National Stock Exchange of India
Circular

Department: Investigation	
Download Ref No: NSE/INVG/56907	Date: May 31, 2023
Circular Ref. No: 141/2023	

To All NSE Members

Sub: SEBI Order in the matter of Capacious Farming Pvt. Limited

This has reference to NSE Circular NSE/INVG/48922 dated July 12, 2021 in respect of SEBI Order no. WTM/GM/EFD/DRA3/12523/2021-22 dated 12-Jul-2021.

SEBI vide its Order no. WTM/SM/EFD/DRA3/26974/2023-24 dated May 31, 2023, has restrained following entities from accessing and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, from the date of this order, till the expiry of 03 years from the date of this order or from the date of completion of the refunds to the investors or payment of balance amount to IPEF, whichever is later.

Sr. No.	Name of the Entity	PAN
1	Capacious Farming Pvt. Ltd	AAECC3138N
2	Gaurav Yadav	ACQPY5145E
3	Gurbakhsh Singh	BCLPS1117G

SEBI vide above order has directed that obligation of above entities, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized Stock Exchange (s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order, only in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the Noticees in the F&O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

This Order shall come into force with immediate effect.

The detailed order is available on SEBI website (http://www.sebi.gov.in).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page at the below mentioned link:

National Stock Exchange of India

https://www.nseindia.com/regulations/member-sebi-debarred-entities

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to email us at dl-invsg-all@nse.co.in

For and on behalf of

National Stock Exchange of India Limited

Sandesh Sawant
Senior Manager

ANNEXURE: - SEBI Order in the matter of Capacious Farming Pvt. Limited

WTM/SM/EFD/DRA3/26974/2023-24

SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: S.K. MOHANTY, WHOLE TIME MEMBER
ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B (1) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF CAPACIOUS FARMING PVT. LIMITED

In respect of:

Sr. No.	Entity Name	PAN
1.	**Capacious Farming Pvt. Ltd.**	**AAECC3138N**
2.	**Gaurav Yadav**	**ACQPY5145E**
3.	**Gurbakhsh Singh**	**BCLPS1117G**
4.	**Narmin Kaur Yadav**	-

PURSUANT TO THE ORDER DATED MARCH 28, 2022 PASSED BY THE HON'BLE SECURITIES APPELLATE TRIBUNAL

Background:

1. The instant proceedings are being conducted in compliance with the order dated March 28, 2022 passed by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as the "**SAT/ Tribunal**") in Appeal No. 116 of 2019, Gurbaksh Singh Vs. Securities and Exchange Board of India and others. Vide the said order, the Hon'ble Tribunal, while allowing the appeal filed by Mr. Gurbaksh Singh, has set aside the order dated July 12, 2021 passed by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), and remanded the matter back to SEBI. The Hon'ble Tribunal while remanding the matter *inter alia* held as follows:

"8. For the reasons stated aforesaid, the impugned order cannot be sustained and is quashed. The appeal is allowed. The matter is remitted to the WTM to pass a fresh order after giving an opportunity of hearing without taking into consideration the earlier order passed by the WTM dated July 12, 2021. In this regard, the appellant shall appear on April 08, 2022 before the WTM. Misc. Applications are accordingly disposed of."

2. In order to adjudge the issue involved in the present proceedings I have to first advert to the factual background of the present matter which led to the issuance of a show cause notice dated May 12, 2014 against the *Noticees:*

I. Based on a complaint received from an individual, it came to the knowledge of SEBI that Capacious Farming Pvt. Limited (hereinafter referred to as '**Capacious**'/ '**the Company**') is collecting monies from the public.

II. Certain communications were exchanged between SEBI and the *Company* and certain documents pertaining to the *Company* were also gathered by SEBI from the Registrar of Companies (hereinafter referred to as '**RoC**').

III. In terms of the information submitted by the *Company*, it was noted that it was incorporated on March 10, 2011, with an objective to carry on the business of trading of animals and animal products; to run and operate a dairy farm, poultry farm, piggery, goat farm; processing, packing and trading in all kinds of animal products. The *Company* was claiming to manage a Goat and Pig farm in a land admeasuring 5 acres situated in Nathapura Village, Tehsil Natha, Distt. Bhatinda, Punjab, having 1,200 Goats and 400 pigs. The objective of managing such a farm was to raise and sell animals to individuals/ corporate, who were desirous of buying the animals for their personal or business use.

IV. The *Company*, in the Financial Year 2011-12 made an outward sale of 3,499 goats for a value of INR 2,40,79,541.

V. The examination of the activities of the *Company, prima facie* indicated that the schemes/arrangement being run by it to mobilise funds from the public, are in the nature of 'Collective Investment Scheme' (hereinafter referred to as **'CIS'**), consequently, a show cause notice dated May 12, 2014 (hereinafter referred to as the **'SCN'**) was issued to the *Company (Noticee no.1)* and its Directors viz., Mr. Gaurav Yadav *(Noticee no.2)*, Mr. Gurbakhsh Singh *(Noticee no.3)* and Ms. Narmin Kaur Yadav *(Noticee no.4)*.

VI. The SCN alleged that under the scheme/arrangement floated by the *Company* for the sale and rearing of livestock (goats/pigs), the investors were required to make monthly payments towards the purchase of livestock and for rearing of the purchased animal which (rearing) was carried out by the *Company.* As per the sale agreement, the physical custody of the animal was handed over to the purchaser, however, another clause of the agreement stated that there may be multiple purchasers of the animal, indicating thereby, that the actual custody of the animal was never handed over to the purchaser (s). Further, the *Company* promises assured resale/ realizable value on the purchase of the livestock at the end of the term of 48 months or to receive the animal after 48 months.

3. The SCN called upon the *Company* and the aforesaid individuals alleging that the aforesaid scheme/arrangement of the *Company* is a CIS, as defined under Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act, 1992**") and having carried on/caused to carry on such a CIS without obtaining the requisite registration from SEBI, is in violation of Section 12 (1B) of the SEBI Act, 1992 read with the Regulation 3

of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as the "**CIS Regulations**").

4. The proceedings that emanated from the aforesaid SCN finally culminated into an order dated June 16, 2015 passed by SEBI against the *Noticees* herein and the said order rendered a finding that the *Company* had launched a CIS for which no registration was obtained from SEBI and such an act/omission was found to be in violation of provisions of Section 12 (1B) of the SEBI Act, 1992 read with Regulation 3 of the CIS Regulations. Further, vide the aforesaid order, the *Noticees* herein were *inter alia* restrained from further collecting money under the said scheme and were also directed to wind up the existing CIS and refund the money to the investors, with the returns which were due to the investors, within a period of three months from the date of the said order.

5. The aforesaid order dated June 16, 2015 (hereinafter referred to as the "**1st SEBI order**") was challenged in a common Appeal (Appeal no. 405/2015, Capacious Farming Pvt. Ltd. and others Vs. SEBI) before the Hon'ble SAT. In the said proceedings filed before the Hon'ble SAT, the *Noticees* contended that the 1st SEBI order has been passed without providing an opportunity to the *Noticees* to furnish relevant documents. The Hon'ble SAT, vide its order dated November 07, 2017 (hereinafter referred to as the "**1st SAT order**") disposed of the appeal by setting aside the 1st SEBI order and directed the appellants therein to file their submissions before SEBI within a period of 4 weeks, and SEBI was directed to consider such submissions/documents before passing a fresh order.

6. The relevant findings of the Hon'ble SAT recorded in the 1st SAT order are reproduced herein below for ready reference:

"2. It is the case of the appellant that the WTM of SEBI without calling upon the appellants to furnish documents has held in the impugned order that the appellants had failed <u>to furnish documents</u> relating to sale of goats/pigs <u>amounting to Rs. 2.4 crore</u>. It is submitted that the appellants are ready and willing to furnish whatever documents that are available with them and also furnish details of the sales return as is available with them within a period of 4 weeks from today. It is further submitted that the appellant no.1 had not collected any money from the investors and any money collected from the customers under the respective agreements have been returned to the customers by dropping the schemes floated by the company and as such the question of <u>refunding the money</u> by the company does not arise at all.

