

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
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 interim order cum show cause notice dated March 31, 2015 in the matter of Prosperity Agro India Limited.

In respect of:

Sr. No.	Noticees	CIN/PAN
1	Prosperity Agro India Limited (formerly: Samruddha Jeevan Agro India Private Limited)	U01400PN2010PLC135473
2	Mr. Santosh Shrawan Mali	AWMPM2320F
3	Mr. Santosh Kaluram Paygude	ANQPP5668L
4	Mr. Vanshree Tukaram Chidrawar	AMHPC6141M
5	Mr. Hrishikesh Vasant Kanase	BBXPK1567K
6	Mr. Dattatray Madhav Yadav	ACPPY3360C

-
1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") vide an ex-parte ad-interim order dated March 31, 2015 had prima facie observed that Prosperity Agro India Limited (PAIL) and its Directors, namely, Mr. Santosh Shrawan Mali, Mr. Santosh Kaluram Paygude, Mr. Vanshree Tukaram Chidrawar, Mr. Hrishikesh Vasant Kanase and Mr. Dattatray Madhav Yadav (hereinafter collectively referred to as “noticees”) were illegally mobilizing funds from the public through schemes in the nature of Collective Investment Schemes (“CISs”) without obtaining certificate of registration from SEBI and thus contravened section 12(1B) of the Securities and Exchange Board of India Act, 1992 (“the SEBI Act”) read with Section 11AA of the SEBI Act, 1992 and regulation 3 of the SEBI (Collective Investment

Schemes) Regulations, 1999 (CIS Regulations). It was also observed that the fund mobilization activity of PAIL through its various schemes prima facie amounted to fraudulent practice under regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 (PFUTP Regulations), which was brought into effect from September 06, 2013.

2. In view of the prima facie findings against the Noticees, they were directed not to collect any money from investors under its existing scheme or to launch any new schemes, not to divert any fund raised from the public and not to dispose of any assets, property etc. The noticees were also directed to submit the full inventory of the assets owned by PAIL, details of expenses on advertisement and details of accounts transferred from Samruddh Jeevan Foods India Limited (SJFIL) to PAIL and from PAIL to Samruddha Jeevan Multi-state Multipurpose Co-operative Society Limited (SJMMCSL). The interim order also called upon the Noticees to show cause as to why the plans/schemes identified in the order should not be held as a “collective investment scheme” in terms of section 11AA of the SEBI Act and the CIS Regulations and why appropriate directions in terms of regulation 65 and 73 of the CIS Regulations should not be issued against them.
3. The said interim order, which came into force from 31 March, 2015, was served upon the company and its directors by speed post. PAIL, Shri Hrishikesh Vasant Kanase and Dattatray Madhav Jadhav requested for inspection of documents vide letters dated May 5, 2015 and February 2, 2016. These entities inspected the documents relied upon in the matter on February 3 & 5, 2016. SEBI sent letters dated March 31, 2016 and May 6, 2016 to PAIL advising them to file reply and furnish information/clarification about its transaction with SJMMCSL and also regarding transfer of business as mentioned in the interim order. The company has not submitted the information and documents even after seeking several extensions of time to submit the same. Subsequently, the company vide letters dated October 21, 2016, November 18, 2016 and November 24, 2016 requested SEBI to allow it to sell its majority stake in Broadcast Initiative Limited. The intimation about permission to sell the shares subject to their fulfilling certain conditions and complying with applicable law was sent to the entity vide letter dated December 19, 2016. Subsequent requests of the company to sell certain other assets were not considered as it failed to comply with the conditions stipulated

in the SEBI letter dated December 19, 2016. In the meantime, as the desired information and reply was not received, another reminder letter dated December 9, 2016 was sent to the company advising it to furnish information and reply to the interim-order cum show cause notice. However, neither the company nor the directors filed their reply. In order to proceed further with the matter, an opportunity of hearing was granted to the entity on March 2, 2017. PAIL requested for an adjournment of the hearing and further time to file its reply. Considering the request, the hearing was rescheduled to March 31, 2017. On March 31, 2017, Mr. Dattatray Madhav Jadav and Mr. Santosh Shrawan Mali appeared for hearing and stated that they will file their written submissions and documents sought by SEBI within seven days. However, no documents or written submissions have been received. Thus, being convinced that the noticees were granted sufficient opportunity to present their case, I am proceeding with the matter on the basis of the material available on record.

