

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA  
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

**ORDER**

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999

**IN THE MATTER OF CITRUS CHECK INNS LIMITED**

In respect of:

1. Citrus Check Inns Limited (CIN: U55101MH2011PLC222394),
  2. Mr. Omprakash Basantlal Goenka (PAN: AECPG3854J),
  3. Mr. Prakash Ganpat Utekar (PAN: AALPU9100E),
  4. Mr. Venkatraman Natarajan (PAN: ACUPV4686K) and
  5. Mr. Narayan Shivram Kotnis (PAN: ABIPK5022D)
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**Date of Hearing: August 13, 2015**

**Appearance:**

- For noticees :**
1. Mr. Pradeep Sancheti, Senior Advocate
  2. Mr. Sagar Ghogre, Advocate
  3. Mr. Krushanu Pandya, Advocate
  4. Ms. Namrata Mehta, Advocate
  5. Mr. Mukesh S. Thakur, Authorised Representative
  6. Mr. Umesh Vartak, Authorised Representative
  7. Mr. Nitin Pawar

- For SEBI :**
1. Dr. Anitha Anoop, Deputy General Manager
  2. Mr. Pradeep Kumar, Assistant General Manager
  3. Mr. Ankit Bhansali, Assistant General Manager
  4. Mr. Pankaj Bhageria, Assistant General Manager
  5. Mr. Abhiraj Arora, Manager
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1. Hon'ble Securities Appellate Tribunal vide its order dated August 06, 2015, in Appeal number 366 of 2015, in the matter of Citrus Check Inn Limited (hereinafter referred to as 'the Company' or 'Citrus') had directed the parties therein, as under:

“... ”

4. ... 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.

5. 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 directed the noticees to file reply to the interim order, if any, on or before August 10, 2015, SEBI to hear the noticees on or before August 13, 2015 and pass appropriate order thereon and communicate the same to on or before August 24, 2015.

...” [Emphasis Supplied]

2. In compliance with the directions of Hon’ble SAT, SEBI communicated the date of personal hearing as August 10, 2015, to the noticees. The noticees requested to postpone the hearing. The request of the noticees was considered and the date of personal hearing was rescheduled to August 13, 2015.
3. A brief background of the case is given below:
  - a. Securities and Exchange Board of India (hereinafter referred to as ‘SEBI’) had, *prima facie* found that one Citrus Check Inns Limited (hereinafter referred to as ‘the Company’ or ‘Citrus’) is engaged in mobilization of funds ‘*under its various holiday plans with a promise of return/ holiday points, when considered in light of the other features*’, which is in the nature of a Collective Investment Scheme (hereinafter referred to as ‘CIS’) as defined in Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘the SEBI Act’) without obtaining a certificate of registration as required under Section 12(1B) of the SEBI Act and Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as ‘the CIS Regulations’). The fund mobilising activity of the Company was also alleged to be in violation of the Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as ‘the PFUTP Regulations’). In view of such findings, SEBI proceeded further and issued an *ad interim ex-parte* Order dated June 03, 2015 (hereinafter referred to as ‘the interim order’).

- b. This *interim* order directed Citrus Check Inns Limited and its directors, viz., Mr. Omprakash Basantlal Goenka, Mr. Prakash Ganpat Utekar, Mr. Venkatraman Natrajan and Mr. Narayan Shivram Kotnis (hereinafter collectively referred to as 'noticees':

- "● *not to collect any fresh money from "customers"/ investors under its existing scheme;*
- *not to launch any new schemes 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 such schemes,*
- *to immediately submit the full inventory of the assets obtained through money raised by Citrus;*
- *not to dispose of 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:*
  - i. *Full list of "customers"/ investors with complete particulars such as PAN, address, telephone numbers etc.,*
  - ii. *Details of rooms available for occupancy/accommodation provided/projected to be provided,*
  - iii. *Year-wise number of "customers"/ investors (1) who have actually availed the holiday accommodation under the plan(s)/ subscribed to the plan(s) (2) who have encashed their points into cash.*
  - iv. *Details of assets held by Citrus and its group companies,*
  - v. *Full details of Mirah Group (as stated in the Clause 29 of the "Offer Document") including full inventory of its assets,*
  - vi. *Details of charges created on its assets by Citrus,*
  - vii. *Details of amounts mobilized as on March 31, 2014 and March 31, 2015 under its various Holiday plans/ schemes,*
  - viii. *Details of commission paid on amounts mobilized above,*
  - ix. *Details of agents along with their addresses, etc.,*
  - x. *Audited Accounts for the financial years i.e. FY 2012-13, 2013-14, and 2014-15;*
  - xi. *Income Tax returns for FY 2012-13, 2013-14, and 2014-15;*
  - xii. *Details of fund transfers within group companies and associates and its directors for the year 2012-2013, 2013-2014 and 2014-2015.*

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

31. *This order shall be treated as a show cause notice and Citrus and its Directors may show cause as to why the plans/ schemes identified in this order should not be held as a 'collective investment scheme' in terms of the Section 11AA of the SEBI Act and the CIS Regulations and why appropriate directions under the SEBI Act and CIS Regulations, including directions in terms of Regulations 65 and 73 of the CIS Regulations should not be issued against them.*