3. In these circumstances, we set aside the impugned order and direct the appellants to furnish documents e.g. agreements executed under the schemes floated by the company, details of <u>sales returns</u>, details of amounts received and <u>refunded to the customers</u> etc within a period of 4 weeks from today. If the above documents are furnished within a period of 4 weeks from today, SEBI would consider the same and pass appropriate order in accordance with law. If the appellants fail to submit the documents within 4 weeks from today, then the impugned order shall <u>stand revived and SEBI would be entitled to enforce the said order</u>." (underline supplied)

7. From the records of the present matter, it is noted that in pursuance of the aforesaid directions of the Hon'ble SAT, vide letter dated November 11, 2017, certain submissions were made by the *Noticees* before SEBI. The proceedings that further emanated after the filing of such documents/submissions by the *Noticees,* led to the passing of another order dated July 12, 2021 by SEBI (hereinafter referred to as the "**2nd SEBI order**"). In the 2nd SEBI order, after considering all the documents so furnished by the *Noticees* and also after considering the submissions made thereto, SEBI again came to the conclusion that the said scheme or arrangement being conducted by the *Company* was in the nature of a collective investment scheme. The relevant findings recorded in the 2nd SEBI order are being reproduced hereunder for ready reference:

> *"…13. After considering the documents submitted by the company, I am of the view that if the company was only engaged in outright sale of livestock and related products, as claimed, then there would have been no occasion for entering into detailed agreements for the same with customers. The very existence of these agreements leads to a presumption that the entity was not engaged in sale of livestock and related products. It is further noted that SEBI had received investor complaints alleging that the Company had not paid back*

money they *<u>had invested.</u>* *It is noted that the complainants had enclosed copies of the receipts given by the Company acknowledging the payments received from them. The complainants had also submitted copies of the cheques through which payments were made. Further, the amounts mentioned in the complaints and the receipts issued by the* *<u>Company do not match</u>* *with the sales ledger or other documents submitted by the Company.*

14. In view of the above, I am of the opinion that the details furnished in the form of the sales ledger account and copies of agreements entered into with customers are not sufficient to come to a conclusion that the Company was engaged in the outright sale of livestock and related products as opposed to running a CIS scheme as held in the SEBI Order. I am therefore inclined to ratify the findings in the SEBI order dated June 16, 2015…." (underline supplied)

8. Further, the 2nd SEBI order also directed the *Noticees* to wind up the existing CIS and refund the money collected under the scheme, along with the returns which are due to the respective investors as per the terms of the offer, within a period of three months from the date of the said order.

9. It is noted that the 2nd SEBI order also came to be assailed by one of the *Noticees* (Mr. Gurbaksh Singh) before the Hon'ble SAT in *Appeal no. 116 of 2022,* Gurbaksh Singh Vs. SEBI and others. As an outcome of the aforesaid appeal, vide order dated March 28, 2022 of the Hon'ble SAT, the 2nd SEBI order also came to be set aside and the matter again got remanded back to SEBI. The findings recorded by the Hon'ble SAT to set aside the 2nd SEBI order are reproduced hereunder:

"…it is clear that the WTM in the impugned order has only considered the findings given in its earlier order of June 16, 2015 and came to the conclusion that the evidence led by the appellant was not sufficient to take a different view.

6. In our view, the WTM has committed an error in proceeding in this fashion. Once an order of the WTM is set aside by this Tribunal the said order is no longer in existence and cannot be utilized in any manner.

7. When an order is quashed or set aside, the said order is wiped out from its existence. It is annulled. *<u>Quashing</u>* *of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed as held in Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Assn. (1992) 3 SCC*

1. Thus, once the order is wiped out from its existence, the question of considering the findings of that order which is no longer in existence does not arise.

8. For the reasons stated aforesaid, the impugned order cannot be sustained and is quashed. The appeal is allowed. The matter is remitted to the WTM to pass a fresh order after giving an opportunity of hearing without taking into consideration the earlier order passed by the WTM dated July 12, 2021. In this regard, the appellant shall appear on April 08, 2022 before the WTM. ..."

10. As can be noted from the above, the Hon'ble SAT remitted the matter to SEBI for fresh consideration and *inter alia* directed the appellant therein to appear before SEBI on April 08, 2022. As directed by the Hon'ble SAT, a personal hearing was granted to Mr. Gurbaksh Singh (the appellant before the Hon'ble SAT; *Noticee no. 3* herein) on April 08, 2022. On the said date, the Counsel for the said *Noticee* appeared before me through video conferencing mode and made a preliminary submission that SEBI needs to grant a hearing opportunity also to the *Company* and other Directors (remaining *Noticees*) as they are not aware of the order dated March 28, 2022 passed by the Hon'ble SAT (2nd SAT order). Further, the Counsel for the *Noticee no. 3* made submissions by referring to the 1st SAT order so as to demonstrate the background of the proceedings and the reason for remanding the matter back to SEBI by the said order. The *Noticee no. 3* was given the liberty to file a written reply so as to present all his arguments and vide an email dated May 07, 2022, the written reply was filed on behalf of the *Noticee no. 3*.

11. I may note here that the aforesaid personal hearing held on April 08, 2022 was conducted in due compliance with the directions of the Hon'ble SAT. Further, after considering the fact that the appeal filed by the *Noticee no. 3* (Gurbaksh Singh Vs. SEBI and others) was disposed of by the Hon'ble Tribunal without issuing any notice to the Respondent nos. 2 to 4 therein viz., Capacious Farming Private Limited (*Noticee no. 1* herein), Mr. Gaurav Yadav (*Noticee no. 2* herein) and Mrs. Narmin Kaur Yadav (*Noticee no. 4* herein), it was deemed fit to grant an opportunity of

personal hearing to the aforesaid *Noticees* also. Accordingly, the personal hearing in the matter for all the *Noticees* was scheduled for August 02, 2022.

12. The records before me indicate that in order to intimate the afore-said date of hearing, separate hearing notices dated June 23, 2022 were issued by SEBI, however, all the said notices returned undelivered with the following comments:

Table no. 1

Sr. No.	Noticee	Remarks
1.	Capacious Farming Private Limited	Left without Address
2.	Gaurav Yadav	Left without Address
3.	Gurbaksh Singh	Insufficient Address
4.	Narmin Kaur Yadav	Left without Address

13. Apart from sending the hearing notices through Registered Post, vide emails dated June 24, 2022, the scanned copy of such notice was also sent to the email addresses of the *Noticee nos. 1, 2* and *3* and also to the email address of the Counsel for the *Noticee no. 3*, as available on records with SEBI. The said emails were followed up by reminder emails dated July 22, 2022. Further, efforts were also made to contact the *Noticee nos. 2* and *4* over the phone (based on the contact details shared by the Counsel of the *Noticee no. 3*), however, the said efforts also could not yield in any result to contact the above two *Noticees.*

14. On the hearing date so fixed, i.e., August 02, 2022, the Counsel for the *Noticee no. 3* appeared before me through Video Conferencing mode and made submissions which were broadly on the lines of his written reply dated May 07, 2022. As there was no representation from the remaining *Noticees* viz., *Noticee nos. 1, 2* and 4, it was deemed fit to grant them another opportunity to present their case, and accordingly, another personal hearing was fixed for September 26, 2021 and this time, the hearing notices were served through publication in two newspapers viz., Amar Ujala (Jalandhar Edition) and Ajeet (Bathinda Edition). However, despite effecting the service of the said hearing notice through newspaper publication, the said *Noticees* did not avail of the opportunity of personal hearing so granted on September 26, 2021. Under the circumstances, I am of the view that the present matter deserves to be adjudged on the basis of the material available on record, as adequate opportunities to the said *Noticees* have been provided to appear before me for their personal hearing as well as for making written submissions in response to the SCN served upon them.

