

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 21.01.2016

Date of Decision : 03.02.2016

Misc. Application No. 327 of 2015

And

Misc. Application No. 328 of 2015

And

Appeal No. 416 of 2015

Citrus Check Inns Ltd.
16-19, 1st Floor, Shilpin Center,
4, G. D. Ambekar Marg, Wadala,
Mumbai – 400 031.

..... Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.

.....Respondent

With

Appeal No. 421 of 2015

1. Mr. Omprakash Basantlal Goenka
2. Mr. Prakash Ganpat Utekar
3. Mr. Venkatraman Natrajan
4. Mr. Narayan Shivram Kothis

16-19, 1st Floor, Shilpin Center,
4, G. D. Ambekar Marg, Wadala,
Mumbai – 400 031.

..... Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.

..... Respondent

Mr. Pradeep Sancheti, Senior Advocate with Mr. C. D. Mehta, Ms. Rashida F. Savliwala, Advocates i/b Dhruve Liladhar & Co. for the Appellant in Appeal No. 416 of 2015.

Mr. C. D. Mehta, Advocate with Ms. Rashida F. Savliwala, Mr. Krushanu Pandya, Advocates i/b Dhruve Liladhar & Co. for the Appellants in Appeal No. 421 of 2015.

Mr. J. P. Sen, Senior Advocate with Mr. Tomu Francis, Advocate for the Respondent.

CORAM : Justice J. P. Devadhar, Presiding Officer
Jog Singh, Member

Per : Jog Singh

1. The question that falls for our consideration in these two appeals is whether SEBI by its confirmatory order dated August 24, 2015 is justified in continuing the directions contained in the ex-parte interim order dated June 3, 2015 until further orders. Connected with this is the issue as to whether SEBI is justified in turning down a request made by the Appellant by way of a Miscellaneous Application before this Tribunal seeking registration as CIS under the CIS Regulations, without prejudice to its right to contend that the schemes operated by it are not covered under CIS. Since a common issue is involved in these two appeals filed by the company and its directors respectively, both are heard together and disposed of by this common decision.

2. This is the second round of litigation. In the first instance, the Appellants had approached this tribunal by way of Appeal Nos. 336 of 2015 and 359 of 2015 in which the Appellants challenged the ad-interim ex-parte order / directions, which, according to the Appellants, practically amounted to abrupt and arbitrary closure of the business bringing everything to a standstill without first hearing the Appellants.

3. By the ex-parte ad-interim order dated June 3, 2015, the appellant company and its Directors were called upon to do or to abstain from doing something. The same is relevant and is reproduced hereinbelow for the sake of convenience :-

- “Not to collect any fresh money from “customer” / investor under its existing scheme;

- Not to launch any new scheme or plans in this company;
- Not to raise any fresh moneys from any other existing company within the group;
- Not to float any new companies to raise fresh moneys under the schemes;
- To immediately submit the full inventory of the assets obtained through money raised by Citrus;
- Not to dispose off or alienate any of the properties / assets obtained directly or indirectly through money raised by Citrus;
- Not to divert any funds raised from public at large, kept in bank account(s) and / or in the custody of Citrus or group companies or promoters or LLPs or Proprietary concerns or any person directly or indirectly controlled through shareholding or management by citrus;
- To furnish all the information / details sought by SEBI within 15 days from the date of receipt of this order including the following :-
 - *Full list of “customers” / investors with complete particulars such as PAN, address, telephone numbers etc.*
 - *Details of rooms available for occupancy / accommodation provided / projected to be provided.*
 - *Year-wise number of customers / investors (1) who have actually availed the holiday accommodation under the plan(s) submitted to the plan(s) who have encashed their points into cash.*
 - *Details of assets held by Citrus and its Group companies.*
 - *Full details of Mirah Group (as stated in Clause 29 of the “Offer Document”).*
 - *Details of charges created on its assets by Citrus.*
 - *Details of amounts mobilized as on March 31, 2014 and March 31, 2015 under its various holiday plans / schemes.*
 - *Details of commission paid on amounts mobilized above.*
 - *Details of agents along with their addresses etc.*
 - *Audited accounts for the financial year i.e. FY 2012-13, 2013-14 and 2014-15.*
 - *Income tax returns for FY 2012-13, 2013-14 and 2014-15.*
 - *Details of fund transfers within group companies and associates and its directors for the year 2012-13, 2013-14 and 2014-15.”*

