

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

ORDER

Under sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999 in respect of in the matter of Popular Agro Farms Pvt. Ltd. (CIN:U01409TN1992PTC023157) and its Directors viz. Mr. Usman Pasha Usman Fayaz (DIN:00890257) and Mr. Niyaz Hyder Ali (DIN:00890228).

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a complaint on June 09, 2014, wherein it was alleged that **Popular Agro Farms Pvt. Ltd.** (hereinafter referred to as "**Popular Agro/the company**") failed to refund the amount invested by the complainant in one of the schemes. The complainant also furnished the following documents:
 - *Copy of an advertisement issued by Popular Agro, regarding the schemes offered by them,*
 - *Copy of proof of payment made by the complainant,*
 - *Letter of acknowledgement issued by the company to the complainant,*
 - *Copy of the "Teak tree Certificate" issued by the company.*
2. As part of the inquiry, SEBI, vide letter dated November 06, 2014 *inter alia* sought details of the various schemes operated by the company. In addition, Popular Agro was also asked to furnish the following documents:
 - *Amount collected - investor-wise, year-wise, and scheme-wise,*
 - *Amount refunded,*
 - *Brochures/pamphlets circulated by the company,*
 - *Audited financial statements for last three years.*

2.1 SEBI also sent separate letters to the Directors of the company seeking the aforesaid information/documents. The said letters were, however returned with the remarks "*Left*" / "*No such Addressee*".

3. Subsequent to this, SEBI, vide letter dated November 14, 2014, referred the aforesaid complaint to Registrar of Companies, Chennai, Reserve Bank of India, Chennai and Chief Secretary to Government of Tamil Nadu, to initiate action in respect of the issues falling under their jurisdictions, if any.
4. Further, on examining the website of *MCA- 21* portal, it was observed that the company had not made any filings with MCA for the last three years and the status of the company was mentioned as "*Under process of Striking Off*".
5. I have carefully perused the documents and material available on record such as, the complaint filed against the company and the documents contained therein; material/information obtained from *MCA -21* Portal, etc. The issue for determination in the instant matter is whether the mobilization of funds by Popular Agro is a '*collective investment scheme*' in accordance with Section 11AA of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**").

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

- i. Popular Agro Farms Pvt. Ltd. was incorporated on July 27, 1992 (CIN:U01409TN1992PTC023157). The registered office is at Plot No.1 & 2, Lake Area, Melur Main Road, Madurai 625 107. The authorised and paid-up capital are Rs.14 lakhs and Rs.1 lakh (1000 shares of Rs.100 each) respectively.
- ii. The Directors of the company are :

Serial No.	Name of Directors	PAN/DIN	Date of appointment as director /	Date of expiration DSC
1.	Mr. Usman Pasha Usman Fayaz (Managing Director)	DIN:00890257	September 4, 1992	November 27, 2014
2.	Mr. Niyaz Hyder Ali (Director)	DIN:00890228	July 27, 1992	October 24, 2011

- iii. As per the Memorandum of Association, the main object of the company is to carry on the business of agricultural, horticultural, floricultural and agricultural activity by purchase, lease, grant, licence lands and cultivate, grow or deal in any plantation, agricultural crops, manage and sell them.
- iv. It is observed from the documents available on record that Popular Agro collects money from the public under the scheme, "*Popular Triple Tree Bonanza*". Following are the details of the scheme:

Name of the Plan	Cost per unit	Time of Maturity	Expected returns	Gift Scheme*
<i>Casuarina</i>	Rs.350	5 years	Rs.1,200	quarterly
<i>Eucalyptus</i>	Rs. 500	8 years	Rs.2,500	quarterly
<i>Teak</i>	Rs. 1,000	20 years	Rs.70,000	Monthly

* *Investors are offered gifts- anything from a Maruti Car to a Casserole. The draws will be conducted at a function to be held every month at different places*

- v. Popular Agro claims to have plantations in Kodaikanal, Madurai and Tirunelveli- all in Tamil Nadu. The amounts mobilised from the investors would be invested by the company in these plantations and a guaranteed return, either in the form of tree or its sale proceeds, are offered to the investors. The company also claims that they use "*Micro-propagated tissue culture plants*" to ensure optimum growth in the specified period. The company also offers high returns on the investments.
- vi. As per the "*Teak tree Certificate*" issued by the company (provided by the complainant), it is observed that the complainant had invested an amount of Rs. 1000 in the "*Teak Tree*" Plan/ scheme in 1993. The date of expiry of the scheme was mentioned as December 03, 2012. The certificate also states: "*This is to certify that you are entitled to receive at your option on expiry of 20 years a sum of Rs. 70,000/- for the Teak Tree grown for you or the tree itself*". Following are the terms and conditions mentioned in the aforesaid certificate:

- *"The applicant shall make one-time payment of Rs. 1000 per teak tree along with the application form duly filed in. Out of this Rs. 1000/-, Rs. 500/- shall be towards long term maintenance cost, Rs. 400/- towards plantation developments, marketing, recurring and non-recurring maintenance expenses. And Rs. 75 towards companies charges and Rs. 25 towards the cost of saplings.*
- *Within 10 days from the receipt of issue of Application Money. The company shall post to the investor a certificate entitling the ownership of tree(s) as per option indicated.*
- *A teak tree managed by **Popular Agro Farms Pvt. Ltd.** at the end of 20 years is likely to yield 37 cubic feet of teak timber. Taking into account the current market price based on 6% inflation, each teak tree at the end of 20 years may fetch Rs.70,000/- as sale proceeds. Hence the investor at the end of the 20th year has the option for either a tree duly cut or as sale proceeds of the tree. Under both these options the company shall cut the tree from 6 inches above the ground and deliver the same to the member either as tree or as sale proceeds of the tree subject to the deduction of statutory levies a smay be applicable then.*
- *At any point of time from the date of allotment if any member wishes to opt out of the scheme the member would get back the initial payment without interest from M/s Popular Agro Farms Pvt. Ltd. and this would cancel the membership and the benefits that go along with such membership.*
- *The company shall plant carefully selected Teak saplings, nurture the same with scientific cropping practices and latest Agriculture Techniques. The company shall offer regular irrigation, periodic fertilizers....to protect plants.*
- *The company shall plant sufficient number of trees so that at the end of the scheme each Member would be in a position to receive the expected returns.*
- *The member rights are limited to trees or sale proceeds of the same only at the end of the scheme (s) and not to the land or any other product or output from the said land. At the end of the scheme each member shall intimate the company his option for the tree duly cut or the realized sale proceeds of the trees. In case nothing is heard from the member within two months from the end of the scheme the company shall cut trees and sell and remit the sale proceeds after deduction of statutory levies to the credit of the member which shall not carry any interest.*
- *The entire control, management and execution of the scheme, trees and plantation shall vest exclusively with the company."*

vii. As per the Annual Return filed by the company for the financial year 2010-11 (as observed from the website-MCA-21 Portal), a figure of Rs.12.07 lakhs under the head "Unsecured Loans" and Rs.6.11 lakhs under the head "Loans and Advances" are mentioned. Therefore, the data regarding the amount mobilized by Popular Agro under their various schemes is not available.

6. The aforementioned features of the "Popular Triple Tree Bonanza" appear to be a "scheme" offered by Popular Agro and the same has to be considered in light of the provisions of Section 11AA of the SEBI Act. Section 11AA provides for the conditions to determine whether a scheme or arrangement is a "collective investment scheme". It 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 Popular Agro, 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.***

Popular Agro collects funds from the investors for the purchase of trees through their scheme viz: "Popular Triple Tree Bonanza", comprising of three payment plans with varying term period of 5 years (*Casurina*), 8 years (*Eucalyptus*) and 20 years (*Teak*). As per the Clause 3 of the terms and

conditions mentioned in the "*Teak Tree Certificate*" issued by the company to the complainant (on receipt of the money from her), out of Rs. 1000 (per teak tree) collected from an investor, Rs. 500/- shall be towards long term maintenance cost, Rs. 400/- towards plantation developments, marketing, recurring and non-recurring maintenance expenses and Rs. 75/- towards companies charges and Rs. 25 towards the cost of saplings. It is further noted from the advertisement issued by the company that the trees are grown as per the guidance provided by agricultural scientists and using modern technologies, etc. This indicates that major portion of the amount collected from the investors are expended towards the development, maintenance and marketing charges and only 5% of the amount is spent towards the cost of saplings. The company agrees to pay an amount of Rs. 70,000/- to the investor as returns or the tree itself, on expiry of 20 years (for the amount of Rs.1000 paid by an investor (under the "*Teak Plan*"). It is therefore, clear that the amount collected from the investors are pooled and utilized for the purpose of the scheme.

Hence, it is clear that the instant '*scheme*' satisfies the first condition of "*pooling of contribution or payments*", 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.*

It is evident from the scheme that the investors are offered assured returns out of the sale proceeds arising from the sale of the tree or in the form of trees. For example, as per the terms and conditions of the teak tree scheme, "*the investor at the end of the 20th year has the option for either a tree duly cut or the realised sale of proceeds of the tree.*" Clause C (2) of the terms and conditions also states "*The company shall plant sufficient number of trees so that at the end of the scheme each Member would be in a position to receive the expected returns*". Further the advertisement of the company specifically portrays three schemes under the names '*Casuarina*', '*Eucalyptus*' and '*Teak*' with "*expected returns*"/profit of Rs.1,200 after 5 years (on investment of Rs.350), Rs.2,500 after 8 years (on investment of Rs.500) and Rs.70,000 after 20 years (on an investment of Rs.1,000).

Hence, it is clear that the second condition, which stipulates that the contributions or payments are made to such scheme of arrangement by the investors with a view to receive profits, income, produce or property as stipulated in Section 11AA (2) (ii) of the SEBI Act is also fulfilled.

- 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.***

Following clauses in the "*Teak Tree Certificate*" indicate that contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed by Popular Agro, on behalf of the investors and the investors do not have day-to-day control over the management and operation of the scheme or arrangement,

- *"The entire control, management and execution of the schemes, trees and plantation shall vest exclusively with the company.*
- *The company shall plant carefully selected Teak saplings, nurture the same with scientific cropping practices and latest Agriculture Techniques. The company shall offer regular irrigation, periodic fertilizers....to protect plants.*
- *The members rights are limited to tree(s) or sale proceeds of the same, only at the end of the scheme(s) and not to the land or any other product or output from the said land.*
- *The company shall plant sufficient number of trees so that at the end of the scheme each member would be in a position to receive the expected returns."*

The aforesaid clauses clearly indicate that the property, contribution or investment forming part of the scheme, is managed solely by Popular Agro on behalf of the investors and the investors do not have day-to-day control over the management and operation of the '*Scheme(s)/ Plan(s)*'. In view of the above, I find that the instant '*Scheme*'/Plan satisfies the third and fourth conditions stipulated in Section 11AA(2) (iii) & (iv) of the SEBI Act, 1992.

7. In the light of the above analysis and examination, it is clear that the activity of fund mobilization by Popular Agro, under the '*scheme*', 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.
8. 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 5 of the CIS Regulations states that any person who immediately prior to the commencement of these regulations was operating a collective investment scheme shall subject to the provisions of Chapter IX of these Regulations make an application to the Board for the grant of a certificate within a period of two months from such date. 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, 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 and 5 of the CIS Regulations.

In the instant case, as per the advertisement, the company started mobilizing fund from the investors for their scheme, "*Popular Triple Tree Bonanza*" since 1992. Further, as per the "*Teak Tree Certificate*" dated January 15, 1993 issued by Popular Agro to the complainant, the date of expiry of the scheme mentioned was December 3, 2012. This indicates that Popular Agro has been operating the '*collective investment scheme*' at the time of commencement of the CIS Regulations (on October 15, 1999), without obtaining certificate of registration from SEBI, contravening the provisions of Section 12(1B) of the SEBI Act and Regulation 5 and 3 of the CIS Regulations.

9. It is further noted that Mr. Usman Pasha Usman Fayaz is the Managing Director and Mr. Niyaz Hyder Ali is the director of Popular Agro. The activity of illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to carry on any collective investment scheme by any person 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. Considering the fact that no prior registration was obtained by Popular Agro in respect of the aforesaid activities in the nature of collective investment scheme, I am of the view that Popular Agro 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, which 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. Protecting the interests of investors is the first and foremost mandate for SEBI. Under the facts and circumstances as detailed above, SEBI has to take immediate steps to prevent activities of companies or entities defrauding investors and damaging the orderly development of the securities market. In order to ensure that Popular Agro and its directors do not collect further funds under its schemes and to safeguard the assets/property acquired by Popular Agro and its directors out of 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 by way of an interim measure. In the light of the same, I find no other alternative but to take recourse through an interim measure against Popular Agro and its directors.

11. In view of the above, I, in exercise of the powers conferred upon me under Section 11(4) and 11B of the SEBI Act, 1992 and Regulation 65 of CIS Regulations, hereby direct M/s Popular Agro Agro Farms Pvt. Ltd. (CIN: U01409TN1992PTC023157) and its Director *viz.* Mr. Usman Pasha Usman Fayaz (DIN:00890257) and Mr. Niyaz Hyder Ali (DIN:00890228):

- i. not to collect any fresh money from investors for its existing schemes;*
- ii. not to launch any new schemes/plans or float any new companies to raise fresh moneys;*
- iii. not to dispose of any of the properties or alienate the assets of the existing schemes;*

- iv. not to divert any funds raised from customers/investors, kept in bank account(s) and/or in the custody of the company;*
- v. to immediately submit the full inventory of the assets owned by Popular Agro,*
- vi. to furnish all the information sought by SEBI, vide letters dated November 06, 2014, including,*
 - Scheme-wise amount mobilized since inception till date,*
 - Details of scheme-wise list of customers/investors,*
 - List of investors who have been refunded,*
 - Audited financial statements for last three years.*
- vii. to furnish the item-wise commission paid to agents/investors for the promotion of the scheme (s), since inception till date.*

12.The above directions shall take effect immediately and shall be in force until further orders.

13.This order is without prejudice to the right of SEBI to take any other action that may be initiated against Popular Agro and its Directors, in accordance with law.

14.This Order shall also be treated as a show cause notice. Popular Agro and its abovementioned Directors may show cause as to why appropriate directions/prohibitions under Section 11 of the SEBI Act and in terms of Regulations 65 and 73 of the CIS Regulations including the following, should not be taken/imposed against them:

- i. Directing them jointly and severally to refund any moneys/assets collected from the investors under the scheme, along with the requisite interest,*
- ii. Directing them to wind up such plans/schemes,*
- iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities market for a particular period.*

15.M/s Popular Agro Farms Pvt. Ltd. and its abovementioned Directors shall, within 21 days from the date of receipt of this Order, file their reply, if any, to the prima facie observations made herein. The company and its Directors may also indicate, in such reply, whether they wish to avail an opportunity of personal hearing in the matter.

Place: Mumbai
Date: September 08, 2015

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