15. The records before me indicate that the *Noticee nos. 1, 2*, and *3* had initially filed a common reply dated June 28, 2014 to the SCN in the first round of proceedings before SEBI. The submissions that were made at that time on behalf of the said *Noticees* are summarised as under:

i. The *Noticee no. 1* runs the farm house with an objective to raise and sell animals to the prospective customers. Such prospective customers are free to use the animals either for commercial or personal purpose, as per their own will.

ii. The *Noticee no. 1* had not mobilised money under any scheme, as alleged and it is only rearing/selling its own animals for making profits. The *Noticee no. 1* is not having any investors and it only sells animals.

iii. The *Noticee no. 1* is not involved in rearing of the animals which are not owned by it. Further, it has no share in the profit of the purchaser of the animals and the possession of the animal is handed over to the purchaser, therefore, there does not arise any question of giving an option to the purchaser to receive the animal/livestock after 48 months and thus there is no scheme which is being managed on behalf of the investors.

iv. The *Noticee no. 1* had started selling the animals on instalments, however, as no response for the same was received, the practice of selling on instalments was dropped.

v. The *Noticee no. 1* sells animals after taking the one-time payment from the customer on execution of a specific agreement with the purchaser / customer.

vi. In case of one-time payment, the only purpose of mentioning the cost of animal after four years in the scheme brochure is to show the purchaser that there are immense profits in the business of sale and purchase of animals, so as to motivate the purchaser to purchase the animals from the *Noticee no. 1*. No commitment of making such projected payments was ever made by the *Noticee no. 1* to its customers.

vii. The sale transactions of the *Noticee no. 1* is not limited to the individuals but are also being made to Firms/companies etc. The term "co-owner" as mentioned in the sale agreement means that the customer being a company may have several directors/shareholders etc.

16. Further, in the earlier proceedings, the *Noticee no. 4* (Ms. Narmin Kaur Yadav) had vide her letter dated June 16, 2014 *inter alia* stated that she was one of the first Directors of the *Noticee no. 1,* the *Company*, which was incorporated on March 10, 2011. She had further stated that owing to her ill health/medical treatments, she was not able to perform any of the activities pertaining to the *Company* and had ultimately resigned vide her resignation letter dated March 27, 2011 and the same was accepted on March 30, 2011. (Copy of Form no. 32 is filed in support of the submissions). *Noticee no. 4* had further stated that even though she remained Director of the *Company* for merely 20 days, she was not involved in any of the activities of the *Company.*

17. Further*,* during the present proceedings, the *Noticee no. 3* has filed his post hearing written submissions in which the highlights of the key submissions are summarised herein below:

i. A letter dated March 08, 2013 was received by the *Company* from SEBI seeking certain documents and the said documents were supplied vide letter dated May 07, 2013 of the *Company.* Further, other sets of documents were also furnished to SEBI vide letters dated January 08, 2014; January 20, 2014 and March 08, 2014 and subsequently, the SCN dated May 12, 2014 was issued by SEBI.

ii. In the proceedings arising out of the aforesaid SCN, a reply date June 28, 2014 was filed and only during the hearing held on January 16, 2015, a copy of the complaint dated January 24, 2013 was furnished and subsequently vide letter dated January 21, 2015, the *Company* was called upon to furnish the documents as advised during the hearing held on January 16, 2015.

iii. Another hearing in the matter took place on February 03, 2015 and subsequently, vide reply dated June 24, 2015, all the documents as sought during the hearings held on January 16, 2015 and February 03, 2015 were furnished. Eventually, vide the order dated June 16, 2015, SEBI held that the activities of the *Company* are in the nature of collective investment scheme.

iv. The said order dated June 16, 2015 was set aside by the Hon'ble SAT vide its order dated November 07, 2017. Subsequently, the additional documents as available with the *Noticees* were furnished to SEBI and another order dated July 12, 2021 was passed.

v. The findings in the SCN are based solely on the alleged complaint dated January 24, 2013, which contains one page of text which was available on the website of the *Company* at one point of time. However, the said complaint is rather in the nature of a public query, and therefore, the allegations made in the SCN are based on surmises and conjectures.

vi. The perusal of the SCN indicates that it was issued only considering the reply dated January 20, 2014 and the other replies dated May 07, 2013, January 08, 2014 and March 08, 2014 were not considered.

vii. As stated in the reply dated February 23/24, 2015, apart from the sale and purchase of the livestock of goats and pigs, the *Company* has been dealing in sale and purchase of animal feed and bio fertilisers, with the following break up:

Table no. 2

Year	Livestock	Animal Feed/Biofertilisers	Total
2011-12	2,40,82,541	-	2,40,82,541
2012-13	2,10,37,218	3,61,69,600	5,72,06,818
2013-14	1,80,10,937	1,51,37,192	3,31,48,129

viii. The findings recorded in the SCN to the extent that "the *Company* raises funds in the name of sale of livestock and rearing" is not sustainable due to the following grounds:

- The said assertion does not refer to or discuss any material and does not consider the replies filed by the *Noticees*. The said finding of the SCN is contrary to the material on record.

- One of the Directors of the *Company,* namely Mr. Gurbaksh Singh is one of the leading progressive farmers of the State of Punjab and has been recognised so by the Government of Punjab.

- The economy of the State of Punjab is primarily rural based having rearing of livestock as a common practice.

ix. The assertion of the SCN that the *Company* is selling the livestock on instalment basis is also unsustainable due to the following grounds:

- The literature available on the website of the *Company* for selling the livestock on part payment/instalments basis was never executed and in absence of any contract being executed, no violation can be alleged. The said offer was eventually dropped by the *Company*.

- If any of such contract of part payment would have executed by the *Company,* the same would have resulted in entries in the balance sheet of the *Company* under the category of sundry debtors/sales receivables from such vendees. The copy of the Balance sheet for the year 2011-12 shows sale of livestock to the tune of INR 2.40 Crore, but there are no sundry debtors or sale receivables against such sales. In case such sale of livestock amounting to INR 2.40 Crore on instalment basis, there would have been sundry debtors/sales receivables of an amount of INR 9.60 Crore. The same establishes that the *Company* has not made any sale under the instalment plan.

- The procedure for execution of the agreements for sale of livestock was done with a view to make the system more organised in the rural areas of Punjab. However, as the customers objected to such a process of execution of agreement, the process of executing the agreements was discontinued and agreements were executed only in initial months after incorporation of the *Company*. The agreements would reflect that the same were pertaining to concluded sale transactions and further reveal that the possession of the livestock has been received by the buyer. In case of sale by instalment, no such agreement would have been executed as it would have obstructed the *Company* to recover the pending amount from the buyers.

- The finding of the SCN that the custody of animal is handed over to buyer in 48 months is wrong as the agreement does not show any reference to the term of 48 months.

x. The findings recorded in the SCN pertaining to the pooling of funds by referring to the clause of the agreement regarding several co-owners is also misplaced as the said clause was incorporated for dealing with firms, association of persons, company etc., however, even in such cases, the agreement was executed only with one person and animal was handed over to such person. The said clause cannot be construed to be a scheme as the agreement specifies that possession has been handed over to the customer.

xi. The SCN has recorded contradictory findings as at one place it mentions that custody is handed over to the purchaser and at another place it states that the *Company* is rearing the animals. However, the customers have signified by signing the agreements that they have taken the possession of the animal. In case of rearing of the animals by the *Company*, the customers would have asked for some acknowledgment to indicate the possession of animals with the *Company*.

xii. The *Company* has never been involved in the rearing of animals which it did not own. The findings of the SCN that money is paid by the customers with a view to receive profits is based on the presumption that the *Company* is rearing the animals already sold. However, as there was no such activity of rearing sold animals carried out by the *Company,* the question of any promised return does not arise. The SCN merely alleges that there was a promise from the *Company,* however, no allegation has been made that the *Company* has actually done rearing of the animals or has paid any promised returns.

xiii. There was no provision of buy back or payment of the estimated cost of developed livestock.