4. During the pendency of the appeal since SEBI offered to hear the appellants and pass order, this tribunal vide its order dated August 6, 2015, after hearing both the parties and keeping their respective contentions open, directed the Respondent as under :-

“...Before these appeals could be taken up for hearing, the WTM of SEBI has offered to hear the appellants on August 10, 2015, In this view of the matter, without going into the merits of the case, we direct the appellants to file their reply, if any, on or before August 10, 2015 and the WTM of SEBI is directed to hear the appellants on or before August 13, 2015 and thereafter pass appropriate order thereon and communicate the same to the appellants on or before August 24, 2015. It is made clear that the hearing shall be restricted to the question as to whether the prima facie view contained in the ex-parte ad interim order dated June 3, 2015 on the grounds set out therein can be sustained after hearing the appellants or not.”

“...It is made clear that if the WTM of SEBI fails to hear the appellants on or before August 13, 2015 and fails to pass and communicate the final order on or before August 24, 2015, the ex-parte ad interim order dated June 3, 2015 shall forthwith come to an end.”

“...Both appeals are disposed of in the above terms with no order as to costs.”

5. Pursuant to the above directions, the learned WTM of the Respondent has passed the present impugned order dated August 24, 2015, after hearing them and seeking their written submissions, basically reiterating the earlier ad-interim ex-parte order dated June 3, 2015 passed against the Appellants. The operative portion of the order dated August 24, 2015 is also reproduced below :-

“12. As also noted earlier the documents / details submitted by the Company have to be examined in detail, in the light of submissions made and the discussion in the interim order. In view of the same, I am convinced that the directions in the interim order in respect of the entities need to be continued, till further directions. These directions have been imposed in the interest of investors and to ensure that the noticees do not continue with the money mobilization activities through its plans / schemes. SEBI is directed to conduct an investigation into the operations of the Company, in order to form a final view as to whether the activity of the Company is in the nature of CIS as prima facie observed in the interim order. SEBI is advised to expeditiously conclude the investigation and proceed in accordance with law.

13. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11(1), 11(4) and 11B of the SEBI Act, 1992

read with Regulation 65 of SEBI (Collective Investment Schemes) Regulations, 1999, hereby confirm the directions issued vide the SEBI interim order dated June 03, 2015 against Citrus Check Inns Limited, Mr. Omprakash Basantlal Goenka, Mr. Prakash Ganpat Utekar, Mr. Venkatraman Natrajan and Mr. Narayan Shivram Kotnis.

14. These directions shall continue to be in effect till further orders of SEBI.”

6. The case of the appellants in the present appeal is that although hearing has been granted to the appellants by the learned WTM before passing the impugned confirmatory order, in substance it reiterates the earlier ad-interim ex-parte order. The learned senior counsel for the Appellant, Shri Pradeep Sancheti, who appeared with Mr. C. D. Mehta and Ms. Rashida Sawliwala, learned advocates, has urged that there is no compliance with the directions of this Tribunal contained in its order dated August 6, 2015. The opportunity given by the learned WTM to the appellant before passing the impugned order is no more than a farce. No final order as directed by this Tribunal has been passed by the respondent in compliance with the directions of the tribunal but a so-called confirmatory order has been passed that too without taking into consideration the submissions and material furnished during the course of hearing.

7. Even for confirming a *prima facie* case of CIS against the appellants, the learned WTM should have taken into consideration various components of the definition of CIS prescribed by law in the light of submissions and material submitted by the Appellant to repel the *prima facie* view of the Respondent that all the activities of the Appellant relating the time-sharing business amounted to a CIS. This has not been done and as such the *prima facie* view is based on conjecture, surmises and even suspicion. Similarly, the submissions of the appellants before the learned WTM regarding balance of convenience, which lies in favour of the appellants to continue the schemes in the larger interest of about 4.5 lacs members and irreparable loss that would be caused to the appellants and

its members if the ad-interim ex-parte order is not recalled or modified, have been conveniently ignored by the learned WTM.

