BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No.436 of 2015

Date of Order reserved: 21/01/2016
Date of decision: 03/02/2016

Royal Twinkle Star Club Private Ltd.
a Company incorporated under the
Companies Act, 1956, and having its
registered office at 16-19, 1st Floor,
Shilpin Center, 4, G.D. Ambedkar Marg,
Wadala, Mumbai – 400 031. …Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No.C4-A, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051. … Respondent

WITH
Appeal No.437 of 2015

1. Mr. Omprakash Basantlal Goenka
2. Mr. Prakash Ganpat Utekar
3. Mr. Venkataraman Natrajan
4. Mr. Narayan Shivram Kotnis

all Directors of Royal Twinkle Star Club Private Ltd.
and having their office at 16-19, 1st Floor,
Shilpin Center, 4, G.D. Ambedkar Marg,
Wadala, Mumbai – 400 031. …Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No.C4-A, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051. … Respondent

Mr. Pradeep Sancheti, Senior Advocate a/w Mr. Neville Lashkari, Advocate i/b Ms. Sonu Tandon Advocate for the Appellant.

Mr. J. P. Sen, Senior Advocate a/w Mr. Tomu Francis, Advocate for the Respondent.

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

Per : Jog Singh

1. These two Appeals have been preferred by Appellants against a common impugned order dated 21st August, 2015 passed by the Respondent against them. Appellant in Appeal No.436 of 2015, namely, Royal Twinkle Star Club Private Ltd. (hereinafter "RTSCL) is an unlisted company whereas four Appellants in Appeal Nos. 421 and 437 of 2015, namely, Mr. Omprakash Basantlal Goenka, Mr. Prakash Ganpat Utekar, Mr. Venkataraman Natrajan and Mr. Narayan Shivram Kotnis are Directors of RTSCL. By the said order, Appellants have been mainly restrained from collecting any money from investors or from launching or carrying on any Collective Investment Schemes ("CISs") including the schemes which have been identified as CISs in the impugned order itself. The four Directors have also been barred from accessing the securities market by imposing a prohibition of four years in this regard. The precise directions issued by the said impugned order dated 21st August, 2015 are reproduced below:-

"*a. Royal Twinkle Star Club Limited and its Directors, namely, Mr. Omprakash Basantlal Goenka [PAN: AECPG3854J], Mr. Prakash Ganpat Utekar [PAN: AALPU9100E], Mr. Venkatraman Natrajan [PAN: ACUPV4686K] and Mr. Narayan Shivram Kotnis [PAN: ABIPK5022D] shall abstain from collecting any money from the investors or launch or carry out any Collective Investment Schemes including the scheme which have been identified as a Collective Investment Scheme in this Order.*

b. Royal Twinkle Star Club Limited and its Directors, namely, Mr. Omprakash Basantlal Goenka, Mr. Prakash Ganpat Utekar, Mr. Venkatraman Natrajan and Mr. Narayan Shivram Kotnis are restrained from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities market for a period of four (4) years

c. Royal Twinkle Star Club Limited and its Directors, namely, Mr. Omprakash Basantlal Goenka, Mr. Prakash Ganpat Utekar, Mr. Venkatraman Natrajan and Mr. Narayan Shivram Kotnis shall wind up the existing Collective

Investment Schemes and refund the money collected by the said company under the schemes with returns which are due to its investors as per the terms of offer within a period of three months from the date of this Order and thereafter within a period of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, including the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds.

d. *Royal Twinkle Star Club Limited and its Directors, namely, Mr. Omprakash Basantlal Goenka, Mr. Prakash Ganpat Utekar, Mr. Venkatraman Natrajan and Mr. Narayan Shivram Kotnis shall not alienate or dispose off or sell any of the assets of Royal Twinkle Star Club Limited except for the purpose of making refunds to its investors as directed above.*

e. *Royal Twinkle Star Club Limited and its Directors, namely, Mr. Omprakash Basantlal Goenka, Mr. Prakash Ganpat Utekar, Mr. Venkatraman Natrajan and Mr. Narayan Shivram Kotnis are also directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.*

f. *In the event of failure by Royal Twinkle Star Club Limited and its Directors, namely, Mr. Omprakash Basantlal Goenka, Mr. Prakash Ganpat Utekar, Mr. Venkatraman Natrajan and Mr. Narayan Shivram Kotnis to comply with the above directions, the following actions shall follow:*