18. Before I proceed to appropriately adjudge the merits of the present case, it is relevant to note here that the definition of CIS has been laid down under Section 11 AA (2) of the SEBI Act, 1992, based on which it has been alleged in the SCN asking *Noticees* to respond as to why the aforesaid scheme launched by the *Noticee no. 1* should not be declared as CIS and for the said purpose, *Noticees* have been confronted with the charges of violation of Section 12 (1B) of the SEBI Act, 1992 read with Regulation 3 of the CIS Regulations. In order to adjudge the charges levelled in the SCN against the *Noticees*, it would be apt to refer to the above-stated relevant provisions of the SEBI Act, 1992 and CIS Regulations, which are reproduced hereunder for facility of reference:

SEBI Act, 1992

12. Registration of stock brokers, sub-brokers, share transfer agents, etc.

(1B) No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations: Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30.

SEBI CIS Regulations, 1999

No Person Other than Collective Investment Management Company to Launch collective investment scheme.

3. No person other than a Collective Investment Management Company which has obtained a certificate under these regulations shall carry on or sponsor or launch a collective investment scheme.

19. As has been noted earlier, the proceedings in the matter have been held twice in the past; one resulting in passing of the SEBI's order dated June 16, 2015 and the other one culminating into SEBI's order dated June 12, 2021. The present proceedings bring before me a unique factual positon where it is seen that Mr. Gurbaksh Singh (*Noticee no. 3*) who is still continuing as a Director of the *Noticee no. 1 Company* had filed an Appeal (Appeal no. 116 of 2022) before the Hon'ble SAT, making therein *Company* and other directors of the *Company* as party respondents. In the first hearing conducted before me in pursuance of the directions passed by the Hon'ble SAT in the said appeal, the *Noticee no. 3* instead of arguing the matter on the merit of his case, insisted that the hearing in his case should not be proceeded with and SEBI ought to issue notice to the other *Noticees* as well viz., the *Company* and its other Directors. On the first blush itself, such an insistence by the *Noticee no.3* during his own hearing which was fixed in pursuance of the directions of the Hon'ble SAT, was observed to be not an inspiring demand for the reason that knowing very well that the matter has already been adjudicated twice in past and any further delay would not be desirable, he still chose to prolong the proceedings. Secondly, the *Noticee no. 3* was still continuing with the *Company* as its Director and has all the access to the *Company* as well as the documents that he required to rely upon to defend the allegations against him of being a Director of the *Noticee no. 1* when the violations took place. It is noted that the *Noticee no. 4* was a Director for a very brief period of 20 days and had resigned from the *Company* in the year 2011 itself. The *Noticee no. 2* is still associated with the *Company*. Needless to state that the allegations against the said two natural persons (*Noticee no.* 2 and *Noticee no. 3*) in this case have arisen out of their vicarious liability towards the *Noticee no. 1* as expected of a Director of a company under applicable laws. However, considering the fact that the matter has been adjudicated twice earlier and each time, it was remanded for reconsideration, in order to avoid unwarranted disagreement

with the *Noticee no.3* and to put the issue at rest, it was deemed proper to accept the demand of the *Noticee no.3* and to afford an opportunity to all the *Noticees* at one go, so as to arrive at a productive conclusion, even at the cost of some delay. Accordingly, after carefully considering all the issues, hearing notices to the *Company* and the remaining two Directors were also issued. However, as pointed out earlier, despite serving such notices through various modes including newspaper publication, the said entities have not appeared before me. At the same time, the factual position of the present matter shows that a written reply has been filed by the *Noticee no.3* who is a current Director of the *Company* and the contentions made therein by him are also in the nature of defending the impugned activities of the *Company* which have been alleged to be nothing but running schemes in the nature of CIS. Under the circumstances, I am of the view that as sufficient opportunities have been granted to all the *Noticees* to defend the allegations levelled against them in the SCN in due compliance with the principles of nature justice and the *Company* in any case has also adequately been represented through its Director (*Noticee no.3*) who has submitted a written reply in response to the allegations made in the SCN, it is in fitness of things now to conclude the proceedings on merit based on the facts and evidences as available on the records without further delay

20. Moving on to the merits of the submissions by the *Noticee no.3* as recorded earlier, I note at the outset that it has been contended that the instalment payment plan as referred to in the SCN was never given effect to, by the *Company* and was merely published on the website of the *Company*. Irrespective of this outright claim made upfront by the *Noticee no.3* stating that the the above instalment payment plan was not given effect to, it becomes imperative to proceed with

the matter based on records and as alleged in the SCN so as to arrive at judicious findings having considered the submissions advanced by the *Noticees.*

21. It is noticed that the records before me indicate that the following plans were admittedly published on the website of the *Company:*

Plan

You can purchase the live stock (Goats/Pigs) from Capacious Farming Pvt. Ltd. at part payment option instead of one time advance payment and you can do an agreement for rearing of your already purchased animal and can get the following benefits:

Number of Goat(s) / Pig(s)	***If you want to pay per month then you have to pay***	***Total cost of Animal you have to pay in 48 months***	***Estimated Cost of developed Animal after 48 months***	***Estimated Cost of developed animal 72 months***
1	*300/-*	*14,400/-*	*17,500/-*	*24,000/-*
2	*500/-*	*24,000/-*	*30,000/-*	*40,000/-*
4	*1,000/-*	*48,000/-*	*62,000/-*	*84,000/-*
8	*2,000/-*	*96,000/-*	*1,40,000/-*	*1,90,000/-*
20	*5,000/-*	*2,40,000/-*	*3,80,000/-*	*5,10,000/-*

Note: Each purchaser will pay 200/- Rs extra in 1st instalment as processing charges

If you pay advance instalments, then you will get extra benefit as per following:

On Quarterly advance instalment you will get 9% extra benefit on end of agreement. On half yearly advance instalment, you will get 5% extra benefit on end of agreement. On yearly advance instalment you will get 10% extra benefit on end of agreement.

One Time Payment

No. of Animal	***Cost***	***Cost of Animal after 4 years***
1 piglet/ kid	*5,000*	*10,000*
1 goat/ pig	*10,000*	*20,000*

2 goat/ pig	*20,000*	*40,000*
5 goat/ pigs	*50,000*	*1,00,000*
12 goat/ pigs	*1,25,000*	*2,50,000*
25 goats/ pigs	*2,50,000*	*50,000*
50 goats/ pigs	*5,00,000*	*10,00,000*

22. Insofar as the aforesaid plan details are concerned, it has been contended before me that though the said plans were conceived and the details of the same were published on the *Company's* website, no transaction under such plan was executed, as there was no response from the customers, and eventually, the livestock were sold by it only after taking the entire consideration in one go.

23. Notwithstanding the said submission of the *Noticees,* I observe that the mandate entrusted upon me in the present case is to ascertain as to whether the *Noticee Company* had sponsored or caused to be sponsored any scheme which had the elements of a collective investment scheme as laid down under the Section 11AA of the SEBI Act, 1992. Therefore, all the features of the schemes as well as the submissions on behalf of the *Noticees* shall have to be examined from the lens of the provision of Section 11AA of the SEBI Act, 1992.

24. I note that Section 11AA of the SEBI Act, 1992 defines what will constitute a collective investment scheme. Therefore, for ready reference, the said provision is reproduced hereunder:

Collective investment scheme.

11AA. (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (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 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 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.