8. The learned senior counsel has, *inter-alia*, urged the following submissions before the tribunal on behalf of the appellants :

- (a) That the powers conferred upon the Respondents under Sections 11(1), 11B and 11(4) of the SEBI Act, 1992 are to be used in extremely rare cases of urgency, and are not powers that can be resorted to on a regular basis.
- (b) That the business carried on by the appellant of time sharing does not amount to CIS as per the definition presented by SEBI. The Appellant carries on two types of time-sharing schemes and some of them do not involve any element of refund of profit and hence no promise of any return by the Appellant. Such schemes have always treated as not covered by the CIS Regulations or the definition thereof in Section 11 AA by SEBI itself.
- (c) That the impugned order is based on conjectures and far-fetched surmises that have not been justified in the order by analysing the facts of the present case. The impugned order must be a well-reasoned and speaking order which can be justified on the basis of the reasons contained therein and not on the basis of new submissions put forth during the hearing.
- (d) The complaints which are stated by the respondent to have acted as catalyst for the impugned order have not been disclosed to the appellant and so the appellant is not in a position to understand the true nature of the

complaints and construct an appropriate defence. Said complaints in an incomplete form have, however, been sent to the Appellant during the pendency of proceedings before this Tribunal on or around August 6, 2015.

(e) The Royal Twinkle Star Club Ltd. and the appellant are two distinct entities. The circumstances surrounding the former cannot be used to make the case against the appellant stronger. Moreover, the SCN does not make any reference to the schemes of Royal Twinkle Star Club Ltd., and as such reliance placed by the Respondent on an order dated August 21, 2015 in respect of Royal Twinkle Star Club Ltd., is erroneous. Only a complaint in respect of Royal Twinkle Star Club Ltd. is to be found in the SCN.

(f) It is also argued by Ld. Counsel Shri Sancheti that SEBI is wrong in refusing the request of the Appellant made by way of a Miscellaneous Application before this Tribunal clearly expressing its desire for being registered and regulated as per CIS Regulations under aegis of SEBI.

9. The appellants have also contended that one of the *prima facie* finding in the impugned order that there seems to be diversion of funds collected from the investors / members based on the audited Profit and Loss A/c and balance sheets submitted by the appellant himself has been arrived at in violation of the law laid down by the Hon'ble Supreme Court in **S. L. Kapoor Vs Jagmohan reported in AIR 1981 SC page 153 particularly paragraph 16** thereof. The submission of the appellant is that the respondent could not have drawn a conclusion merely on the basis of certain material without intimating the Appellant of the charge

sought to be levelled against it because the information was gathered pursuant to SCN which did not contain any allegation with regard to such conclusions to be found in Para 9(c) of the impugned order in question.

10. Therefore, it is submitted by Shri Sancheti that the impugned order reflects a pre-conceived notion in the mind of the respondent and the opportunity afforded to the appellant by the learned WTM pursuant to the order of this Tribunal and the material and written submissions preferred by the appellants during that hearing are all meaningless because nothing has been considered by the learned WTM in passing the so called confirmatory order and has simply reiterated the stand taken by SEBI in the ad-interim ex-parte order. In this connection, our attention has been drawn towards the judgment of Hon'ble Supreme Court in the case of **Nandkishore Vs State of Bihar reported in (1978) 3 SCC page 366 at paragraph 19** and the case of **Bank of India Vs Degal Suryanarayana reported in (1999) 5 SCC page 762, paragraph 11**. These rulings have been cited by the learned counsel to impress upon us that no conclusion could be drawn by the respondent on the basis of surmises, conjectures and / or suspicion. It is also argued by Shri Sancheti that the impugned order doesn't take into consideration the contentions of the appellants regarding "balance of convenience" and "irreparable loss."