- *Royal Twinkle Star Club Limited and its Directors, namely, Mr. Omprakash Basantlal Goenka, Mr. Prakash Ganpat Utekar, Mr. Venkatraman Natrajan and Mr. Narayan Shivram Kotnis shall remain restrained from accessing the securities market and would further be prohibited from buying, selling or otherwise dealing in securities, even after the period of four (4) years of restraint imposed in paragraph 18(b) above, till all the Collective Investment Schemes of Royal Twinkle Star Club Limited are wound up and all the monies mobilized through such schemes are refunded to its investors with returns which are due to them.*

- *SEBI would make a reference to the State Government/ Local Police to register a civil/ criminal case against Royal Twinkle Star Club Limited, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and*

- *SEBI would make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the company, Royal Twinkle Star Club Limited.*

- *SEBI shall initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder.*"

2. For the sake of convenience and with the consent of the parties, Appeal No.436 of 2015 preferred by the Appellant-company against the impugned order is taken as the lead case.

3. Briefly stated the facts of the case are that; the Appellant-company started its business of selling of holidays plans on 6th May, 2008. The Appellant i.e. RTSCL belongs to Mirah Group of Companies which is stated to be engaged in various business activities, including the business of running hotels and restaurants since the year 2002. The Appellant started various time sharing holiday schemes offering customers various options, including non-refundable and refundable schemes. It means the customers/investors who might not be in a position to avail a holiday plan within a specified period, would be repaid their money with a certain additional monetary benefit on the expiry of the said period. In case they utilize the holiday plan, there would be no question of any refund. This seems to be the crux of the refundable schemes. Whereas in the non-refundable schemes, fixed amount is taken from the customers/investors towards holiday plan to be utilized by the said customer/investor within a specified period and failing which the Appellant will not refund the amount on the expiry of the period. It was pointed out to us that most of the other schemes run by Mahindra Resorts, Sterling Resorts, etc. are non-refundable and beyond the purview of the concept of CIS as envisaged under Section 11A of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act, 1992").

4. On receiving certain complaints alleging that the Appellants were carrying on CIS without seeking registration under the CIS Regulations

(according to the Appellants the said complaints were never furnished till the passing of the impugned order in question), the Respondent decided to determine whether the activities of RTSCL could be construed as "CIS" in terms of Section 11A(2) of the SEBI Act, 1992. Letter dated 1/6/2012 was, accordingly, issued by the Respondent to the Appellant seeking various information incorporated therein. Appellant by letter dated 15/6/2012, while supplying the requisite information/documents to the Respondent, submitted that it was an unlisted company with no intention of ever getting listed on any Stock Exchange and hence was beyond the purview of SEBI as such. It was part of the larger Mirah Group of Companies and was incorporated as a hospitality solution provider. In the meanwhile, Ministry of Corporate Affairs vide letter dated 9/1/2013 seem to have forwarded to SEBI certain inspection report with respect to RTSCL, conducted by it in terms of Section 209-A of the Companies Act, 1956. The Ministry of Corporate Affairs noted that no fraud etc. was committed by the Appellant in respect of customers/investors. After some protracted correspondence between the Appellant and the Respondent, an order dated 7/3/2014 was straightaway passed against the Appellant by the Respondent invoking powers under Section 11(1) 11B and 11(4) of the SEBI Act, 1992 read with Regulation 65 of the CIS Regulations, 1999 directing the Appellant and its Directors:-

> *"a. not to collect any more money from investors including under the existing schemes;*
> *b. not to launch any new schemes;*
> *c. not to dispose of any of the properties or alienate any of the assets of the schemes;*
> *d. not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of the company;*
> *e. submit the list of investors with full particulars such as PAN numbers, addresses etc within fifteen days from the date of receipt of this order;*

f. submit full inventory of 233965 rooms as mentioned in the letter of RTSCL dated August 5, 2013 within fifteen days from the date of receipt of this order."