32. *Citrus and its abovementioned Directors may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they desire to avail*

*themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard."*

- c. The Company vide its letter dated June 25, 2015, submitted the list of customers with PAN, address, telephone number, etc., details of the rooms available for occupancy/ accommodation provided/ projected to be provided, year-wise number of customers who had availed the holiday accommodation/ benefits under the plans and who had encashed the points, details of assets held by Citrus and its group companies, full details of 'Mirah Group' including full inventory of its assets, details of amounts mobilized as on March 31, 2014, under various holiday plans/ schemes, details of agents along with addresses, etc., audited accounts for the financial years 2012-2013, 2013-2014, Income Tax return for the financial years 2012-2013 and 2013-2014 and details of the funds transfer within the group companies and associates and its directors upto March 2014.
- d. Thereafter, SEBI vide its letter dated July 03, 2015, asked for the details of the commission paid on the amounts mobilized by Citrus, as asked vide the *interim* order. The Company vide its letter dated July 22, 2015, submitted that it had paid about ₹480.32 crores as commission to its marketing agents for the sale of holiday plans upto March 31, 2014.
- e. In the meantime, Citrus preferred an appeal before the Hon'ble SAT, challenging the *interim* order. As no reply to the *interim* order was received from the Company, within the time granted, SEBI proceeded further and granted an opportunity of personal hearing to Citrus and its directors on August 10, 2015. The same was communicated to Citrus vide letter dated July 14, 2015. However, Citrus vide its letter dated July 16, 2015, intimated about the date of hearing in the appeal filed before Hon'ble SAT, against the *interim* order, as September 01, 2015 and requested for postponement of the personal hearing after such date. Vide this letter the notices requested for inspection of the relied upon documents and submitted that any personal hearing at this stage would be premature.
- f. SEBI vide e-mail dated August 05, 2015, forwarded the copies of the complaints to Citrus. In the meantime, Hon'ble SAT vide its order dated August 06, 2015, had

directed SEBI to decide the case of the Company, whether the *prima facie* view contained in the *interim* order can be sustained after the personal hearing. In compliance with the order of Hon'ble SAT and the timelines fixed, SEBI vide email dated August 07, 2015, communicated the earlier fixed date of personal hearing i.e. August 10, 2015, to the noticees. The noticees vide email dated August 07, 2015, submitted that in terms of the order of Hon'ble SAT, they are entitled to file the reply within working hours of August 10, 2015 and requested to postpone the hearing. The request of the noticees was considered and the date of personal hearing was rescheduled to August 13, 2015.

4. Thereafter, the noticees vide letter dated August 10, 2015, submitted the reply to the *interim* order. In the reply, Citrus sought for the inspection of the complaints and the reference from RBI dated December 17, 2014, at the time of hearing. On the date fixed for the personal hearing i.e. August 13, 2015, the documents for inspection were kept ready, as per the request of the noticees. For the personal hearing Mr. Mukesh S. Thakur and Mr. Umesh Vartak, the authorised representative of the noticees appeared along with Mr. Pradeep Sancheti, Senior Advocate, Mr. Sagar Ghogre, Advocate, Mr. Krushanu Pandya, Advocate, Ms. Namrata Mehta, Advocate and Mr. Nitin Pawar appeared and made submissions based on the reply filed.
5. **Reply of Citrus:** I note that the grounds of the appeal before the Hon'ble SAT and the reply submitted by the noticees are almost similar, and for brevity, the same are summarised below:--
  - a. The hearing ought to be restricted to the question as to whether the *prima facie* view contained in the *interim* order on the grounds set out therein can be sustained after hearing. The direction contained in the *interim* order deprives Citrus of its right to conduct business and has virtually brought its business activities to a standstill. The *interim* order could not have been passed without following principles of natural justice. The directions have adverse civil consequences to Citrus, its customers and its employees. Citrus has around 770 direct employees. If the directions are continued, it will lead to severe erosion of capital affecting the capacity of Citrus to honour its commitment with the members and hotel owners leading to gradual closure and winding of business.