11. Shri Sancheti, learned senior counsel for the appellant has referred to following judgments :-

- Pancard Clubs Ltd. vs. SEBI (SAT Appeal No. 254 of 2014 dated September 17, 2014)
- Zenith Infotech Ltd. & Ors. Vs. SEBI & Ors. (SAT Appeal No. 59 of 2013 dated July 23, 2013)
- Commissioner of Central Excise, Bangalore vs. Brindavan Beverages Pvt. Ltd. & Ors. (2007) 5 SCC 388
- M. A. Jackson vs. Collector of Customs (1998) 1 SCC 198
- Union of India and Anr. Vs. GTC Industries Ltd. Bombay (2003) 5 SCC 106
- S. L. Kapoor V. Jagmohan (AIR 1981 SC 136)

12. Per contra, Shri J. P. Sen, learned senior counsel, who appeared on behalf of the respondent with Shri Tomu Francis, learned Advocate, supported the validity / legality of the impugned order. Shri Sen submits that the *prima facie* finding in the impugned order that the time sharing business run by the appellant falls within the definition of CIS as prescribed in Section 11 AA of the SEBI Act, 1992 cannot be faulted with as the same has been arrived at by the learned WTM after affording an opportunity of hearing to the appellant as per the directions of this Tribunal. The appellant has availed of this opportunity and has even furnished written submissions. Therefore, he cannot challenge the same before this Tribunal as the main issue as to whether the activities of the appellant fall within the definition of CIS has been under investigation of SEBI and final view has yet to be arrived at. It is only with a view to protect the investors' interests that the respondent has passed the ex-parte ad-interim order on June 3, 2015 and subsequently confirmed by the impugned order dated August 24, 2015.

13. Shri Sen also submits on behalf of the respondent that the four complaints in question were only a trigger point to initiate action against the appellant and not the basis of the impugned order. Therefore, their relevance cannot be over-emphasised.

14. Similarly, learned senior counsel Shri Sen also submitted that the appellant should have obtained registration with SEBI prior to commencement of its activities of time sharing business as the same are in the nature of the CIS. We may, however, pertinently note that the appellants' request for applying registration under the CIS Regulations during the course of hearing, of course, without prejudice to their rights and contentions raised in their appeal, was flatly turned down by the learned senior counsel on instruction from his client i.e. the Respondent.

15. Shri Sen further contended that SEBI has ample powers to pass such orders under Sections 11 (1), 11 (4) and 11 B of the SEBI Act 1992 read with Regulation 65 of SEBI (CIS) Regulations, 1999. Therefore, such orders cannot be impugned at this stage before the Tribunal when the final order has yet to be passed after completion of the on-going investigation.

16. Lastly, Shri Sen has placed reliance on an order dated August 21, 2015 passed in the case of Royal Twinkle Star Club Ltd. This order directs Royal Twinkle Star Club Ltd. and its directors, who are common with the Appellant, not to carry on with the CIS Schemes earlier floated by Royal Twinkle Star Club Ltd. The order in the case of Royal Twinkle Star Club Ltd. also restrains its directors from accessing the capital market. It is also submitted on behalf of the Respondent that pursuant to plans / schemes of Citrus as well as Royal Twinkle, a substantial amount is redeemable. Further, elaborating this point, it is contended by Shri Sen that in case of redeemable schemes, the initial amount made by the investors / members is liable to be refunded with certain additional amount as interest. Shri Sen has also produced an undated Broucher to explain various details pertaining to Royal Twinkle and compared the same with that of Citrus. It is brought to our notice that the Broucher issued by Royal Twinkle mentions various schemes floated by Citrus as well.

17. Learned senior counsel for the respondent has referred to the following judgments :-

- NGHI Developers India Ltd. & Ors. Vs. SEBI (SAT Appeal No. 225 of 2012 dated July 23, 2013)
- Maitreya Services Pvt. Ltd. & Ors. Vs. SEBI (SAT Appeal No. 88 of 2013 dated July 23, 2015)
- Alchemist Infra Realty Ltd. & Ors. Vs. SEBI (SAT Appeal No. 124 of 2013 dated July 23, 2013)
- Rose Valley Hotels and Entertainment Ltd. & Ors. Vs. State of Assam & Ors. (Writ Petition No. 4298 of 2013 in the Hon'ble Guwahati High Court at Guwahati dated June 29, 2015)

18. We have heard both the learned Senior Counsel for the parties at length and have minutely perused the pleadings as well as the impugned order dated August 24, 2015 along with previous ad-interim ex-parte order dated June 3, 2015. By our Order dated 29th September, 2015, we have stayed the operation of the impugned order in respect of three schemes of the appellant which are distinguishable from other schemes in as much as in these three schemes there is no provision for redeeming the points earned and can be termed as non-refundable schemes. The dispute now remains only with respect to other refundable schemes floated by the appellants.