25. It is noted that the first condition laid down under Section 11AA of the SEBI Act, 1992 is that "*the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement*". My observations with respect to the scheme of the *Company* vis-à-vis the said ingredient are recorded hereunder:

i. In the present case, it is noted from the records that the *Noticee Company* was incorporated on March 10, 2011 with an initial capital of INR 1 Lakh only.

ii. The Sale Agreement *inter alia* states that "*the SELLER has already purchased/ made arrangements for purchasing/ procuring the .... goat(s) for its PURCHASER*". (underline supplied)

iii. Admittedly, in three financial years viz., 2011-12, 2012-13 and 2013, the *Noticee Company* had "purportedly sold" livestock worth INR 2.40 Crore; INR 2.10 Crore and INR 1.80 Crore, respectively.

iv. In the submissions before me however, no details whatsoever have been furnished with respect to the total amount of money "spent" by the *Noticee Company* towards the cost price for acquiring those livestock during those three financial years. The said aspect is a vital information that is missing from the submissions of the *Noticees* as the claim before me is that the *Company* was involved in a plain business of purchase and sale of livestock.

v. It is worthwhile to mention here that the *Company* had in its first year of operation, i.e., 2011-12 (as the incorporation happened in March 2011), has claimed to have sold sell 3,499 goats. Even if the submission the *Company* that it was involved only in the purchase and sale of the livestock is accepted, the onus of providing the details of amount spent towards procuring the livestock, sources of such amount (as the initial capital of the *Company* was barely INR 1 Lakh only) lies upon on the *Company* so as to seek exoneration from the charge of running an illegal CIS levelled against the *Company* in the SCN.

vi. A cursory perusal of the bank account statement of the *Company* (as furnished by the *Noticee no. 3* vide letter dated August 29, 2022) would indicate that there are multiple credit entries in the said account and most of such credit entries are in cash. I note that the bank account statement produced by the *Noticee no. 3* starts from April 29, 2011 with the first entry of cash deposit of INR 10,000 which seems to be the initial funding of the bank account. Subsequently, in the month of May, 2011, there have been different cash deposits on various dates totalling INR 6.91 Lakh, details of which are tabulated hereunder:

Table no. 3

Sr. No.	Date	Amount	Narration
1.	03/05/2011	32,000	JULLA-Cash Deposit
2.	04/05/2011	1,00,000	JULLA-Cash Deposit
3.	09/05/2011	10,000	AMRIT-Cash Deposit

4.	09/05/2011	80,000	JULLA-Cash Deposit
5.	12/05/2011	5,000	ZIRAK-Cash Deposit
6.	16/05/2011	10,000	HAMID-Cash Deposit
7.	16/05/2011	25,000	TARAN-Cash Deposit
8.	19/05/2011	4,000	AMRIT-Cash Deposit
9.	23/05/2011	10,000	JULLA-Cash Deposit
10.	23/05/2011	4,00,000	Cash Deposit
11.	24/05/2011	10,000	JULLA-Cash Deposit
12.	26/05/2011	5000	JULLA-Cash Deposit
	Total	**6,91,000**	

vii. It may be recalled here that the *Company* was incorporated in the month of March, 2011 only and as can be seen from the bank account statement, within a period of only 1 month, an aggregate amount of INR 6.91 Lakh was found deposited in its account. It may be noted here that apart from these cash credit entries, there are other credit entries in the form of banking modes transactions like the one seen on May 30, 2011, which shows an amount of INR 20,000 was credited with the narration: "*By Inst. 402998/HDFCBANK/MIC*".

viii. It is noted that even in subsequent months like April, 2012, cash deposits in multiple tranches have happened in the bank account of the *Company* which are illustrated in the following Table:

Table no. 4

Sr. No.	Amount	Narration
1.	22000	HAMID-Cash Deposit
2.	11000	TANDA-Cash Deposit
3.	41000	Cash Deposit
4.	97200	AMRIT-Cash Deposit
5.	22000	FATEC-Cash Deposit
6.	100000	JULLA-Cash Deposit
7.	22000	AMRIT-Cash Deposit
Total	**315200**	

ix. Further, apart from the above cited credit entries, there are also multiple debit entries from the said bank account which shows that payments have been made to numerous individuals apart from cash withdrawals seen to have been made from such account.

x. Insofar as the cash deposits are concerned, it is noted from the letter dated March 8, 2014 of the *Company* that the *Company* has furnished therein, some information about the Stock Summary for the year 2011-12. However, in the said information, there was no opening balance of livestock noticed on April 01, 2011. Further, inward entries of 4,232 animals have been reflected during the FY 2011-12 for a total value of INR 1,74,84,000 (INR 1.75 Crore approx.). However, in the submissions before me, no details have been furnished to indicate as to how the *Company* was able to procure livestock worth INR 1.75 Crore with a meagre capital of INR 1 Lakh.

xi. Further, it was noticed from the scheme plan details as available on the website of the *Company* that it had provided an option to the customers to make their payment either in instalments or one time. Though it has been claimed that the instalment payment plan was never initiated and subsequently discontinued, I find from the records that there are complaints of investors annexing documents in form of Agreements, which show that even in the year 2013, the *Company* had executed agreements with the customers, on the basis of monthly payment plans. In order to elaborate this further, I find it apt to reproduce the relevant details retrieved from the copy of a document submitted by one of the complainants:

CAPACIOUS Farming Pvt. Ltd.

Brief of Agreement

Sale Document Regd. No. & Date- GPA/BTD/2013/13250

Plan no. & Term- 300/48

Value of animal- 14400.00

Mode of payment- Monthly

Estimated market Value of the Animals at the end of the term- 17500.00

Expiry date of agreement- 11/02/2017

Name-Malkeet Singh…..

Address- …..

Nominee name- …..

Date: 12/04/2013 (emphasis supplied)

xii. The aforesaid document that has been received by SEBI along with a complaint, indicates that the contention of the *Company* that it has never executed any agreement with instalment basis payment plan was a patently untruthful submission. I may also add here that the aforesaid details mentioned in the agreement viz., the total value of the animal, the estimated value of the animal etc., matches exactly with the details provided in the brochure circulated by the *Company* amongst its potential customers, which it claims to have discontinued.

xiii. It is also observed that a Sales Ledger purportedly maintained by the *Company*, containing numerous entries purportedly showing the sales of Live Stocks was furnished on behalf of the *Company*. The said details of sales merely mention the mode of sale (Cash/Credit); corresponding Voucher number and amount of sale. I observe that the Sale Ledger is a self made document of the *Company* and being an internal document of the *Company* cannot be verified in absence of any relevant supporting evidences such as the contact details of the customer, details of livestock sold to the customer etc., or any other independently verifiable documentary evidence, hence such a self-generated accounting statement will be of no reliable value for the present case.

xiv. It is also worthwhile to mention here that in the aforesaid documents submitted by the complainants, against the column of "No. of Animals", it is mentioned as "*1 Goat/Pig*", without specific details of the livestock (as to whether it was a Goat or a Pig), specific breed of such livestock, the weight of the animal etc., or any other distinguishing characteristic that could be of help to substantiate the genuineness of the transaction purportedly done with the customer.

26. I also observe that the reliance made in the balance sheet of the *Company* for the year 2011-12 by the *Noticees* so as to contend that there were no outstanding sundry debtors or sale receivables at the end of the FY 2011-12 to suggest that animals were being sold by taking payments in instalments under a CIS scheme, is completely misplaced and misleading. The records before me indicate when the balance sheets of the subsequent financial years are considered, it is seen that as on March 31, 2013, the *Company* had outstanding debtors to the extent of INR 73,492,85 and as on March 31, 2014, it had outstanding debtors of INR 4,25,090, hence, the Balance sheet for its first year of operation, i.e., FY 2011-2012 in exclusion of subsequent years' Balance sheet cannot be isolatedly considered to understand the business model followed by the *Company*. Thus, the huge amounts of outstanding debtors balance as on March 31, 2013 and 2014 indicate that the *Company* was not merely engaged in outright trade in animals as it contends, but was rather engaged in a business that was apparently being conducted under a pre-meditated scheme to mobilise funds from the prospective customers. From a conjoint reading of the aforesaid findings, one can reasonably arrive at a conclusion that the vehement claim made on behalf of the *Company* that it was not involved in any scheme as alleged and was doing only sale purchase activities of the livestock, is not borne out of any cogent evidence turns out to be merely a bald claim. Firstly, the *Company* has not been able to adduce any documentary evidence to show as to how with a capital of INR 1 Lakh, it procured livestock worth INR 1.75 Crore within the very first year of its operations. Secondly, the documents like the Sales Ledger etc., as filed on behalf of the *Company* are also found to be wanting as the said