- b. The statistics originating from the survey of the hospitality industry had revealed that the occupancy rates in the hotels throughout the year on average worked out to only 60%. A marketing strategy was devised to ensure that the under utilisation was either eliminated altogether or at least be minimised. With that objective, Citrus was incorporated on September 26, 2011 and had commenced the business in April 2012, i.e. much before passing of the SEBI's order against Royal Twinkle Star Club Limited (hereinafter referred to as 'Royal') on March 07, 2014. Citrus is in the business of 'sale of holidays'. When a customer makes payment to Citrus, he purchases a holiday entitlement certificate/ holiday plan/ time share holiday. Citrus has approximately 4,50,000 members/ holiday seekers under different holiday plans and as on March 31, 2013, it had generated sales/revenue to the tune of ₹770 Crores. Further, as of March 31, 2015, the amount generated through sales/ revenue is about ₹1,600 Crores and the payments from the members/ holiday seekers are often in the form of equated monthly installments. Citrus has an inventory of 2,33,965 rooms available for use by its customers. Citrus, after deducting various expenses incurred for achieving the sales of the holiday plans, earns certain profit on such sales and also pays income tax on the said profit. The income tax authorities have recognized and assessed the amounts received from customers as sales proceeds.
- c. The activities mentioned in the Memorandum of Association of Citrus are essentially connected to the time share activities and therefore no exception could have been taken to the same. The time share plans offered by established companies had multiple restrictions. The Company had to offer new and innovative schemes as opposed to that of the established companies. Therefore, Citrus introduced a different concept, which was easy to understand, operate and offered flexibility to the customers. As there was no 'week concept', no limitation on account of amount, nothing like high/ low season, rates for purchase of the holidays were independent of season, holidays were at the sole discretion of the purchaser, any number of days could be used at a time, customer was free to purchase another plan while continuing with one plan, no additional charges to be paid (no hidden costs), choice of places not restricted to either the hotels and resorts owned by the Mirah Group or to affiliated resorts but could be extended by availing exchanges with other establishments that have tie up with Royal, points accumulated could be used for other than holidays i.e. for business travel or

personal travel, accumulation was allowed with zero forfeiture clause, gift/ transfer/ assignment/ rent out options, dining options at various F&B outlets to redeem the points.

- d. Citrus is in the timeshare business i.e. selling of rooms for a fixed duration of nights/ days depending upon the plans opted by its customers. Prior to 2013, SEBI had taken a consistent view that time share/ holiday plan business does not fall within the purview of CIS. Thus, being a central regulatory authority it cannot now approbate and reprobate. Further as Citrus does not carry any CIS, it is not required to obtain a certificate of registration from the Board. SEBI does not have jurisdiction over the business activities of Citrus, for reasons that SEBI has not finally in any of the matters declared that holiday plans/ time share plans are CIS, when a customer makes payment to Citrus he purchases a holiday entitlement certificate/ holiday plan/ time share holiday and cannot be termed as an investor. The amount received from a customer is shown as sale proceeds by Citrus. Citrus is selling holiday plan/ timeshare plans and the customer is purchasing the same. The sale of holiday plan by Citrus is recorded as 'sale proceeds' in the books of account of Citrus and is not credited to any sort of subscription fund or share capital fund.
- e. It has not sold any holiday plans/ time share holidays to its customers since June 03, 2015. Citrus is using its assets only in the ordinary course of business and Citrus has not disposed off any of its assets after the passing of the Order.
- f. SEBI has not demonstrated the manner in which the business of Citrus is hampering the interest of alleged investors. Further, there was no emergent situation or case of extreme urgency for passing of the *interim* order as SEBI had received the first complaint dated January 17, 2014. SEBI had entered into extensive correspondence with Citrus from February 18, 2014, however, there was no mention of any complaints and has failed to provide Citrus with the copies of the complaint. It was incumbent upon SEBI to provide the copies of the complaints to Citrus to enable it to redress and/ or respond to the alleged grievances. Citrus vide its letters dated August 07, 2014 and August 22, 2014, had sought an opportunity for personal hearing before SEBI. However, SEBI had failed to give any opportunity for personal hearing and suddenly after a considerable period of 18 months has, without any justification or reasons, passed the Order. The *interim* order could have been passed only on compliance with

the principles laid down by the Hon'ble SAT in its order dated September 17, 2014 in the matter of *Pancard Club Limited Vs. SEBI* [Appeal No. 254 of 2014].

- g. Citrus vide its letter dated July 16, 2015, had called upon SEBI to provide it with inspection of documents as referred to in the said Order. SEBI till date has not given inspection of the original documents as referred to in the said order and only the copies of four complaints were forwarded to Citrus vide e-mail dated August 05, 2015, which are incomplete. They neither contain the personal details nor bear any signatures. It is difficult to verify the authenticity of such complaints as Citrus has been denied the opportunity to verify the copies of the complaints with the originals available with SEBI. Further, the complainants are required to be tested to ensure that the complaints have not been made with a malafide intention, at the behest of the competitors of Citrus. As regards, the complaint received by SEBI on January 24, 2014, it has been said that the same is addressed to the directors of Citrus and copy to SEBI. However, Citrus had not received such complaint. Further, the annexures to the said complaint do not lend any credibility. The copy of the complaint does not bear the signature of the complainant. The complainant has used the holiday plans of Citrus and on January 25, 2015, had utilized 2,500 points.

The complaint received by SEBI on September 23, 2014, stated that Royal has been renamed as Citrus. The allegation that initially business was conducted under the name of Royal and on passing of the SEBI Order dated March 07, 2014, against Royal, the business was carried in the name of Citrus. The same has been refuted by Citrus on the ground that both the said entities are distinct corporate entities. It has also been said that the complaint neither bears the signature of the complainant nor the name of the complainant.