19. We would like to deal and analyse the main contentions advanced on behalf of the appellants by Shri Sancheti reproduced herein above in paras 7(a) to para 7(f) and the response of Shri Sen on behalf of SEBI in respect of each of those submissions and our findings thereon.

20. Regarding 7(a) that there was no emergent situation or extreme urgency for invoking and exercising powers conferred upon the Respondent by Sections 11(1), 11 B and 11(4) of the SEBI Act, 1992 read with Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, and that there is a delay of 18 months in passing the impugned order by SEBI. This contention of Shri Sancheti does not seem to be very convincing. Although this Tribunal has consistently held that such powers should be invoked sparingly in the most deserving cases of extreme urgency and not in a routine manner and even for coming to a *prima facie* view as regards the nature of the appellants' activities of time sharing business to fall within the definition of CIS, there has to be sufficient material / evidence on record which could have motivated the respondent to form such a *prima facie* view which, in turn, has far-reaching and damaging effect on the appellant's business. Such a *prima facie* view or *prima facie* finding by the respondent either in the show cause notice or in the

impugned order has to be based on prudent and rational considerations. The jurisdictional facts required for invoking powers to issue ad-interim ex-parte directions in the nature of temporary injunction have to be brought on record by unambiguous and uncontroverted material. After going through the pleadings and the impugned orders, we, however, note that there is a delay on the part of the appellant itself to submit documents before the SEBI. Some of the documents were supplied by the appellant even after the ex-parte order came to be passed against it. Since the investigation itself is going on in the matter undertaken by SEBI and has not yet achieved finality, both the parties should cooperate in expediting the matter so that the respondent can pass final orders after completing fact finding exercise as per law.

21. In this connection, Shri Sancheti has also relied upon judgment of this Tribunal in the case of Pancard (supra). That decision is somewhat distinguishable on facts, because, at the time when the appeal filed by Pancard was taken up for hearing, *prima facie* view of the Hon'ble Guwahati High Court in the case of Rose Valley Hotels (supra) (Writ Petition No. 4298 of 2013) to the effect that the time sharing business of the appellant therein was not covered by the concept of CIS as envisaged in the SEBI Act, 1992 read with the CIS Regulations, 1999 was in force. In the impugned order it is noted that Writ Petition No. 4298 of 2013 has been finally dismissed by the Hon'ble Guwahati High Court by recording that if interest on deposit under the scheme is the alluring factor on part of the investor, then the case would squarely fall under Section 11AA(2)(ii) of SEBI Act. In view of above distinguishing factor which took place subsequent to our order in case of Pancard appellants are not justified in relying on the order passed in case of Pancard.

22. As regards 7(b), it was submitted that the time sharing business carried on by the appellant does not amount to CIS. There is no merit in the above

contention. In the ex-parte ad-interim order dated June 3, 2015, it is specifically recorded as to the basis on which SEBI finds that all the four conditions set out under Section 11AA(2) are *prima facie* satisfied in the present case. In our opinion, no case is made out for disturbing that *prima facie* view. The appellants have contended that they are discriminated inasmuch as similarly situated entities like Club Mahindra, Sterling Resorts and Country Club are allowed to continue to operate similar schemes but the appellants are restrained from operating similar schemes. It is true that the WTM of SEBI has failed to consider these arguments in the confirmatory order. However, during the course of arguments it is brought to our notice that in the schemes floated by Club Mahindra, Sterling Resorts, Country Club etc. there is no provision for refunding the amount invested with promised return, whereas, in certain schemes operated by appellants, there is provision for seeking refund with promised return. Thus, the schemes in question are not fully comparable with the schemes floated by Club Mahindra, Sterling Resorts, Country Club etc.