5. Strangely, this letter itself was treated as a show-cause notice against the Appellant by the Respondent. It is relevant to note that the Ministry of Corporate Affairs has already found that no action was necessary in the matter, after conducting investigation under Section 209(A) of the Companies Act, 1956. The Appellant represented against this ex-parte order cum show-cause notice dated 7th March, 2014 by filing various submissions before the Respondent. At this stage, Appellant was also given an opportunity of personal hearing during the pendency of the connected Appeals before this Tribunal. Thereafter, the impugned order dated 21st August, 2015 came to be passed against the Appellant and the same is the subject-matter of the present Appeal. By the said order, Respondent has prima facie found the activities of the Appellant to be CIS, although, admittedly, Appellant had wound up the holiday plans/schemes started on 6th May, 2008 on 31/3/2012.

6. We have heard the learned Counsel for the parties and minutely perused the record of the case.

7. Shri Pradip Sancheti, learned Senior Counsel for the Appellant submits that, the business activities of the Appellant-company do not fall within the ambit of CIS as envisaged under Section 11 A of the SEBI Act, 1992. The finding in the impugned order to this effect is therefore, contended to be wrong and contrary to law and facts of the present case. It is also submitted by the Appellant that the Ld. WTM has failed to take into consideration the underlying object in floating somewhat unique holiday / time-sharing plans which are more befitting to the common man's aspirations of utilizing /

undertaking holiday plans. The Ld. WTM did not consider that, in case the customers did not utilize the time-sharing plan, in a specified time period as per the bilateral contract, the amount collected from the customers are liable to be repaid. Since, it is a simple case of selling of a product by the Appellant-company to its customers under a contract and as such it is a misnomer to call "customers" as "investors" by the Ld. WTM. It is, thus argued by Shri Sancheti that the customers purchased holiday plans to be utilized in various hotels, restaurants run under the aegis of the larger Mirah Group. There is therefore, no purchase of holiday plan or time-sharing holidays for the purpose of making profits. The amount is liable to be returned to the customers, only in the eventuality of the holidays being not availed by the customers due to reason attributable to the customers and hence, beyond the control of the Appellant. Therefore, refund of any money to such customers, is a matter of good gesture on the part of the Appellant and cannot be treated as a factor to bring the business activity of the Order under the preview of the CIS. In nutshell, it is that, the four ingredients of Section 11 AA of the SEBI Act are not at all satisfied in the present case and that the concept of CIS has been unnecessarily been stretched to bring the business activities of the Appellant under the clutches of CIS by deliberately ignoring the contractual nature of the obligations undertaken by the customers while purchasing time-sharing holiday plans from the Appellant.

8. The Appellant's next contention is that the investigation undertaken by the SEBI in the present matter was to "determine" the nature of the business activities of the Appellant in the context of CIS Regulations on the basis of certain complaints. These complaints were never supplied to the

Appellants' and fragmented copies, that too without the details of the complainants, on the directions of this Tribunal, were furnished during the course of the hearing. In the process, the Appellant lost the opportunity to redress any grievances of the complainants, if any. In this context, it is pertinently argued by the Appellant that Regulation 65 of the CIS Regulations was illegally invoked to wind up the companies and refund the amounts to the customers, which process had already been undertaken by the Appellant w.e.f. 1st April 2012 itself, on its own. Similarly, it is submitted by the Appellant that the Ministry of Corporate Affairs also investigated the complaints and in its inspection report opined that the Appellant-company had not defrauded any purchaser of the holiday plans.