The complaint dated October 08, 2014, had alleged that after passing of the show cause notice against Royal the schemes are being run under a different name of Citrus and the same is malafide and has no basis.

As regards the fourth undated complaint, it has been said by Citrus that the incomplete copy of the same has been given to Citrus. The complaint consists of three pages, the second page is a blank page. The font on the first page of the complaint defers from the third page drastically.



- h. The *interim* order forces Citrus to commit breach of its contractual obligation, as Citrus without availability of fund will not be in a position to provide the hotel rooms at deep discounted rates.
- i. The Hon'ble Gauhati High Court had taken a *prima facie* view that the activities of timeshare business does not fall within the purview of the term 'CIS' as defined under SEBI Act and that SEBI does not have jurisdiction to take any action in the affairs of the business of the company involved therein. Hon'ble Gauhati High Court vide order dated August 01, 2013, read with order dated November 06, 2013 (continued from time to time) had stayed/ suspended Respondent's directions with regards to collections of monies etc. SEBI had appealed against the above referred order dated August 01, 2013, by way of Special Leave Petition (SLP) no. 3724 of 2014 to the Hon'ble Supreme Court. The Hon'ble Supreme Court was pleased to dismiss the SLP. Thus, the *prima facie* findings of Hon'ble Gauhati High Court that timeshare companies do not fall within the purview of the term 'CIS' are binding on SEBI.
- j. The action of SEBI is discriminatory as it has not initiated any proceedings against other similarly placed companies which are also running Time Share Schemes such as Club Mahindra, Sterling Resorts, Country Club, etc. The *interim* Order is in violation of the Article 19(1)(g) and Article 14 of the Constitution of India. SEBI has acted arbitrarily and in an unreasonable manner by passing the *interim* order as companies carrying similar businesses like Rose Valley Hotels and Entertainments Limited continue to do their business pursuant to order dated August 01, 2013 and November 06, 2013 passed by the Hon'ble High Court at Gauhati. Further, Pancard Clubs Limited was also allowed to continue its business.
- k. Hon'ble SAT in the matter of *Zenith Infotech Ltd. and Ors. Vs. SEBI & Ors.* [Appeal No. 59 of 2013] vide order dated July 23, 2013, has laid down that if complaints are made against a noticee, SEBI should give an opportunity to the noticee by supplying a copy of the complaint and call upon the Company to present their defence to such complaints. The said procedure has not been followed by SEBI in the case at hand.
- l. All the information as sought by SEBI in the proceedings have been provided by Citrus. SEBI in the *interim* order had sought certain additional information, which was provided vide letters dated June 25, 2015 and July 22, 2015. Certain delay, in any, in providing the information with regards to name, addresses and PAN details of the

customers/members, may not have any bearing on the issue whether holiday plans/ time share plans of Citrus fall within the purview of the term 'CIS' as defined under the SEBI Act and CIS Regulations. It has been said that information sought by SEBI with regard to the details of customers, their addresses, etc. is not germane for deciding the issue at hand. It has also been said that any delay in providing the information was unintentional and be condoned.

- m.** Citrus had submitted all the documents pertaining to its holiday plans in August 2014 to SEBI. It is an admitted position that SEBI has details of all the schemes/ plans floated by Royal. Though that being the case SEBI has not made any reference to the schemes of Royal. SEBI has not made any effort to compare the holiday plans/ time share plans offered by Citrus to the schemes of Royal or any other company.
- n.** The term 'inviting subscription' and 'invest' is a misnomer as Citrus is in the business of selling holiday plans/ time share plans and neither invites subscription nor has any investors. Citrus is engaged in the business of selling of holiday packages/ time share holidays and has no investors. All persons who purchase their holidays from Citrus are the customers of Citrus. The hotel room/ facilities/ resorts are owned by its group companies/ business associates. Citrus does not own any hotel facilities. The holiday plan/ time share plans offered by Citrus in order to fall within the purview of the definition of CIS, it must meet all the requirements enumerated in Section 11AA (2) of the SEBI Act.
- o.** The amount received from a customer is shown as sale proceeds by Citrus as Citrus is selling the holiday plan and the customer is purchasing the same. The sale of holiday plan by Citrus is recorded as 'sale proceeds' in the books of account of Citrus and is not credited to any sort of subscription fund or share capital fund. The sale of holiday plan by Citrus is a 'sale at discounted price'. There is nothing unusual in selling a hotel room at below the rack rate i.e. at a discounted rate. Citrus, after deducting various expenses incurred for achieving the sales of the holiday plans, earns certain amount of profit on such sales and also pays income tax on the said profit.
- p.** The customers of Citrus are entitled to substantial discounts on hotel room tariffs and holiday plans if they use holiday facilities. Keeping in mind the high rate of lapse of benefits/ facilities in time share holidays, Citrus has adopted the marketing strategy of repurchasing unused/ partly used holidays by returning/ refunding the amount paid

by them to the customers if they do not avail/ partly avail the facilities/ benefits offered.