23. As regards 7(c), on the question of commonality of Directors of Royal Twinkle Star Club Ltd. and the appellant company, namely, Citrus Check Inns Ltd., it is submitted by the learned senior counsel that the impugned order does not discuss any comparative data of the holiday plans of the two companies. It is argued that neither any information in the nature of comparative data or analysis with regard to the similarities / dissimilarities of the holiday plan of the two companies was furnished by the respondent to the appellant nor any summary statement or material was sought from the appellant by the learned WTM before passing the impugned order. In this regard we may pertinently refer to the judgment of Hon'ble Supreme Court in the case of **Commissioner of Central Excise, Bangalore Vs Brindavan Beverages (P) Ltd. Reported in (2007) 5**

SCC, page 388, paragraphs 10-14 in particular. Para 14 of the said judgment of the Hon'ble Supreme court states that –

“14. there is no allegations of the respondents being parties to any arrangement. In any event, no material in that regard was placed on record. The show cause notice is the foundation on which the Department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. In the instant case, what the appellant has tried to highlight is the alleged connection between the various concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the arrangements, if any. As no sufficient material much less any material has been placed on record to substantiate the stand of the appellant, the conclusions of the Commissioner as affirmed by CEGAT cannot be faulted.”

24. A minute perusal of the case of Brindavan Beverages *prima facie* reveals that the facts therein seem to be similar to the facts in the case in hand inasmuch as in the case of Brindavan Beverages also the SCN sought to make allegations on the basis of commonality of directorship without any other corroborative material. There was no material in the SCN to come to the said conclusion. Therefore, in the case of Brindavan Beverages the Hon'ble Supreme Court was pleased to set aside the SCN in that case. However, in the case in hand, we find that irrespective of certain differences in the schemes of both the companies, the basic concept in the schemes of both companies is identical.

25. As regards 7(d), that the basis of SCN seems to be certain complaints mentioned therein which have not been supplied to the appellant before hand and

in totality. After hearing the parties and perusing the material produced by the parties before us, we note that during the hearing of the matter before this Tribunal on 5th and 6th August 2015, the respondent without giving any inspection of the original documents, vide e-mails dated August 5, 2015, forwarded photocopies of incomplete complaints. The appellant has not been in a position to decipher the nature of the complaints or the details of the complainants so as to redress the same in case they are genuine. Moreover, no explanation was ever sought from the appellants on those complaints before passing the impugned order. This according to the appellant, amounts to violation of the principles of natural justice. Similarly, copy of the reference received from RBI received on December 17, 2014 as mentioned in the SCN has never been supplied to the appellants though relied upon by the respondent.

26. After considering the rival submissions of the parties on this point, we find some force in the contention raised by Shri Sancheti. We note that the Hon'ble Supreme Court, in the case of **M. A. Jackson Vs Collector of Customs, reported in (1999) 1 SCC**, specifically in paragraphs 6-9, has been pleased to hold that any reliance on documents referred to in the show cause notice but not supplied to the Noticee is illegal and vitiates the whole proceedings. The submission of the respondent that the complaints were only a trigger point for taking action in question against the appellant, therefore, cannot be countenanced. We, therefore, direct respondent to supply legible copy of the material / complaints relied upon by it in the show cause notice forthwith and before starting investigation in question.

27. As regards 7(e) it is contended that the respondent has travelled beyond the show cause notice inasmuch as it has taken into consideration an order dated August 21, 2015 pertaining to Royal Twinkle Star Club Ltd. after the appellant had already concluded hearing on August 13, 2015 when no such order dated