documents do not contain details sufficient enough to demonstrate through independently verifiable evidence, that the transactions entered into by the *Company* with its customers were merely sale transactions and not under any collective investment scheme. Thirdly, the need of having an agreement with the customers itself for a simple sale transaction is questionable. Without prejudice to the afore-said observations, it is noted that the clauses in the agreement executed with the customers which envisage that the *Company* had made arrangements for procuring the livestock for the respective customer, which is also indicative of the fact that the livestock was not purchased first by the *Company* and sold to the customers, but were being procured by the *Company* after taking advance money from the customers, either in lumpsum or in instalments. Fourthly, the large amount of cash deposits seen in the bank account of the *Company* is also corroborative of the fact that the monies collected from the customers were being deposited in the bank account of the *Company* against which, the *Company* has not been able to furnish supporting sales vouchers, invoices etc., which could have supported the claim of the *Company* having merely sold the livestock as part of its trading activities. Thus, from the aforesaid glaring factors, coupled with the admission on the part of the *Company* that the plans floated by it were indeed published on its website, would lead to an irresistible conclusion that the payments made by the investors/customers of the *Company* in the name of livestock purchase were in reality being pooled and utilised for the purpose of achieving the objective of the scheme of the *Company*.

27. The next condition under Section 11AA of the SEBI Act reads as*: 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. My findings on the said ingredient are recorded hereunder:

i. As stated earlier, the *Company* claims to have merely sold and handed over the livestock to the customers and has denied having entered into the transactions with its customers under any scheme. I observe that there are two sets of agreements executed between the *Company* and the customers: one filed by the *Company* (Application form and Agreement) and the other filed by the complainants. Without going into the detailed analysis of the terms of such agreements, as observed by me earlier, the very act of execution of agreements with customers with detailed conditions, weighs against the claim of the *Company* of having executed mere simpliciter sale transactions as part of its trading activities, since such mere sale transactions could have been executed only by the issuance of invoice without entering into an agreement of any kind. Nevertheless, I shall now evaluate the clauses of the agreements/Application form:

Documents filed by the *Company*

Application Form (sample)

Name: …

….

PURCHASE DETAILS

Numbers of goat(s)/pig(s)	*Breed*	*Rate*	*Amount*
1		*11000/-*	*11000/-*

…………………………………………………………………………………………….

SALE AGREEMENT (sample)

Agreement no.

…………………………………………………………………………………………..

PAYMENT

That the Purchaser is hereby purchasing goat's from the Seller on his own free will and that he also hereby promises to pay the entire/total amount for the said purchases as mentioned herein below, to the Seller. Moreover it is specifically understood that along with the Purchaser herein there may be several co-owners of the farming animals, i.e. Goat(s).

Numbers of goat(s)/pig(s)	*Breed*	*Rate*	*Amount*
1		*11000/-*	*11000/-*

RIGHTS OF SELLER

...

That the Purchaser hereby independently states, confirms and declares that all the tax concessions, benefits, subsidiaries and all other kinds of concessions and benefits including financial grants, etc. from all Government Department/ Semi Government Undertakings and all Local Authorities are receivable by the Seller, and the Purchaser shall not have any claim or rights over the same. ..."

ii. As can be noted from the aforesaid sample purchase details and sale agreement, there is a column to mention the breed of the animal, however, the same has been kept blank. It is also interesting to note here that apart from "breed", the other pertinent details of the livestock being sold viz., weight and age of the livestock, etc., at the time of delivery of the particular livestock to the investors are also patently absent from the above documentation.

iii. It is also noted from the clause under the head "Payment", that the said clause in the sale agreement mentions that there may be several co-owners of the farming animal. In this connection, the *Company* has contended that the clause pertaining to "details of co-owners" was incorporated for the sales to be made to Companies, firms etc. However, such an explanation lacks coherence and is completely flawed, as in any sale of the animal to be made to a legal entity (company, firm etc.,), the buyer will be the legal entity itself and there is no requirement of mentioning details of co-owners.

iv. It has been vehemently argued that the *Company* had never transacted with any customer/investor on the basis of an instalment plan. It is however noted from the records that SEBI has received complaints which shows execution of the documents indicating monthly payment plans opted by the investors/customers for investing in livestock. For illustration, it is noted that a document no. GPA/BTD/2013/13250 named as 'Brief of Agreement' was executed by the *Company* with one Mr. Malkeet Singh. The said document indicates that the value of the animal was INR 14,400; mode of payment was fixed on a monthly basis and the estimated market value is mentioned as INR 17500 under the Plan no. & Term mentioned as '300/48'.

v. The aforesaid details clearly indicate that the *Company* actually was taking money on instalment basis from its investors, hence its claim that its instalment plan never took off is built on falsehood, more so when I find that the above details completely matches with the brochure being distributed by of the *Company*.

vi. Besides, I observe that even for the customers/investors who had paid their money to the *Company* in lumpsum, have also been charged projected cost of a developed animal, which is evident from the following extract of the documents furnished by one of the complainants:

<u>Documents filed by the complainant/investor</u>

Capacious Farming & Research Foundation

Agreement no. – GPA/BTD/2012/13269

Name- Malkeet Singh

…..

No. of Animal(s)- 1 Goats/Pigs

Cost of Animal (s)- 10000.00

Cost of Developed Animal (s)- 20000.00

Date of Agreement- 31/12/2012

Expiry date of Agreement- 31/12/2015

Nominee- ….

vii. The aforesaid details as furnished by the complainant clearly indicate that even for the customers/investors who were paying lumpsum payments, the *Company* was factoring into and adding up the cost of growing the animal to a developed livestock in the lumpsum amount so charged to them, which would further compound the fact that the defence being taken by the

Company that the transactions made by it were mere sale of animals, is unfounded on facts and has been offered as an afterthought explanation.

28. A contention has been made before me that the "estimated realisable value of the livestock" as projected in the agreements after 48 months and 72 months from the date of agreement was stated to show the purchaser that the business of the livestock is immensely profitable. The said contention however is not only half baked but is also contradictory to the claim of the *Company* that the livestock was being handed over to the purchaser immediately after the sale. If the livestock is sold in a plain sale transaction, the complete control on such livestock including its rearing, utilising, selling etc., is immediately transferred to the owner, and the *Company* would have ceased its control over such animal once the animal is delivered after sale. Then it becomes totally out of context for the *Company* to project any future value of the livestock. The said argument of the *Company* with projected realisable values in future infact makes it obvious that the transactions that were being executed with the customer/investors did not involve immediate handing over of the purchased livestock and the monies were rather being paid to the *Company* by the investors with a view to "receive profits from the scheme" at a later date or after a specific period albeit in the form of increased realised value of the animal in which the monies were being invested by the investors/customers. It is further noted that in the complaint dated February 17, 2017, it has been alleged by the complainant that despite SEBI's order dated June 16, 2015, the *Company* has not refunded the money due to such investors. It has also been asserted in the complaint that the original documents pertaining to the investment made by the complainant have been taken by the *Company* and the same have been destroyed, and the customers have been issued some kind of voucher in lieu thereof. Further, the cheques issued to

the said customers have been dishonoured due to insufficient funds in the bank accounts of the *Company* and the *Company* has not repaid to any of its investors. It is seen that none of the complainants have whispered about receiving any livestock from the *Company* nor were they apparently expecting delivery of any animal to them and all such investors are rather aggrieved due to non-payment of the dues as promised by the *Company* in the agreement. Under the circumstances, I observe that the aforesaid findings and observations of mine adequately demonstrate that the payments that were made by the investors to the *Company* were infact made under its schemes with an expectation to receive the profits from the said scheme, which reinforces the fact that the said scheme floated by the *Company* satisfied the second ingredient of the Section 11AA (2) of the SEBI Act, 1992.