q. The term 'pooled' is neither defined in the SEBI Act nor the Companies Act, 1956 nor in the Securities Contract (Regulation) Act, 1956 and hence its meaning as understood in general parlance needs to be considered. The word 'pooled' is used in verb form and its meaning pre-supposes inherent/ prior knowledge on the part of the persons that they shall be working as a group towards achieving a commercial objective by contributing certain amount to a common/ corpus fund. In 'pooling of funds', funds from investors are aggregated for the purpose of investment. Pooled funds of the investors are managed by professionals who are third parties and they are paid management fees for the same. In case of pooled funds, the gains/ profits are evenly spread among all investors. Quantum of financial gain in terms of saving, varies from frequency of usage of holiday plans, locations visited, time of visits, type of hotels visited etc. in short. The only right of investor was to get uniform financial gain which is not quantified. When a customer makes payment to Citrus, he purchases a holiday entitlement certificate/ holiday plan/ time share holiday and he has no knowledge whatsoever as to what transactions other customers are entering into with Citrus. There is no commonality of object with the objects of other customers. The amount received from a customer is shown as sale proceeds by Citrus, the customer is purchasing the same and is not credited to any common/ corpus fund which is set aside for any particular purpose. The amounts received from customers as sale proceeds by Citrus is neither pooled nor utilized solely for the purpose of holiday plan/ time share holiday. The amounts are used only when a customer 'decides to avail the facilities offered to him', till that time, the money may be used for the purposes other than 'providing holiday plan/ time share holidays'. All the above ingredients of 'pooling' are absent in totality as regards the transaction of purchase of holiday entitlement certificate from Citrus by a customer.

r. Under the holiday plans/ time share holidays of Citrus, the amounts paid by the customers entitle them to redeem points which can be used for holidays and dining out options. In the event of the customer choosing not to avail these services he may avail of the rent out option i.e. the plan holder is allowed to 'rent out' unutilised portion of the holidays if he wishes for, full rent out option or for partial rent out option. The

unutilised portion of the holiday plan facilities are rented out by Citrus in the open market and rent so realized is paid to the plan holder/ customer opting for this facility. In such cases the value of the facilities rented out shall not exceed the original value of the plan. 'Sale of holiday entitlement certificate' is inherent to the transaction, while refund of money to its customers is 'contingent to the transaction'. The customers under the scheme/ arrangement are only entitled to use the holiday plans.

- s. Citrus is neither an agent nor does it have any investors. When a scheme is 'managed on behalf of investors', the manager/ management is required to give to the beneficiaries its report stating the status and financial position of the affairs managed by him. However, Citrus has neither contracted to give such report to its customers nor has it given any such report. The customers of Citrus had wide discretionary powers to use the benefits derived by them from holiday entitlement certificates/ holiday plans/ time share holidays. Citrus has never exercised its discretion 'to refuse/ prohibit cancellation/ surrender of holiday plan before due date' and it has always permitted such cancellation after deduction of the stipulated amount. By opting this course of action, Citrus has waived its right to refuse/ prohibit cancellation of holiday plan before due date.
- t. SEBI had referred to the reference from RBI dated December 17, 2014, with regards to alleged clarification sought by CID (Economic Offences Cell), Goa. However, no copy of the same or inspection of this document has been provided by SEBI.
- u. No allegations with regards violations of 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities), Regulation 2003 were raised in the correspondence exchanged between the parties and as such the said allegations were never part of the inquiry. SEBI did not give an opportunity to Citrus to answer any charge/ allegation pertaining to the issue of alleged violation of regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities, Regulation 2003.
- v. The SEBI Act and CIS Regulations deal with securities, which are marketable on the securities market and relate only to movable assets like shares, bonds, derivatives, units of mutual fund schemes, etc. The business of Citrus cannot be regulated by SEBI as it does not relate to securities. Transactions of sale of holiday plans would quiet clearly

not fall within the ambit of such activity and therefore there being no activity related to securities, the business of Citrus could not be regulated by SEBI.

6. Hon'ble SAT has given the mandate to SEBI to decide the question '*whether prima facie view contained in the ex-parte ad interim order dated June 03, 2015, on the grounds set out therein can be sustained after hearing the appellants or not*'. Therefore, I proceed further to consider the same, in the light of submissions made by Citrus and the material available on record in seriatim:

**A. Directions in the *interim* order are causing irreparable loss to the reputation and goodwill of Citrus, etc.:**

SEBI initiated enquiry against Citrus in 2014 beginning. For the same, relevant information were sought from Citrus vide SEBI letter dated February 18, 2014, in order to confirm whether the alleged business activities of Citrus are in the nature of CIS. A *prima facie* finding was made in the *interim* order that Citrus allegedly runs a CIS, based on the information/ evidences obtained from the Company itself. During the enquiry, the scale of operation of Citrus as seen from the amount raised i.e. ₹777.04 crore as on March 31, 2013 was also considered. The main concern for SEBI, while passing the *interim* order was protection of investors, that the investors should not be victims of the unregistered CIS operations of the Company. This factor, in my opinion, always weighs above any possible loss of reputation and goodwill of the persons/ companies running such schemes.