9. Yet another argument is advanced by Shri Sancheti for quashing of the show-cause notice itself on the ground of violation of the principles of natural justice. It is contended that the Appellants have been punished, inter alia, for a period of Four years from entering the capital market, without there being any whisper of imposing such an extreme penalty of debarment for a specific period of four years to be imposed upon the Appellant in the show-cause notice. This is contrary to the decision of the Hon'ble Supreme Court in the case of Gorkha Security Services Vs. Government (NCT of Delhi), reported in (2014) 9 Supreme Court Cases 105. It is submitted that atleast after determining the Appellants' business activities as amounting to CIS as per the Respondent, it was incumbent upon the Respondent to have issued another letter or supplementary show-cause notice to this effect, if it was not mentioned in the original show-cause notice. In our view, the issue of debarment would have become mere academic exercise, if the Appellant had

admittedly closed its business activities of enrolling fresh members / customers on 31st March 2012 itself. At this stage, it is pertinent to note that the four Directors who are Appellants before us, in Appeal No. 437 of 2015, namely Shri Omprakash Basantlal Goenka, Shri Prakash Ganpat Utekar, Shri Venkataraman Natrajan, and Shri Narayan Shivaram Kotnis, have started another Company, namely, Citrus Check Inns Ltd. on 1st April 2012, it becomes relevant to deal with this issue. Since the Directors are common in both the Companies i.e. erstwhile RTSCL and CCIL which are also being disposed off today itself with a direction to the Respondent to consider registration of Citrus Check Inns Ltd. as a CIS Company, as per the law, it becomes significant to deal with the aspect of debarment of the common Directors for a period of four years.

10. Although various points/grounds have been urged in the Appeal by the Appellant, but during the course of hearing Shri Pradip Sancheti, learned Senior Counsel for the Appellant, mainly, submitted that since there was no mention of debarment of Appellants from accessing the securities market in the SCN, no adverse order could be passed by the Respondent without putting the Appellants to notice in respect thereof. In this connection, Shri Sancheti has relied upon the judgment of the Hon'ble Supreme Court delivered in the case of Gorkha Security Services Ltd. v. Government (NCT of Delhi) & Ors., reported in (2014) 9 Supreme Court Cases, page 105 and has pleaded for quashing and setting aside of the show-cause notice dated 7th March, 2014 along with proceedings and the consequent impugned order dated 21st August, 2015. Secondly, Shri Sancheti has brought to our notice that more than 70% amount collected from various customers has either since

been paid and/or the customers have availed the time sharing schemes for which they had paid the money in question. For remaining 30%, Shri Sancheti has pleaded for two years time so as to enable the Appellant to discharge its contractual obligations towards the remaining customers either by offering them benefit of time sharing schemes or refunding the money in question.

11. Shri J.P. Sen, learned Senior Counsel for the Respondent, submitted that the Apex Court's verdict in Gorkha Security Services Ltd. is not attracted in the present case and that the Appellant has not made out any case for quashing of the show-cause notice as well as the consequent proceedings and the impugned order in question. However, the question of grant of time to the Appellant for discharging its obligations towards the customers in repaying or allowing them to utilize benefits of time sharing scheme has been left to the Tribunal.

12. In the case of Gorkha, the Hon'ble Supreme Court was dealing with a situation in which the Appellant, a partnership firm was providing security services to a hospital which was working under the administration of Government of NCT of Delhi. There was a contract of providing security services by the Appellant therein to the hospital under a contract for a monthly payment. The contract expired on 1st September 2012 but the Appellant continued to render services to the hospital till 31st July 2013. The hospital had called upon the Appellant to submit as regards, the provident fund and Employees State Insurance etc. certain deficiencies were also alleged by the hospital in the performance of the contract by the said Appellant. The said Appellant submitted detailed reply including the

documents sought by the hospital. The hospital being unsatisfied with the reply, issued a show-cause notice to the Appellant, mainly alleging that:

> *"5……..*
> *And whereas, by the above act and omissions, the firm has not only failed to provide minimum wages and extend the statutory benefits and abide by the labour laws, but also failed to provide satisfactory services and failed to submit the required information/ document, as and when called for and also being pre-requisite under the tender terms and conditions, and have rendered this hospital at the risk by deputing the less security personnels that too without prior intimation of the credentials of the deployed staff and police verification, as such liable to be levied the cost accordingly*
>
> *Therefore, you are directed to show cause within 7 days of the receipt of this notice, as to why the action as mentioned above may not be taken against the firm, beside other actions as deemed fit by the competent authority."*

13. Finally, impugned order dated 11th September 2013 was passed by the hospital holding that Gorkha had violated the terms and conditions of the contract / labour laws and as such following penalties were imposed on Gorkha:

> *"9……..*
> *(i) A penalty of Rs. 3000/- (Rupees Three Thousand only) under clause 27 (c) of the T&C, on account of public complaints.*
>
> *(ii) A penalty of Rs. 41,826/- (Rupees Forty One Thousand Eight Hundred Twenty Six only) under Clause 27 (c) (a) (i) on account of unsatisfactory performance and not abiding by the statutory requirements.*
>
> *(iii) A penalty of forfeiture of performance guarantees amounting to Rs. 3,70,000/- (Rupees Three Lac Seventy Thousand only) submitted at the commencement of contract.*
>
> *(iv) A penalty of blacklisting the firm M/s Gorkha Security for a period of 4 years from the date of this order, from participating the tenders in any of the department of Delhi Government/ Central Government/ Autonomous Body under the Government.*
>
> *(v) Since, the firm has made the payment of wages @ Rs. 4,000/- per month per person which is less than the prescribed rates of minimum wages, and submitted no proof of payment of wages, EPF and ESI etc. in spite of opportunities given over the years, hence, it is ordered to release the payment only @ Rs. 4,000/- per month per person plus applicable taxes after deducting the penalty imposed at 1 & 2 above and withhold rest of the payment of bills to the extent of amount over and above Rs. 4,000/- per month per person, till the payment of full wages to the employees and submissions of the proof of disbursing minimum prescribed wages and depositing the EPF and ESI*

> *contributions in respect of each deployed employees who have actually deployed and worked in this hospital duly verified by the authorities concerned."*

14. Gorkha first approached the Hon'ble Delhi High Court and the learned Single Judge did not find any merit in the Writ Petition and dismissed the same by upholding the action of the hospital by blacklisting the Gorkha for a period of four years. The plea of Gorkha that the Show Cause Notice did not specifically refer to the proposed action of blacklisting, was rejected by learned Single Judge. On preferring Letters Patent Appeal before the learned Division Bench of the High Court, the view of the Single Bench got affirmed and the LPA was dismissed. This is how Gorkha approached the Hon'ble Supreme Court and the question posed before the Hon'ble Supreme Court was as to whether the action of blacklisting could be taken without specifically proposing / contemplating such a harsh action in the Show Cause Notice. The Hon'ble Supreme Court, in Gorkha's case, before dealing with the main question of the requirement of incorporating the nature of action proposed to be taken against an entity in the show-cause notice particularly when harsh punishments like blacklisting etc. proposed to be inflicted upon the concerned persons, pertinently dealt with the very purpose underlying the requirement of issuance of show-cause notice itself. In Para 21, it has been very vividly explained by the Hon'ble Supreme Court that:

> *"21. The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.*

> *22. The High Court has simply stated that the purpose of show cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfill the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz:*
>
> *i) The material/ grounds to be stated on which according to the Department necessitates an action;*
>
> *ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.*
>
> *We may hasten to add that even if it is not specifically mentioned in the show cause notice but it can be clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement."*