August 21, 2015 could have been in existence. It is argued that the two companies are entirely different legal entities in the eyes of law. It is also contended that as per the settled legal position, the activities of one company cannot be juxtaposed on the other only on the ground of certain Directors being common in both the companies. In our opinion, this aspect should have been taken into consideration by the learned WTM. Moreover, Shri Sen drew our attention during the course of the hearing to an undated brochure / pamphlet issued by Royal Twinkle mentioning therein various schemes to be floated by Citrus. This factual aspect also needs to be considered by the WTM duly appreciating the rival contentions of the parties. The Appellant has been contending all along that the commonality of directors alone may not per se lead to a conclusion that the two companies are intimately connected or interdependent. It has been maintained by the Appellant that the two companies have completely different and exclusive legal identities. After perusing the brochure and listening to the learned Counsel appearing for parties on this question, we are of the opinion that the question of similarity or dissimilarity of various schemes floated by the two companies, is a question of fact and law to be discussed and determined by the learned WTM after the completion of investigation by giving an opportunity of hearing to the concerned parties. We note that, barring a reference to the complaints pertaining to Royal Twinkle, there is no mention of salient features of various schemes earlier floated by Royal Twinkle Star Club Ltd. and later on by Citrus. It is a matter of record that Royal Twinkle closed its operations prior to the commencement of the new and re-modelled schemes launched by Citrus. *Prima facie*, both the companies are different and have separate legal existence. In this connection, the judgment of Hon'ble Supreme Court, in the case of Brindavan Beverages (supra) has already been discussed hereinabove.

28. Furthermore, we note from the pleadings that Citrus has started many holiday schemes w.e.f. April 1, 2012 which include refundable as well as non-refundable flexible plans offered to its customers. This aspect has not at all been considered by the learned WTM.

29. Point number 7(f) takes us to an important aspect involved in the matter. During the hearing of the matter before this Tribunal, the Appellant has filed a Miscellaneous Application dated 15 September 2015 stating that it is willing to seek registration from SEBI without prejudice to its contention that the schemes are not covered under CIS. Shri Sen, learned senior counsel for SEBI, on instructions, submitted that since the appellants have operated CIS in violation of CIS Regulations without seeking registration within the time stipulated therein, the question of permitting the appellants to seek registration at this belated stage does not arise.

30. When we look at the historical background of the concept of Collective Investment Scheme, we find that no definition of CIS was incorporated in the SEBI Ordinance when it was promulgated on 30th January, 1992. However, Chapter IV, which deals with Power and Functions of the Board specifically provided in Section 11(2)(c) about “*registering and regulating of the working of Collective Investment Schemes.*” Later on by way of an amendment in the year 1995, Section 12(i)(b) was inserted which provided that no person shall carry on a collective investment scheme unless a certificate of registration from the SEBI was obtained in accordance with the Regulations. Such Regulations, however, came into existence only in the year 1999 which also mandated registration of various collective investment schemes hitherto remained unregulated. It is, thus, evident that the fundamental legislative purpose in entrusting SEBI with the affairs of various collective investment schemes companies is to register and

regulate them under the Regulations so that the interest of crores and crores of gullible investors could be duly protected.

31. It is relevant to note that the CIS Regulations framed by SEBI came into force with effect from October 15, 1999. Since October 15, 1999 till date we are informed that only one company, namely, “Gift Collective Investment Management Company Ltd.”, has been registered under the CIS Regulations and it is reported that the said company has become defunct. Thus, in the last 16 years only one company operating CIS has been regulated by SEBI and even that company has become defunct. It is a matter of records that since 1999 till date SEBI has unearthed several cases, where the companies are found to have floated and operated CIS without registration and without being regulated by SEBI. Obviously it means that the companies prefer to float and operate CIS without being registered and without being regulated by SEBI. It is only when crores and crores of investors after investing crores and crores of rupees in various schemes have approached SEBI seeking redressal of their grievances, action has been taken by SEBI. In these circumstances, since unregulated and unregistered companies which are a menace to society are thriving, it is high time for SEBI to take corrective measures and permit a company which even after operating CIS without obtaining registration is willing to seek registration and carry of CIS in accordance with law.

32. Next, during the course of hearing the appellant has filed an affidavit stating on oath that a sizeable number of customers are substantially using the holiday plans. The number of users in the last three years has constantly increased from about 800-900 in the first year to about 3500 in the second year. The number of users has crossed 73000 members in the third year. In the fourth and fifth year the appellant is expecting that atleast 50 % of the members would be using the holiday plans, which would substantially reduce the liability of the

appellant to refund the money as per the basic modality of business adopted by the appellant and agreed to between the appellant and its members.