29. The third condition of Section 11AA (2) reads as: "*the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors.*" And the fourth condition reads as: "*the investors do not have day to day control over the management and operation of the scheme or arrangement.*" My findings on the said two conditions are recorded hereunder:

i. In terms of the brochure (website) of the scheme, the *Company* had offered to rear the animals on behalf of the investors, which is evident from the clause: "*you can do an agreement for rearing of your already purchased animal and can get the following benefits:"* The said clause in the brochure of the *Company* also shows that the *Company* was engaged in the rearing of the livestock on behalf of the investors after receiving the investment money from them. Further, as stated earlier, the complaints received by SEBI have not mentioned anything about delivery of the livestock to them at the time of making such investments, which therefore signifies that the livestock were very much under the custody of the *Company* and were being reared by the *Company* itself on behalf of the investors.

ii. As pointed out earlier, in the agreement executed by the *Company,* it has been *inter alia* stated as: "*That the Purchaser hereby independently states, confirms and declares that all the tax concessions, benefits, subsidiaries and all other kinds of concessions and benefits* including *financial grants, etc. from all Government Department/ Semi Government Undertakings and all Local Authorities are receivable by the Seller, and the Purchaser shall not have any claim or rights over the same. ..."*

iii. From the above clause, it is seen that even though the livestock is being claimed to be sold and handed over to the respective purchasers, the right over the benefits/grants etc., accruing on such livestock have been retained with the *Company* itself.

iv. It is also noted from the copies of the documents submitted by the complainants that there is a clause under which the details of Nominee of the investor are mentioned. I observe that presence of such a clause in the Agreement is also sufficient to indicate that the *Company* was holding some valuables on behalf of such customer for a specific period of time, since in a simpliciter sale transaction of livestock, there was no need of mentioning the details of a Nominee as the sale transaction would be concluded on the spot upon receipt of payment by the *Company* and delivery of livestock to the customer by the *Company*, leaving no future obligations for the *Company* which would necessitate recording the details of a Nominee o the buyer.

30. In view of my above noted findings, I can clearly observe that the investors were making contributions/investments in the *Company* under a scheme and the scheme properties i.e. the

livestock that were being purchased by the customers were being managed on behalf of the investors by the *Company* itself and the respective investors under the scheme of the *Company,* were not having any kind of day to day control over the management and operation of the scheme or on the assets (livestocks) of the said scheme, which the *Company* was managing unilaterally on behalf of the investors. In the light of the said observations, I find that the scheme of the *Company* also satisfied the third and the fourth ingredient of the Section 11AA (2) of the SEBI Act, 1992.

31. In view of my findings recorded in the previous paragraphs, I observe that the scheme promoted, launched and carried on by the *Company* satisfied the presence of all the four ingredients laid down under Section 11AA (2) of the SEBI Act, 1992, so as to qualify as a scheme in the nature of collective investment scheme. I note that the Section 12 (1B) of the SEBI Act, 1992 and the Regulation 3 of the CIS Regulations cast a prohibition on carrying on any collective investment scheme without obtaining the requisite registration from SEBI and only a Collective Investment Management Company having a registration from SEBI, is permitted to sponsor, cause to be a sponsor of and carry on collective investment schemes. In the present case, admittedly, no such registration has been obtained by the *Noticee Company* for the Collective Investment schemes sponsored and caused to be sponsored by it in the names of selling of livestock.

32. Having held that the schemes run by the *Company* were in the nature of collective investment schemes, I note that the registration requirement mandated under the SEBI Act, 1992 and the CIS Regulations are not mere paper formalities, but the same goes to the root of the mandate of SEBI, i.e., protection of the interest of the investors. As a brief background, I can recollect that

it was noted by the Government of India during 1990s, that multiple entities were mobilising funds from the gullible investors by issuing various instruments and offering high rate of returns, hence it was felt necessary to have a regulatory ecosystem in place for such activities. Accordingly, the SEBI (Collective Investment Schemes) Regulations, 1999 were notified w.e.f October 15, 1999. The said regulations not only reaffirmed the requirement of registration before sponsoring the business undertakings in the nature of collective investment schemes, but also laid down various parameters based on which, an entity can get the registration as a collective investment management company. For illustration, the networth requirement for registration as a Collective Investment Management Company has been kept at minimum INR 50 Crore, which shows that only the entities with strong financials are allowed to handle the money of the investors on their behalf. It is noted that despite having in place stringent regulatory requirements specifying mandatory registration, time and again, the errant entities devise some or other way to bypass the registration requirement. It has been noted from the regulatory experience gathered over time that the basic structure of the schemes remains the same and only the underlying product/service is replaced in such schemes by the persons who run such schemes. Some schemes offer plantation bonds; some offered land parcels; some schemes like the present one offered animal rearing; but the common thread that ran through such schemes was that the money invested by the investors were pooled and utilised for the scheme and the investors were not having any kind of control over the operations as they had invested their money with a hope to receive profits out of the schemes at a future date as promised to them under such schemes. Whatever nomenclature is used for a scheme, it would be the essence of terms and conditions, tested and verified in terms of the statutory ingredients of collective investment, that would qualify a scheme to be a collective investment scheme, as has been done in the present case in the preceding paragraphs of this order.

33. At this stage, I deem it fit to refer to the observations of the Hon'ble Supreme Court as recorded in the matter of *PGF Limited & Ors. Vs. Union of India & Anrs. (Civil Appeal No. 6572 of 2004):*

> "*Therefore, the paramount object of the Parliament in enacting the SEBI Act itself and in particular the addition of Section 11AA was with a view to protect the gullible investors most of whom are poor and uneducated or retired personnel or those who belong to middle income group and who seek to invest their hard earned retirement benefits or savings in such schemes with a view to earn some sustained benefits or with the fond hope that such investment will get appreciated in course of time. Certain other Section of the people who are worstly affected are those who belong to the middle income group who again make such investments in order to earn some extra financial benefits and thereby improve their standard of living and on very many occasions to cater to the need of the educational career of their children.*
>
> *38. Since it was noticed in the early 90s that there was mushroom growth of attractive schemes or arrangements, which persuaded the above vulnerable group getting attracted towards such schemes and arrangements, which weakness was encashed by the promoters of such schemes and arrangements who lure them to part with their savings by falling as a prey to the sweet coated words of such frauds, the Parliament thought it fit to introduce Section 11AA in the Act in order to ensure that any such scheme put to public notice is not intended to defraud such gullible investors and also to monitor the operation of such schemes and arrangements based on the regulations framed under Section 11AA of the Act. ...*
>
> *... ...*
>
> *40. It will have to be stated with particular reference to the activity of the PGF Limited, namely, sale and development of agricultural land as a collective investment scheme, the implication of Section 11AA was not intended to affect the development of agricultural land or any other operation connected therewith or put any spokes in such sale-cum-development of such agricultural land. It has to be borne in mind that by seeking to cover any scheme or arrangement by way of collective investment scheme either in the field of agricultural or any other commercial activity, the purport is only to ensure that the scheme providing for investment in the form of rupee, anna or paise gets registered with the authority concerned and the provision would further seek to regulate such schemes in order to ensure that any such investment based on any promise under the scheme or arrangement is truly operated upon in a lawful manner and that by operating such scheme or arrangement the person who makes the investment is able to really reap the benefit and that he is not defrauded ...*
>
> *... ...*
>
> *42. Therefore, in reality what sub-section (2) of Section 11AA intends to achieve is only to safeguard the interest of the investors whenever any scheme or arrangement is announced by such promoters by making a thorough study of such schemes and arrangements before registering such schemes with the SEBI and also later on monitor such schemes and arrangements in order to ensure proper statutory control over such promoters and whatever investment made by any individual is provided necessary protection for their investments in the event of such schemes or arrangements either being successfully operated upon or by any misfortune happen to be abandoned, where again there would be sufficient safeguards made for an assured refund of investments made, if not in full, at least a part of it.*

... ... In the light of our above conclusions on this ground it will have to be held that Section 11AA is a valid provision, not suffering from any infirmity, as it does not intrude into the specific activities of sale of agricultural land and its development.
... ...