15. Having said so, the Hon'ble Supreme Court, once again considered the facts of Gorkha's case and held that *"merely because of the reason that Clause 27 …… empowers the department to impose such a penalty would not mean that this specific penalty can be imposed, without putting the defaulting contractor to notice to this effect….. this Show Cause Notice is conspicuously silent about the blacklisting action….."* This is how the Hon'ble Supreme Court categorically held that "without any specific stipulation in this behalf, the Respondent could not have imposed the penalty of blacklisting." Infact the Hon'ble Supreme Court has termed the action of blacklisting of an entity as "civil death." Therefore, in Para 31, of the judgment, Hon'ble Supreme Court has notably held that:

> *"31. When it comes to the action of blacklisting which is termed as civil death' it would be difficult to accept the proposition that without even putting the noticee to such a contemplated action and giving him a chance to show cause as to why such an action be not taken, final order can be passed blacklisting such a person only on the premise that this is one of the actions so stated in the provisions of NIT."*

16. Similarly, in Para 33 of Gorkha judgment, Hon'ble Supreme Court has repelled the contention of the Learned ASG, to the effect that no prejudice

was caused to the Appellant in that case by not mentioning the proposed action of blacklisting against Gorkha in the Show Cause Notice. In this connection, Hon'ble Supreme Court analyzed the judgment of Haryana Financial Corporation Vs. Kailashchand Ahuja, reported in (2008) 9 SCC 31 and aptly held in Para 33 of Gorkha Judgment that:

> *"33. When we apply the ratio of the aforesaid judgment to the facts of the present case, it becomes difficult to accept the argument of the learned ASG. In the first instance, we may point out that no such case was set up by the respondents that by omitting to state the proposed action of blacklisting, the appellant in the show cause notice has not caused any prejudice to the appellant. Moreover, had the action of black listing being specifically proposed in the show cause notice, the appellant could have mentioned as to why such extreme penalty is not justified. It could have come out with extenuating circumstances defending such an action even if the defaults were there and the Department was not satisfied with the explanation qua the defaults. It could have even pleaded with the Department not to blacklist the appellant or do it for a lesser period in case the Department still wanted to black list the appellant. Therefore, it is not at all acceptable that non mentioning of proposed blacklisting in the show cause notice has not caused any prejudice to the appellant. This apart, the extreme nature of such a harsh penalty like blacklisting with severe consequences, would itself amount to causing prejudice to the appellant."*

17. The above analysis of Gorkha Security Services Ltd. clearly reveals that the ratio of the said judgment is an advancement on existing jurisprudence relating of the principles of natural justice. The concept of principles of natural justice in the matter of granting effective and proper opportunity to an entity against whom an extreme order of blacklisting or debarment, as in the case in hand, is likely to be passed for a specific period. After a detailed analysis of the jurisprudence on the subject, the Hon'ble Supreme Court has categorically held that to fulfill the requirement of principles of natural justice, a show-cause notice should meet the following:-

> *"(i) The material/grounds to be stated which according to the department necessitates an action;*
> *(ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.*

We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement."

18. Undoubtedly, there is power vested in the Respondent by Regulation 65 of CIS Regulations to, inter alia, debar an entity from entering the market. No period is prescribed. Therefore, in all fairness, while issuing the SCN, the Respondent should have mentioned the maximum period for which entity could also be debarred, in case the charge was proved. However, applicability of the judgment of Hon'ble Supreme Court in the case of Gorkha to the facts of present case need not be gone into because, Counsel for the Appellants in order to put an end to the controversy, fairly stated before us, that even if the schemes operated by the Appellants are held to be CIS, in view of the fact that the Appellants have stopped enrolling new members from 31/3/2012 and the directors of RTSCL have already undergone debarment from the date of impugned order till date, in the facts of present case, where, except for registration the schemes were carried on in accordance with law, this Tribunal be pleased to restrict the debarment till date, so that the directors of RTSCL who are also directors of CCIL can continue with the schemes operated by CCIL by seeking registration from SEBI under the CIS Regulations.

19. Thus, the time sharing schemes initiated by RTSCL on 6/5/2008 had already been closed on 31/3/2012 long before issuance of the show-cause notice dated 7th March, 2014. Appellant has not enrolled a single new member after 31/3/2012 in any of the erstwhile schemes run by RTSCL. However, we also note that the Appellants went on collecting equated monthly installments from the members enrolled prior to 31/3/2012 and on 9/6/2014

addressed a letter to that effect to SEBI. Admittedly, this letter remained unanswered by the Respondent. Further, during the course of hearing we directed the Appellant to submit to SEBI a complete list of its members as also the balance amount refundable to the members. The same was promptly done by the Appellant with various details of its members/customers. SEBI selected about 500 members and verified from them about the conduct of the Appellant in the matter of repayment to them. Learned Senor Counsel Shri Sen fairly submitted before us that no negative comments were received from the people which could be contacted by the SEBI. Therefore, the conduct of the Appellants seems to be good. Similarly, the Appellants have filed an affidavit before the Court categorically stating that the remaining likely contractual liability to repay to those customers who don't want to avail of the holiday facility in their resorts, hotels and restaurants, etc., an amount of Rs.786 crore is due to be paid to such customers. Whereas, the Appellant, as on the date of affidavit, has got assets worth Rs.1421 crore.

20. Considering the above facts and respective submissions of the parties, we are inclined to extend the time to the Appellant to repay the dues to its members on account of its contractual obligations for a period of 24 months from the date of this order. In the meanwhile, the Appellant shall not encumber or dispose of its assets except for the purpose of making payment of dues to its members and/or running its routine business. During this period of 24 months, the Appellant shall be entitled to continue to receive EMIs from the willing members as per the contract for availing facility of time sharing schemes in question.

21. To sum up, the decision of SEBI that the schemes floated and operated by the Appellants constituted CIS and operating such schemes without seeking registration was in violation of CIS Regulations cannot be faulted. Admittedly, the said schemes have been closed with effect from 31/3/2012. No doubt that the Appellants while not admitting new subscribers were not justified in collecting the equated monthly installment from the members who had subscribed to the schemes prior to 31/3/2012. However, it is on record that in reply to the ex-parte order cum show-cause notice dated 7/3/2014 the Appellants by letter dated 9/6/2014 had intimated the same to SEBI, but SEBI did not consider it necessary to stop the Appellants from collecting the subscription amount from the members who had subscribed to the schemes prior to 31/3/2012. Instead of directing the Appellants to stop collecting equated monthly installments, the WTM of SEBI, by the impugned order dated 21/8/2015 had directed SEBI to look into the matter. Be that as it may. It must be told to the credit of the Appellants that on our pointing out that the collection of subscription amount after the ex-parte interim order was improper, the Appellants have immediately stopped collecting the subscription amount from the subscribers who has subscribed to the schemes prior to 31/3/2012. Therefore, we rest this matter here itself. Further, it is relevant to note that apart from the fact that the CIS schemes were floated and operated without seeking registration under the CIS Regulations, there is nothing on record to suggest that the schemes operated by the Appellants were detrimental to the interests of the investors. Moreover, it is a matter of record that after 31/3/2012, the Appellants have refunded substantial amounts to the investors and the Appellants have submitted that the balance amount

of (approx) Rs.786 crore (subject to redeeming the points under the holiday plans) would be refunded to the investors within a period of two years.

22. In these circumstances, while upholding the decision of SEBI that the Appellants have floated and operated CIS without registering with SEBI and hence in violation of CIS Regulations, since the schemes are closed by the Appellants voluntarily and substantial amount is refunded to the investors, we grant extension of two years time from the date of this order to the Appellants to enable them to pay the balance amount refundable to the investors. Looking to the conduct of the Appellants before and after 31/3/2012 which is fair, we restrict the debarment imposed against the directors from the date of the impugned order i.e. from 21st August, 2015 till the date of present order.

23. Both the Appeals are disposed of in the above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

03/02/2016
Prepared & compared by-ddg