4. It is noted that SEBI had received certain investor complaints in the matter. The complaint dated January 20, 2014 from an investor states that he has invested about ₹ 30 lacs in PAIL which is an entity related to Samruddha Jeevan Foods India Limited ('SJFIL'). Another complaint dated September 04, 2014 from an investor of SJFIL alleges that instead of refunding the money on maturity, SJFIL transferred the membership from SJFIL to PAIL and later on to SJMMCSL.
5. It is also noted that during the preliminary inquiry into the matter, PAIL stated that the company is carrying on the business of rearing livestock and furnished, interalia, the following details and documents vide letters dated March 22, 2014 and October 18, 2014:
 - i. Memorandum and Articles of Association of PAIL.
 - ii. Details of the past and present directors.
 - iii. Audited financial statements for the financial years ended on March 31, 2011, March 31, 2012 and March 31, 2013.
 - iv. Income Tax Returns for the financial year 2010-11 and 2011-12.
 - v. Business manual and rearing plans.
 - vi. Sample copies of executed application forms and agreement for rearing of livestock, and
 - vii. List of investors/customers for 2012-2013.

6. I have taken into consideration the observations in the interim order and the material available on record. The issue for determination is whether the mobilization of funds by PAIL under its various schemes/plans for 'rearing and breeding of livestock for service charges' falls under the ambit of 'collective investment scheme' in terms with section 11AA of the SEBI Act, 1992. Section 11AA, which provides for the conditions to determine whether a scheme or arrangement is a 'collective investment scheme', reads as under :

“(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.

(3) ...”

7. Essentially, in a case where the payments or contributions of the investors are pooled and utilized for the purpose of a scheme with the promise of returns and the scheme being such that it is managed by the person collecting such contributions to the exclusion of the investors in its day to day affairs, it would qualify to be a CIS under the SEBI Act. Thus in terms of the provisions in Section 11AA of the SEBI Act, it is necessary to examine the Scheme of “Rearing Plans of Calves/Goats/Buffaloes” offered by PAIL to ascertain whether it falls within the ambit of a CIS or not.

8. It is seen that PAIL invited funds from public for its schemes towards "rearing of livestock such as Calves/Goats/Bufaloes" through its various plans. The plans Prosperity Life (3years), Prosperity World (3 years), Prosperity Vaibhav (4years) are similar. The details of one such plan is mentioned in table (a) below. Further, the plans Prosperity Green (4 years), Prosperity Anand (5years) and Prosperity Sun (5.5 years) are similar and the details of one such plan is mentioned in table (b) below.

Table (a) - Rearing Plan Prosperity Life for 3 years

No of goats/ calf/ Buffalo given for Rearing by customer	Livestock rearing charges	Rearing Charges In ₹				Approximate number of goats & equivalent weight of goats/ calf/ buffalo at the end of live sock rearing contract
		MLY	QLY	HLY	YLY	
1 goat- 10 to 15 kg	3600	100	295	585	1160	2 goats up to 48 kg
1 goat of 16 to 24 kg	7200	200	590	1170	2320	4 goats up to 95 kg
2 goats of 25 to 36 kg	10800	300	885	1755	3480	7 goats up to 131 kg
1 calf of 8 to 10 months old	14400	400	1180	2340	4640	1 non milking buffalo
1 calf of 11 to 12 months old	18000	500	1475	2925	5800	1 milking buffalo
1 calf of 20 to 22 months old	36000	1000	2950	5850	11600	1 milking buffalo & 1 non milking buffalo

Table (b) - Rearing Plan Prosperity Green for 4 years

No of goats/ calf/ Buffalo given for Rearing by customer	Livestock rearing charges In ₹	Approximate No. of goats & equivalent weight of goats/ calf/ buffalo at the end of live sock rearing contract
1 Goat of 15 to 20 kg	6000	4 goats of 75 kg
2 goats of 25 to 30 kg	9000	6 goats of 113 kg
2 Goat of 35 to 40 kg	12000	8 goats of 150 kg
1 Calf of 15 to 18 month old	30000	1 milking buffalo & 1 Buffalo
1 milking buffalo	60000	3 buffalos

9. The amounts are collected from the customers towards onetime payment plans or periodic payment plans. The '*customers*' or investors who are desirous of subscribing to the schemes are made to execute an agreement viz., "*Live Stock Rearing Contract*" prescribing different sets of payment schedules illustrated at tables (a) and (b) above. From the *Livestock Rearing Contract* furnished by PAIL, the following are noted:

- a) *The Owner (Customer) on his free will is entering into the present livestock rearing contract with Contractor (PAIL) and hereby handover 1 goat weight in Kg (18 kg) to Contractor for rearing and breeding of the said livestock.*
- b) *The Owner shall pay to the contractor total sum of Rs. 6000 towards rearing and breeding expenses of the said Live Stock.*
- c) *The livestock rearing contract shall come into force immediately on physical delivery of goats and actual receipt of rearing charges from owner to the contractor.*
- d) *The livestock rearing contract is commencing from April 25, 2012 and ending on October 24, 2017. On expiry of the aforesaid tenure, the contractor hereby undertakes to handover five number of goats (approximately 100 kg weight) to the owner.*
- e) *After the commencement and during the rearing contract, contractor shall be the absolute owner of milk, dung etc. of the said goats and contractor shall have right to use the said goats and their offspring for agricultural purpose such as production of fertilizers, gober gas etc. Contractor shall have absolute*

liberty to enter into rearing and/or breeding sub contract with other persons/ farmers/ organizations/firms etc. for that livestock during subsistence of present livestock rearing contract.

- f) *In case of death of goats during three contract period, the owner shall not be responsible for the same and PAIL shall be entirely liable to bear the loss there of.*

10. It is noted that as per the "Live Stock Rearing Contract", the customer is required to handover goat(s) and pay corresponding rearing charges either as upfront lumpsum payment or through installment payments as per the plan opted by the customer. Upon execution of the contract, PAIL takes delivery of the livestock and collects money, as per plan. It is observed that PAIL has received ₹15,68,50,449/- as short term advance from 39,347 customers for rearing as on March 31, 2013. Further, it received ₹50,89,58,201/- as long term advance from 40,916 customers as advance payment for rearing as on March 31, 2013. Thus, it is noted that as on March 31, 2013, PAIL had mobilized an amount of at least ₹66.58 crore as advance rearing charges. Further, at the end of the agreement term, the owner of goat is entitled to receive goats as per the plans. Further, as per the plan the contributions were to be utilized for the purpose of the scheme.

11. It is further noted from the rearing plans that an investor who hands over 1 goat of 15 to 20 kg weight (under Prosperity Green Plan), after 4 years becomes entitled to receive 4 goats weighing 75 Kg approximately. Further, as per the terms of the contract in case of death of livestock during the contract period, PAIL is entirely liable for the loss. Hence, it appears that such contracts are entered into by the customers, with an intention to earn profits and therefore the above referred schemes satisfy the second condition stipulated in section 11AA (2)(ii) of the SEBI Act. It is noted from the Live Stock Rearing Contract, that after the commencement and during the rearing contract, PAIL is the absolute owner of milk, dung etc., of the said livestock and had the right to use the animal and its offspring for agricultural purpose. PAIL also had absolute liberty to enter into rearing and/or breeding sub-contract with other persons/ farmers/ organizations/firms etc. for that livestock during the subsistence of contract (Clause 7). Under Clause 12 of the contract, the Owner authorized PAIL to take all the necessary decisions in respect of all such aspects which are incidental to the rearing contract. As per clause 14, the contractor was authorized to pay all taxes, levies, duties etc. and receive all concessions, subsidies etc. Further, as per clause 17, the owner had no right to

terminate the contract before the term under any circumstances and as per clause 9, the owner was not entitled to receive any monetary benefit from PAIL during the subsistence of the contract.

12. The basic issue for consideration is whether the contributions received from the investors are pooled and utilized for the scheme purposes or not. I find that PAIL has floated the said schemes to attract the investors to the schemes with the promise of returns. The quantum of contributions received as advance from around 80,000 investors till 2013 was ₹66.58 crores. As the noticees have not co-operated, it is possible that the amount of money mobilized by PAIL and the number of investors affected may be larger. The characteristics of the schemes floated by PAIL would show that the idea was to mobilize contributions from different investors according to their suitability and invest it collectively so as to meet the promise of returns made thereunder. Till the point of time of return of the cattle, the investment supposedly in the form of goats is in the hands of the company in such a way that the investors do not have a control over the operation of the PAIL's scheme. From the contract conditions as elaborated above, I conclude that the schemes of "Rearing of Calves/Goats/Bufaloes" offered by PAIL and its directors fulfill the conditions of a 'collective investment scheme' as defined in Section 11AA of the SEBI Act and therefore was required to be registered as mandated under section 12(1B) of the SEBI Act and CIS Regulations. The launching/ floating/ sponsoring/ causing to sponsor any Collective Investment Scheme and mobilization of funds from the public under such scheme can be done by any person only after obtaining requisite registration under section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations. In this regard, I note that PAIL has not obtained any certificate of registration from SEBI under the CIS Regulations for its fund mobilizing activity from the public, for the 'Schemes' offered by it. Further, I also find that the fund mobilizing activity of PAIL through its various schemes was done without obtaining the necessary registration and was therefore illegal and amounts to a fraudulent practice in terms of Regulation 4(2)(t) of the PFUTP Regulations.