53. We, therefore, hold that Section 11AA of the SEBI Act is constitutionally valid. We also hold that the activity of the PGF Limited, namely, the sale and development of agricultural land squarely falls within the definition of collective investment scheme under Section 2(ba) read along with Section 11AA (ii) of the SEBI Act and consequently the order of the second respondent dated 06.12.2002 is perfectly justified and there is no scope to interfere with the same. In the light of our above conclusions, the PGF Limited has to comply with the directions contained in last paragraph of the order of the second respondent dated 06.12.2002 ... ..."

34. In view of the above cited judgment of the Hon'ble Supreme Court, the extant regulatory framework and my findings to the effect that the schemes that were being run by the *Company* were in the nature of collective investment schemes, it is deemed fit to pass appropriate directions in the matter. It is observed that the day to day affairs of the *Noticee no. 1 Company* were being managed by its Directors viz., *Noticee nos. 2* to *4*. Insofar as directorship of the said individual *Noticees* are concerned, it is noted that the *Noticee no. 4* had resigned from the directorship of the *Company* on March 30, 2011, and thus remained on its Board for the period between March 10, 2011 to March 30, 2011. On her behalf, it has been submitted that she was not able to perform any activities pertaining to the *Company* and had resigned within a period of 20 days from the incorporation of the *Company*. As regards the liability of the *Noticee no. 4* is concerned, I note from the records that she was one of the subscribers to the Memorandum of Association of the *Company,* at the stage of incorporation of the *Company*. At this stage, my attention gets drawn to the prohibition cast under Section 12 (1B) of the SEBI Act, 1992, which *inter alia* prohibits "causing to be carrying on a collective investment scheme". Therefore, even if the records do not indicate any actual mobilisation of funds under the collective investment schemes of the *Company* during the tenure of the *Noticee no. 4*, she cannot escape the liability that needs to be fastened by virtue of her being associated with the *Company* at the stage of

incorporation of the *Company* and also for the brief period of directorship with the *Company*. However, at the same time, I cannot lose sight of the fact that by virtue of the 1st SEBI order and 2nd SEBI order, she has remained under debarment from accessing the securities market for some time, and therefore, the present proceedings can be disposed of *qua Noticee no. 4* without any directions.

35. Further, with respect to the other two individuals, it is noted that the *Noticee no. 2* is also one of the first Directors of the *Company* w.e.f March 10, 2011 and the *Noticee no. 3* was appointed on March 30, 2011 as Director of the *Company*. Both of them are still continuing to be the Directors of the *Company*. In view of the aforesaid findings, I observe that the *Noticee nos. 2, 3* and *4* were responsible for the acts of sponsoring/causing to be sponsored/carry on/causing to be carried on the collective investment schemes of the *Noticee no. 1 Company*.

36. Before passing necessary directions, my attention is drawn to the 1st Hon'ble SAT order dated November 07, 2017, wherein it has been submitted *inter alia* on behalf of the *Noticees* as: "…*It is further submitted that the appellant no.1 had not collected <u>any money from the investors and any money collected from the customers under the respective agreements have been returned to the customers</u> by dropping the schemes floated by the company and as such the question of refunding the money by the company does not arise at all*…." (underline supplied)

37. I observe that the aforesaid submissions were made by the *Company* when 1st SEBI order dated June 16, 2015 was passed directing it *inter alia* to refund the monies mobilised by it under its schemes. However, the records before me indicate that even till the year 2021, SEBI has been receiving complaints from the investors alleging non-refund of their monies by the *Company*. Further, it is also surprising to note that the submissions made by the current Director of the

Company (Mr. Gurbaksh Singh) during the present proceedings did not contain any whisper about any refunds made by the *Company*. I may also note here that the Show Cause Notice in the present matter was issued on May 12, 2014 and the same is yet to attain finality.

38. Considering the conspectus of the facts in present matter, I deem it fit to direct the *Company* to issue advertisement inviting claims from its investors so as to refund the money due to them as per the scheme offer document (s).

Directions:

39. In light of the findings recorded in the foregoing paragraphs, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B (1) read with Section 19 of the Securities and Exchange Board of India Act, 1992, read with Regulation 65 of the CIS Regulations, here by issue the following directions:

a. Capacious Farming Pvt. Limited (*Noticee no.1*) [PAN: AAECC3138N] shall within a period of 30 days from the date of issue of this order, cause to effect a newspaper publication in one national daily in English and in Hindi each, and in a local daily with wide circulation in each of the States wherein the investors reside, inviting claims from the investors in respect of its collective investment schemes. The newspaper publications shall also contain an advisory, informing the investors to forward a copy of their claims, with the superscription "Complaints/Claims in the matter of Capacious Farming Pvt. Limited", to SEBI at the following address:

The Division Chief, IMD-CIS Division SEBI, SEBI Bhawan,
Plot no. C-4A, G Block Bandra Kurla Complex,
Bandra East Mumbai-400051
Email: cis@sebi.gov.in

b. A copy of the public notice shall also be sent to the investors of the *Noticee no. 1*, by way of Registered Post- Acknowledgement due.

c. A period of six (06) months from the date of the advertisement shall be provided to investors for submitting any claim as stated aforesaid.

d. The *Noticee no. 1* shall make refunds to the investors/claimant within a further period of three (03) months from the last of submission of claims provided in the public notice.

e. All the refunds to the contributors/investors shall be made through 'Bank Demand Draft' or 'Pay Order' (both of which shall be crossed as "Non-Transferable") or through any other appropriate banking channels such as NEFT or RTGS with appropriate audit trail.

f. The *Noticee no. 1* and the present incumbent Directors (*Noticees nos. 2* and *3*) shall submit to SEBI a final Winding Up and Repayment Report (WRR) in the prescribed format for the purpose along with information on the claims so received, the details of the contributors/investors who have been so refunded duly supported by list of all contributors/investors, their contact details, details of investments and corresponding refunds made to such investors, the supporting bank account statements of the *Noticee no. 1 Company*, indicating refunds so made to the investors and the receipts taken from the investors acknowledging such refunds, along with a consolidated statement of such repayments having been made, duly certified by two Independent Chartered Accountants, within a period of 30 days from the date of completion of refunds.

g. The remaining balance amount, if any, shall be deposited with SEBI which shall be kept in an interest bearing escrow account for a period of one (01) year for distribution to the investors who had subscribed to the scheme floated by the *Noticee no. 1*. Thereafter, the said remaining amount shall be deposited in the Investors Protection and Education Fund, maintained by SEBI.

h. The present incumbent Directors (*Noticees nos. 2* and *3*) shall ensure that the aforesaid directions are complied with.

i. The *Noticee nos. 1, 2* and *3* are restrained from accessing the securities market including by issuing prospectus, offer document or advertisement soliciting money from the public and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, from the date of this order, till the expiry of 03 years from the date of this order or from the date of completion of the refunds to the investors or payment of balance amount to IPEF, whichever is later.

j. The proceedings against *Noticee no. 4* are disposed of in terms of paragraph no. 34 above.

k. The *Noticee nos. 1, 2* and *3* shall not divert any funds raised from public at large and shall not alienate or dispose of or sell any of the assets of the *Noticee no. 1* except for the purpose of making refund to its investors as directed above.

l. The *Noticee nos. 1, 2* and *3* are directed to provide a full inventory of all assets held in their names, individually or jointly, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 30 working days from the date of receipt of this order.

40. It is further clarified that during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the debarred *Noticees* shall remain frozen.

41. Obligation of the aforesaid debarred *Noticees*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange (s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order, only in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the aforesaid *Noticees* in the F & O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

42. This Order shall be without prejudice to the right of SEBI to initiate any other proceedings under the securities laws against the *Noticees*.

43. The Order shall come into force with the immediate effect.

44. A copy of this order shall be forwarded to the *Noticees*, all the recognized stock exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

Date: MAY 31st, 2023 **S. K. MOHANTY**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA