illegal mobilization of funds by PDAL and PDA Foundation through its schemes, *prima facie*, amounts to a fraudulent practice in terms of Regulation 4(2)(t) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market), 2003 ("PFUTP Regulations").
- (18) It is noted that PDAL and PDA Foundation was advised to respond to the preliminary inquiry conducted by SEBI vide letters dated November 22, 2012, July 15, 2013 and January 19, 2015. However, PDAL and PDA Foundation failed to furnish the details of scheme as sought by SEBI. This appears to be a deliberate attempt to avoid furnishing the details to SEBI. In these circumstances, I find that sufficient opportunities have been afforded to PDAL and PDA Foundation to respond to SEBI. When considered in the context of the abovementioned *prima facie* finding, the inescapable conclusion is that non-submission of the

information with respect to its schemes to SEBI is nothing but an attempt to conceal the true nature and operation of the fund mobilizing activity of PDAL and PDA Foundation.

(19) Protecting the interests of the investors is the first and foremost mandate of SEBI and therefore, SEBI has to take immediate steps to prevent activities if companies or persons defrauding the investors and damaging the orderly development of the securities market. In order to ensure that PDAL and PDA Foundation and its Directors (past and present)/Trustees do not collect further funds under its scheme/Plans and to safeguard the assets/property acquired by PDAL and PDA Foundation from the funds of the investing public until full facts and materials are brought and final decision is taken in the matter, it becomes necessary for SEBI to take urgent preventive action. In the light of the above, I find no other alternative but to take recourse to an interim order against PDAL and PDA Foundation and its past and present Directors/Trustees.

(20) In view of the foregoing, I, in exercise of powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act read with CIS Regulations and PFUTP Regulations, hereby direct (1) Parivar Dairies and Allied Limited (CIN: U01211MP2002PLC015368) and its Directors viz., Shri Basant Lal Sharma (DIN: 00594879), Shri Ahibaran Singh (DIN: 00625418), Shri Chandra Bhan Yadav (DIN: 02706029) and Pradeep Kumar Sharma (DIN: 02706065) and (2) PDA Foundation and its Trustees viz., Shri Neeraj Singh (R/o G-4/25-26, Sector 16, Rohini, Delhi-110085 and Shri Bhanu Pratap Singh (R/o Shiv Nagar, Birla Nagar, Gwalior, (Madhya Pradesh)-456004):

- *not to collect any fresh money from investors under its existing schemes;*
- *not to launch any new schemes or plans or float any new companies to raise fresh moneys;*
- *to immediately submit the full inventory of the assets including land obtained through money raised by PDAL and PDA Foundation;*
- *not to dispose of or alienate any of the properties/assets obtained directly or indirectly through money raised by PDAL and PDA Foundation*
- *not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of PDAL and PDA Foundation;*
- *to furnish all the information/details sought by SEBI within 15 days from the date of receipt of this order, including,*
  - i. Details of amount mobilized and refunded till date,*

- ii. Scheme wise list of investors and their contact numbers and addresses,*
- iii. Details of commission paid on amounts mobilized above,*
- iv. Details of agents along with their addresses, etc.,*
- v. Audited Accounts for the last financial year and*
- vi. PAN of aforementioned Directors and Trustees.*

(21) The above directions shall take effect immediately and shall be in force until further orders.

(22) This order shall be treated as a show cause notice and PDAL and PDA Foundation and its directors/Trustees may show cause as to why the plans/ schemes identified in this order should not be held as a '*collective investment scheme*' in terms of the Section 11AA of the SEBI Act and the CIS Regulations and why appropriate directions under the SEBI Act and CIS Regulations, including directions in terms of Regulations 65 and 73 of the CIS Regulations should not be taken against them.

(23) The *prima facie* observations in this Order are based on the material available on record. In this context, PDAL and PDA Foundation and its Directors/Trustees 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.

**Date: March 30, 2015**

**S. RAMAN**

**Place: Mumbai**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**