13. From the material available on record, it is observed that Mr. Santosh Shrawan Mali, Mr. Santosh Kaluram Paygude, Mr. Vanshree Tukaram Chidrawar, Mr. Hrishikesh Vasant Kanase

and Mr. Dattatray Madhav Yadav were in charge of and responsible for the day to day affairs of the company as directors of PAIL.

14. It is also pertinent to mention here that SEBI, vide an interim order dated October 31, 2013 restrained SJFIL from collecting any money from the investors under its schemes. Subsequently, a final order in the matter was passed on September 2, 2015, wherein it was held that SJFIL was carrying out the activity of running Collective Investment Schemes without obtaining certificate of registration as Collective Investment Management Company (CIMC) from SEBI. The order directed SJFIL, inter alia, to refund the money collected under the Collective Investment Schemes to the investors. It is also noted that after the passing of the interim order in the matter, SEBI received an investor complaint on September 4, 2014 alleging that instead of refunding the money on maturity, SJFIL transferred his membership from SJFIL to PAIL and later on to SJMMCSL. It is relevant to mention that the interim order in the instant case had also directed PAIL and its directors to furnish details of accounts transferred from SJFIL to PAIL and from PAIL to Samruddha Jeevan Multi-State Multipurpose Co-operative Society Limited. PAIL has submitted that during the financial year 2012-13, it has received ₹15,00,00,000/- from SJFIL towards utilization of livestock farming facility of the Company at its project situated at Valsad (Gujarat) and Jalki (Karnataka). No other details have been furnished. The conduct of the company and its directors indicates that it keeps changing its name, registration and its constitution pattern so as to avoid scrutiny of any regulator from time to time.
15. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11B and 11(4) of the SEBI Act, 1992 read with Regulation 65 of CIS Regulations hereby issue the following directions:
- i. PAIL and its Directors viz., Mr. Santosh Shrawan Mali (AWMPM2320F), Mr. Santosh Kaluram Paygude (ANQPP5668L), Mr. Vanshree Tukaram Chidrawar (AMHPC6141M), Mr. Hrishikesh Vasant Kanase (BBXPK1567K) and Mr. Dattatray Madhav Yadav (ACPPY3360C), shall abstain from collecting contributions/payments, either directly or indirectly, from the investors or launch or carry out any Collective Investment Schemes including the schemes which have been so identified in this Order.

- ii. PAIL and its directors are jointly and severally liable to wind up its existing collective investment schemes and refund the contributions or payments collected from investors under the schemes with returns due to the investors within a period of three months from the date of this order. Upon completion of the refund as directed above, within a further period of seven days, PAIL and its directors shall submit a winding up and repayment report to SEBI in accordance with the CIS Regulations. In the event of failure by PAIL and its noticee directors to comply with the above directions, SEBI shall initiate recovery proceedings under the SEBI Act against the noticees.
 - iii. PAIL and the noticee directors shall not alienate or dispose of or sell or create any encumbrance on any of the assets of the company except for the purpose of making refunds to its investors as directed above.
 - iv. PAIL and the noticee directors are restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly, till the directions for refund/repayment to investors are complied with, as mentioned above, to the satisfaction of SEBI and repayment completion certificate is submitted to SEBI and for a further period of four years from the date of completion of the refund, as directed above.
 - v. The noticee directors are restrained from holding position as director or key managerial personnel of any listed company for a period of 4 years from the date of this order.
16. This order shall come into force with immediate effect. Copy of this Order shall be forwarded to the stock exchanges and depositories for necessary action.

Date: August 8, 2017

Place: Mumbai

**G. MAHALINGAM
WHOLE TIME MEMBER**