33. The appellant in its affidavit dated September 23, 2015 has specifically stated on oath that as per the audited balance sheet of the previous year, the appellant has total assets of about rupees sixteen hundred eighty crores which are sufficient to meet the liability of refund even if no member redeems the points under the holiday plan in question and finally an order to that effect is passed by SEBI after holding the investigation into the whole matter as directed by the learned WTM in para 12 of the impugned order itself.

34. Similarly, the appellant has stated on oath in his affidavit that he would not deal with the assets except for the purpose of meeting day-to-day obligations and liabilities in the normal course of business. The appellant also undertakes to maintain a separate account of amounts which the appellant might receive in respect of existing schemes. The same would also be furnished to SEBI on quarterly basis. The appellant also undertakes not to float any new schemes except in accordance with law.

35. At this stage, it would also be worthwhile to note that the hearing before the learned WTM pursuant to this Tribunal's order dated August 6, 2015 got concluded on August 13, 2015 after giving an opportunity of hearing to the Appellant. Thereafter, no hearing before the learned WTM was held and straight away, impugned order dated August 24, 2015 came to be passed. In this order, the learned WTM has placed reliance on the findings in respect of the order dated August 21, 2015 passed by Respondent, against Royal Twinkle Star Club Ltd., which is a different company. We are of the considered opinion that without supplying a copy of the order dated August 21, 2015, to the Appellant, and seeking its response thereto, the learned WTM should not have passed the impugned order in a hurry, if the said order of Royal Twinkle was to be

considered so essential to be relied upon, in passing the impugned order dated August 24, 2015. This is again violative of the principles of natural justice and the doctrine of fair play in action. The submission of the learned senior counsel for the Appellant Shri Sancheti that the learned WTM has gone beyond the show cause notice in passing the impugned order in question, therefore, has considerable merit.

36. For all the aforesaid reasons and particularly in view of the fact that the appellants pending further investigation have agreed to be regulated by SEBI without prejudice to their rights and contentions that the schemes in question are not covered under CIS, we direct the appellants to make a without prejudice application seeking registration in respect of the refundable schemes in question preferably within one week from today and further direct SEBI to grant provisional registration to the Appellants as per the procedure prescribed under the CIS Regulations so that interest of investors / customers do not suffer, especially when it is found by SEBI that the business carried on by the appellants *prima facie* to be in accordance with law except that the said business is carried on without seeking registration from SEBI. Depending on the investigation report, SEBI may consider grant of final registration to the Appellants in accordance with law in due course of time. Needless to say that SEBI shall make an endeavor to complete the pending investigation expeditiously against the appellants so that the *prima facie* view of SEBI regarding the business activities of the appellants attains finality before hand in one way or the other.

37. For all the aforesaid reasons, while upholding the *prima facie* view of SEBI that the business carried on by the appellants constituted CIS, we set aside the directions given by SEBI in the impugned orders dated June 3, 2015 and August 24, 2015 and direct the Appellants to make an application for registration

with SEBI in respect of the refundable schemes covered by the CIS Regulations, and further direct SEBI to grant provisional certificate of registration as provided under the CIS Regulations forthwith, and eventually on receipt of final investigation report, if found appropriate, grant final registration as per law, so that the schemes being operated by the Appellants are henceforth regulated so that the investors' interests are effectively and properly protected by SEBI. Till the date of granting provisional registration, the Appellants may continue to receive subscription amount from the investors under the existing schemes. However, the accounts / records of the amounts collected thereunder, shall be maintained in a separate account and appellants shall not launch any new scheme except in accordance with law. The appellants shall also not alienate or create any encumbrance or third party rights on any of their properties except for repayment to the customers / investors. Ordered accordingly.

38. Both the appeals are disposed of in the above terms with no order as to costs.

39. In view of the disposal of the appeals, Miscellaneous Application Nos. 327 and 328 of 2015 do not survive and are, accordingly, disposed of as infructuous.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

03.02.2016
Prepared & Compared by
PTM