**B. No emergent situation or extreme urgency**

In this regard, I note that in the past SEBI had issued the *interim* directions in various cases of CIS, wherein it was *prima facie* found that the funds were mobilised by the companies from the innocent investors without having valid registration, for such activities. I note that the purpose of issuing *interim* order is not an exercise of arbitrary discretion as alleged by Citrus in its submissions, rather the same is only a measure for investor protection. When SEBI takes cognisance of illegal mobilisation of money by companies from innocent investors, the statutory mandate for the protection of

investors is being enforced by SEBI, initially by way of *interim* order, asking thereby such companies not to commit further damage by continuing with their money mobilisation. Subsequently, SEBI passes appropriate orders after following the due process of law.

In the instant case also, SEBI had undertaken the exercise of examining various documents to see if there is any violation of the Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. For the same, SEBI had sought for vital information from the Company starting with its correspondence in February 18, 2014, which continued upto January 15, 2015. Although, Citrus had furnished different documents through separate communications, the complete information for SEBI was not forthcoming even at the time of *interim* order. The crucial information regarding the number of investors who had actually availed to the schemes of Citrus was only provided by the Company, after the passing of the *interim* order i.e. on June 25, 2015.

The directors of the Citrus namely Mr. Omprakash Basantlal Goenka, Mr. Prakash Ganpat Utekar, Mr. Venkatraman Natrajan and Mr. Narayan Shivram Kotnis were the same who were also proceeded by SEBI in its order dated March 07, 2014, against one Royal Twinkle Star Club Limited vide which these persons were directed not to collect funds from the investors and not to launch any new schemes. I note that during the course of examination, SEBI had also compared the holiday plans of Citrus with that of Royal and the same were *prima facie* found to be similar in nature. I note that the Royal in its submission had argued that it had not launched any new holiday plans/ times share holidays or scheme since April 2012 and neither had it been accepting any new customers on and from April 2012. Interestingly, during the enquiry, it was revealed that Citrus commenced its business in April 2012 (admitted by Citrus). These facts pointed towards a strong suspicion that Mr. Omprakash Basantlal Goenka, Mr. Prakash Ganpat Utekar, Mr. Venkatraman Natrajan and Mr. Narayan Shivram Kotnis in order to divert the attention of SEBI, in the matter of Royal had started the fund mobilization activities through Citrus.

On an analysis of the documents submitted by the Company, SEBI reached the *prima facie* conclusion that Citrus is operating CIS, without obtaining the certificate of

registration. Thus, in order to prevent any diversion of the assets/ property acquired by Citrus and its promoters/ directors using the funds collected from the investing public, in order to prevent any irreparable loss to the investors of the Company who had invested their life savings in Citrus and to ensure that only legitimate investment activities are carried out by Citrus, SEBI, felt it was necessary to intervene and protect the interest of the investors.

### **C. Non furnishing of the Complaints**

The Company has submitted that non furnishing of the copies of complaints has denied the Company an opportunity to present their defence. I note that the copies of complaints have already been given to Citrus on August 05, 2015 and the reply was filed by Citrus, pursuant to the same. However, it must be understood that every enquiry has a trigger point and that the complaints were only a trigger point for SEBI's examination into the details of the activities by Citrus (alleged to be in the nature of CIS).

The *interim* order of SEBI was based on an independent analysis of the documents submitted by Citrus itself. On analyzing these details, SEBI had *prima facie* found the alleged activities of Citrus to be in the nature of CIS. Therefore, non-providing of the complaints to the noticees has not prejudiced the interest of the noticees. Moreover, the Company at this stage has already been provided with the copy of the complaints and SEBI has also afforded opportunities to reply to the same. In view of the same, the order of Hon'ble SAT in the matter of *Zenith Infotech Ltd. and Ors. Vs. SEBI* [Appeal No. 59 of 2013] as relied upon by the noticees is not applicable in the present matter.

### **D. All the details/ information as sought was submitted to SEBI**

The Company submitted that the information as sought by SEBI was furnished by it. This submission is incorrect. The very fact that Citrus has submitted the details of the investors and investors who had actually availed to the schemes of Citrus pursuant to the *interim* order of SEBI, also, demonstrates that the submission of Citrus is incorrect. Further, the Company has not submitted the details of the commission paid till March 31, 2015. The noticees have argued that the list of the investors was not relevant to

determine the nature of activities. It is not for Citrus to comment as to what SEBI should look into while conducting examination. Further, this aspect has also been dealt by the Hon'ble Gauhati High Court in its order dated June 25, 2015 in the matter of *Rose Valley Hotels & Entertainments Limited & Ors. Vs. State of Assam* [W.P. (C) 4298/2013], as referred in the paragraph 7 below. Before concluding on this, let me also refer to the communications that were exchanged with Citrus prior to the passing of the *interim* order:

- SEBI vide its letter dated February 18, 2014, had sought various details/ information from the Company. Citrus after seeking extension of time for submitting the details on various occasions i.e. March 03, 2014, March 20, 2014, April 21, 2014 and May 28, 2014 submitted certain details on June 19, 2014 i.e., the Memorandum and Articles of Association of the Company, details of the past and present directors of the Company, copies of brochures/ application forms of a few holiday plans of Citrus, certified copies of audited financial statements and income tax returns for the financial years 2011-12 and 2012-13.
- SEBI vide its letter dated July 23, 2014 and August 05, 2014, had issued reminders to Citrus for furnishing of the remaining information which were not received. Vide letter dated August 07, 2014, Citrus submitted certain other information i.e. copies of the additional brochures/ application forms of the remaining holiday plans, copies of the application forms that are required to be submitted by the customers while purchasing the holiday plans of Citrus, copies of holiday entitlement certificates and total amount of plan-wise sale by Citrus as on March 31, 2013.
- SEBI vide its letter dated August 14, 2014, again advised Citrus to furnish the information, as was asked vide letter dated February 18, 2014 and certain additional information i.e. the details (numbers of rooms available, etc.) about the accommodation provided/ projected to be provided, total number of individuals/ customers who have actually availed the services (accommodation) under the plan(s) subscribed to the plan(s) and the details of assets held by Citrus. As per the *interim* order, after seeking extension, Citrus vide its letter dated September 25, 2014, made following submissions:

*"a. The annual room inventory (owned by the group companies) at 11 locations are 233965.*



*Apart from this, company has tie ups with its business associates for providing hotel rooms/ accommodation.*

*b. Demand of the customers for availment of holiday facilities cannot be predicted with reasonable amount of certainty as the same depends on numerous variable factors.*

*c. Majority of the holiday plans were marketed by the company in the year 2012 and their validity period varied from 4 to 15 years.*

*d. Apart from this, Citrus has sought further time to submit the remaining information."*

However, the complete details as sought by SEBI were not furnished by Citrus.

- SEBI again issued reminders to Citrus vide letters dated September 29, 2014 and October 01, 2014, for submitting the details. Citrus vide its letter dated October 13, 2014 replied to the letter of SEBI and referred to its earlier letter dated September 25, 2014, but it failed to furnish any further information.
- SEBI also took cognizance of the fact that the directors of the Citrus namely Mr. Omprakash Basantlal Goenka, Mr. Prakash Ganpat Utekar, Mr. Venkatraman Natrajan and Mr. Narayan Shivram Kotnis were the same who were proceeded by SEBI in its order dated March 07, 2014, against Royal. SEBI found Royal and its directors namely Mr. Omprakash Basantlal Goenka, Mr. Prakash Ganpat Utekar, Mr. Venkatraman Natrajan and Mr. Narayan Shivram Kotnis (who are the directors of Citrus also) to have run an unregistered CIS and directed these not to collect funds from the investors and not to launch any new schemes. This fact pointed to the close association between the operations of Citrus and Royal.
- SEBI once again asked Citrus for the information relating to the 'number of customers who had actually availed the services (accommodation) under the plans' by way of a letter dated January 15, 2015. In reply, Citrus vide its letter dated January 30, 2015, submitted the details regarding the plans of the Company (i.e. Sapphire, Orange, Lemon, Fragrance and Emerald) and sought time to submit the specific information as asked.
- Further, vide e-mails dated March 05, 2015 and March 19, 2015, Citrus again sought time for submitting the information. However, Citrus failed to submit the information relating to 'number of customers who had actually availed the services (accommodation) under the plans' as sought by SEBI, despite repeated reminders *prima facie* appeared to be a deliberate tactic. The *interim* order in this regard has also noted that '*non-submission of the information to SEBI by Citrus is nothing but an attempt to conceal the true nature and operation of the fund mobilizing activity of Citrus.*' The

said information was an important link for determining the business model of Citrus. In such circumstances, SEBI could not have waited further to issue *interim* directions in order to prevent further damage to the investors of the Citrus, by way of the alleged unregistered CIS activities.

In the light of the above discussion, it will be incorrect to say that non furnishing of the information was the sole reason for SEBI to have issued the *interim* order. As has been described, the reasons for issuing the *interim* order are various and has been discussed in the foregoing paragraphs but protection of the investors was the first and foremost. Further, the *prima facie* view taken on the ‘plans/ holiday plans’ of Citrus continues to sustain.

7. I also note that the order of Hon'ble Gauhati High Court in the matter of *Rose Valley Hotels & Entertainments Limited & Ors. Vs. State of Assam*, wherein a *prima facie* view was taken that the activities of time share business does not fall within the purview of the term ‘CIS’ as defined under SEBI Act, is not applicable in the facts of present case as the *interim* order has alleged that the activities of Citrus are in the nature of unregistered CIS and not ‘time share’. Further, I also note that the Hon'ble Gauhati High Court had dismissed the cited writ petition [W.P. (C) 4298/2013] vide its order dated June 25, 2015. The Hon'ble Gauhati High Court also has noted as under in the said order:

*“There is no credible material placed by the petitioner to convince the court that all the members who have subscribed had the dominant intention of enjoying the stay at the hotels. Only on the basis of the format of an application for subscription of membership it cannot be conclusively held that the scheme is only for enjoying the stay in the hotels. It could have been held so if there was no alternative term of refund of deposit with a lucrative rate of interest of 17.6 per cent per annum. This aspect of the matter requires a detailed enquiry about the names and identities of all the subscribers, their social status, their annual income, etc., to find out how many persons have genuinely subscribed for membership for availing the benefit of stay in the hotel. On the basis of incorrect material produced by the petitioner like format of the membership it is not possible to agree with the contention that the scheme is only a holiday management scheme and does not come under the purview of the collective investment scheme more so because of the fact that there is a term in the contract of refund of money with a lucrative rate of interest. If the interest on deposit was the alluring factor on the part of the investor then the case would squarely fall under sub clause (iii) of sub section 2 of section 11AA of the SEBI Act. These facts constitute a mixed question of law and fact and has to be decided by SEBI.”* [Emphasis supplied]

8. The noticees have further argued that the SEBI Act and CIS Regulations deal with

securities, which are marketable on the securities market and relate only to movable assets like shares, bonds, derivatives, units of mutual fund schemes, etc. It has been said that the transactions of sale of holiday plans would clearly not fall within the ambit of such activity and therefore there being no activity related to securities, the business of Citrus could not be regulated by SEBI. This submission of the noticees is contrary to the material available on record and the applicable law. In terms of Section 11AA(2) of the SEBI Act, a scheme shall be a CIS, if it satisfies all the four conditions mentioned therein. Therefore, it is immaterial whether an entity issues an instrument or security, to be regarded as a CIS. Further, Regulation 2(z)(dd) of the CIS Regulations defines the word 'unit' to include '*any instrument issued under a scheme, by whatever name called, denoting the value of the subscription of unit holder*'.

9. **Additional details post *interim* order:** Having considered the above, now, I proceed further and consider the details as submitted by the Company after passing of the *interim* order.
- a. As per the admission of the Company, the investors have deposited ₹1,600 crore with the Company as on March 31, 2015 (₹777.04 crore as on March 31, 2013). This is a fresh information and requires to be examined in detail so as to make final conclusions on the same.
  - b. It is noted that the Company has submitted a list of its agents and such list runs into 59,506 pages and contains the name of 12,55,548 agents, which is clearly more than the admitted number of investors of the Company. The same is *prima facie* unusual for any business activity and raises serious concern about the business model and objective of Citrus. I note that the Company has also submitted the details of its customers under various plans. SEBI is in the process of collating and verifying such details. Giving any conclusive finding on the same or any other argument at this stage may go against the mandate of Hon'ble SAT in the matter.
  - c. At this stage, I also note from the audited balance sheet as on March 31, 2014 that the Company has given 'loans and advances' to related parties aggregating to ₹557,97,82,480. The Company has admitted of giving loans to its group companies.

The same appears to be a diversion of funds collected from the investors who had subscribed to the alleged holiday plans of the Company. The same *prima facie* shows that the Company only mobilises money and transfers the same to its group companies.

10. Having considered the above and finding that the *prima facie* view taken vide the *interim* order dated June 03, 2015 continues to sustain, I also note that SEBI has passed an order dated August 21, 2015 against Royal and its directors, namely, Mr. Omprakash Basantlal Goenka, Mr. Prakash Ganpat Utekar, Mr. Venkatraman Natrajan and Mr. Narayan Shivram Kotnis directing as under:

“... ”

- 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.
- ...” [Emphasis supplied]

It is observed that the directors of Citrus are the same as those of Royals’. In such circumstances, Citrus and its directors cannot be allowed to carry on with their fund mobilization activities from the public under any guise.

11. In the light of the discussion above, the documents and details available on record, the *prima facie* view taken in the *interim* order is correct. Further, the directions of not collecting any funds from the investors under the existing schemes/ existing company within the group and not to launch any new schemes or plans, is in the interest of lay investors who may fall in the trap of the alleged schemes of the Company. In so far as existing investors as concerned, SEBI has directed that the Company shall not dispose of or alienate any of the properties/ assets obtained directly or indirectly through money raised by Citrus and not to divert the funds raised from public.

It was necessary for SEBI that such unauthorized collection of money be stopped immediately in order to prevent further damage to the general public by unregistered CIS activities. As the activities of the Company and its directors are *prima facie* found to be illegal and in violation of the SEBI directions, revoking the directions issued vide the *interim* order, at this stage will not be in the interest of the investors. Further, as also discussed above, in terms of the SEBI order dated August 21, 2015 in the matter of Royal Twinkle Star Club Limited, the directors of the Citrus namely Mr. Omprakash

Basantlal Goenka, Mr. Prakash Ganpat Utekar, Mr. Venkatraman Natrajan and Mr. Narayan Shivram Kotnis cannot be permitted to carry out any fund mobilization activity. In view of the same, in my considered opinion revoking/ modifying the directions issued vide the *interim* order in any form is not appropriate.

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, 1996, 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.

DATE : August 24, 2015  
PLACE : Mumbai

PRASHANT SARAN  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA