

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

ORDER

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

In respect of AROHAN TRUSTEE COMPANY PRIVATE LIMITED

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') came across certain media reports and newspaper articles regarding the mobilization of funds from the investors under the scheme of 'art fund', with an objective to invest in the works of art. While examining such reports/ articles, it appeared to SEBI that one Arohan Trustee Company Private Limited (hereinafter referred to as 'Arohan') had solicited investments in the 'art fund'. SEBI therefore vide its letter dated January 21, 2008, *inter alia* advised Mr. Prakash Apte, Managing Director of Arohan to furnish certain information/ documents including structure of the fund, number of schemes launched, terms and conditions of the art schemes, names of the promoters/ directors, number of investors and amount collected in each schemes.
2. Mr. Prakash Apte while writing on behalf of Arohan vide letter dated January 28, 2008, replied to the SEBI letter and submitted that it was trustee of the India Art Fund (hereinafter referred to as 'IAF') (a trust). The beneficiaries had contributed to the corpus of the trust. It had launched only one scheme. There was no advertisement/ solicitation to invest in IAF. The tenure of the said scheme was four (4) years which was extendable to five (5) years. There were 97 beneficiaries who had contributed a total of ₹24.50 crores to the corpus of the IAF. The funds had been invested in the works of art which were to be sold by 2011. The proceeds from the sales were to be distributed to the contributors.
3. SEBI analysed the submissions of Arohan and *prima facie* observed that the character of 'art fund' is similar to that of a 'collective investment scheme' (hereinafter referred to as 'CIS') as defined under Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and found that Arohan was carrying out such activities without obtaining a certificate of registration in accordance with the SEBI (Collective

Investment Schemes) Regulations, 1999 (hereinafter referred to as 'CIS Regulations'). Subsequently, SEBI issued a show cause notice (hereinafter referred to as 'SCN') dated April 17, 2008 to Arohan advising it to show cause as to why it should not register with SEBI as a Collective Investment Management Company. The SCN further stated that in case of failure to do so, why appropriate directions under Sections 11 and 11B of the SEBI Act should not be issued against it for the alleged violations of the provisions of Section 12(1B) read with Regulation 3 of the CIS Regulations.

4. Arohan vide its letter dated May 07, 2008, submitted its reply. The submission of Arohan, in brief are as under:
 - a. IAF was a private trust, with the main object of owning and operating an art fund. The persons known to the directors of Arohan and to the advisors of IAF, after inquiring into the prospects and risks involved, made contributions to the IAF.
 - b. Section 11AA of the SEBI Act defines a CIS to mean any scheme or arrangement made or offered 'by any company'. Therefore, it was not applicable to a private trust like IAF.
 - c. No security/ any unit/ other instrument under a CIS as defined under the SEBI Act were issued to the beneficiaries of IAF.
 - d. The rights and obligations of Arohan and the contributors were governed by the provisions of Trust Deed which constitutes the contractual framework between the parties. Therefore, the provisions of the SEBI Act relating to the CIS Regulations were inapplicable to it.
5. As requested by Arohan, before proceeding further, an opportunity of personal hearing was granted to it on June 27, 2008, before the then Whole Time Member, when the authorised representatives of Arohan appeared and made submissions. Pursuant to the personal hearing, Arohan submitted its written submission vide its letter dated July 08, 2008 and submitted as under:
 - a. Arohan was the trustee of IAF. The size of investment by any contributory was not less than ₹25 lakh. All contributions were made through private invitation to the persons interested in the field of art. IAF deals with buying and selling of objects of art through contributions made by a select and identifiable group of beneficiaries.
 - b. The real object and purpose of IAF was to bring like-minded people who were interested in art.

- c. The 'art funds' were not contemplated as being covered by the scope of the SEBI Act and the CIS Regulations. The legislative intent of the CIS Regulations was the promotion of schemes by the plantation companies, which collected money for growing trees and forests and commercial exploitation of teak.
 - d. IAF did not entail any unit capital at all. The interests of any contributory in IAF were not being transferred freely to any party.
6. Due to change in the Competent Authority, another opportunity of personal hearing was afforded to Arohan on August 16, 2013. Arohan vide its email dated August 08, 2013, requested for an adjournment. The request of Arohan was acceded to and the hearing in the matter was adjourned to September 11, 2013, which was later postponed to September 24, 2013 due to certain administrative exigencies. On September 24, 2013, Mr. Prakash Apte appeared for Arohan along with Mr. Somasekhar Sundaresan, Partner and Mr. Paras Parekh, Associate, both from JSA Associates and submitted that the fund was for five years and the same has been closed in the year 2011. It was also submitted that all the contributors of the fund have been repaid. Considering such submission, Arohan was asked to submit the documents/ information to show that the money collected in the scheme has been repaid. The noticee was also advised to submit the documents relating to the winding up of the scheme filed with other authorities. The representatives of Arohan were granted one week's time to submit the details/ documents as asked and for filing of written submission, if any.
7. Arohan vide its letter dated November 08, 2013, submitted a certificate from the Chartered Accountant (AM Bhatkal & Associates) dated November 07, 2013, stating that the fund had only acquired works of art and such expenditure of resources was effected between 2006 and 2008. The certificate also stated that the fund has not made any investment in any securities, the fund has disposed off all the 76 works of art as on September 30, 2013 and it did not hold any work of art at all. The trust had distributed all the proceeds of the sale and disposed off all the works of art ever held by the fund and distributed all the proceeds to the beneficiaries. It had further stated that the fund had distributed the money to the beneficiaries in six parts between June 2012 and October 01, 2013 and as on the date of the certificate it had no works of art remaining in stock and no funds were pending distribution to the beneficiaries.
8. As details submitted by Arohan were not complete, a reminder email was issued to it on November 18, 2013. In reply to such email Mr. Prakash Apte vide his email dated November

24, 2013, submitted that they were still working on the details as asked and requested for more time. Vide email dated December 07, 2013, Mr. Prakash Apte submitted certain additional details. The details so filed were also found incomplete and an intimation regarding this was given to Mr. Apte on December 11, 2013. As the details were not forthcoming from Arohan, a reminder letter was issued to Arohan on January 02, 2014, asking for the certified Winding up and Repayment Report and the following information regarding the schemes of 'India Art Funds':

- a. details including bank details to show how much funds were collected and the source of such funds,
- b. details including bank details to show how much funds were repaid and to whom along with proof for such repayments to investors,
- c. Details as to movement of NAV of the fund, the process of valuation and by whom such valuation, if any, was done,
- d. Details of investor complaints/ court matters, if any,
- e. Financial statements for the period from the year, the fund/ schemes was/ were initiated/ commenced till the period of closure.

Arohan vide its letter dated February 01, 2014, submitted audited 'Winding up and Repayment Report'. Vide another letter dated February 11, 2014, Arohan submitted further details like how much funds were collected and the source of such funds, how much funds were repaid and to whom along with proof of payments, movement of NAV, investor complaints and financial statements, which were taken on record.

9. SEBI vide its letter dated September 04, 2014, asked Arohan to submit the clarification/ documents with regard to the following:
 - a. discrepancy regarding the number of investors as mentioned in the letter dated July 08, 2008 and the number of investors as mentioned in the 'Winding up and Repayment Report'.
 - b. Management fees calculation process and the workings of calculation of NAVs at different points of time.
 - c. Copy of the Confidential Information Memorandum circulated to the investors.
 - d. Indenture of Trust related to India Art Fund.

10. Arohan vide its email dated September 11, 2014 and letter dated September 22, 2014 submitted the clarification regarding the number of investors, it was confirmed that all the contributions were received by cheque and there was no Information Memorandum in respect of the fund. Arohan submitted the presentation material used for the discussions and which was said to be strictly for the 'private circulation' and the Indenture of Trust.
11. As considerable time had elapsed from the date of earlier hearing, one more opportunity of personal hearing was granted to Arohan on January 15, 2015. On the date of personal hearing, Arohan failed to appear. Before proceeding further, in compliance with the principles of natural justice one more opportunity of personal hearing was granted to Arohan on February 18, 2015. However, the letter communicating the date of hearing was returned undelivered. As sufficient opportunities of personal hearing and filing of the submissions have already been granted to Arohan, I proceed further with the matter on the basis of material available on record.
12. I have considered the SCN issued to Arohan, the submissions and the documents furnished by Arohan and the material available on record. I note that the main allegation as against Arohan is that the schemes operated by it are in the nature of CIS and that Arohan was offering such schemes without obtaining registration from SEBI in contravention of the provisions of Section 12(1B) of the SEBI Act and the Regulation 3 of the CIS Regulations. The issue that now arise for my consideration is: Whether the scheme operated by Arohan was in the nature of an unregistered CIS?
13. **Whether the scheme operated by Arohan was in the nature of an unregistered CIS?**
 - a. I note the submission of Arohan that it had launched only one scheme and the same was closed in the year 2011. While proceeding further with the matter, it is necessary to note the background of CIS Regulations and how the provisions came to be framed. Several entities were mobilizing huge money by issuing various instruments and offering very high rates of return inconsistent with the normal rate of returns and then misutilizing these funds, for the purposes not disclosed at the time of inviting the investments, thereby not only causing loss to the investors who lost their life savings to such unscrupulous entities, but also eroding the confidence of the general public. Considering the high element of risk associated with such

schemes, the Government of India felt that it was necessary to set up an appropriate Regulatory framework to regulate such entities. Hence, in order to protect the interest of the investors and to ensure that only legitimate investment activities are carried on, vide press release dated November 18, 1997, the Government of India communicated its decision that schemes through which instruments such as agro bonds, plantation bonds, etc., are issued by the entities, would be treated as Schemes under the provisions of the SEBI Act and directed SEBI to formulate Regulations for the purpose of regulating these CISs. It was against this background that Section 11AA of the SEBI Act and the CIS Regulations came to be framed. Thereafter, several press releases and newspaper advertisements/ notices were issued by SEBI from time to time in the leading newspapers bringing to the notice of the investors and the persons concerned, the various instructions issued by SEBI/ Central Government from time to time in respect of the functioning of the CIS. The press releases further stated that instruments such as agro bonds, plantation bonds should be treated as CIS coming under the SEBI Act. All the companies having such activities were required to file information with SEBI. Moreover, general public was also informed that no person can sponsor or cause to be sponsored any new CIS and thereafter raise further funds. Meanwhile, a committee was formed to examine and finalize the draft regulations for CIS to structure a comprehensive regulatory framework. Subsequently, the notification of SEBI (Collective Investment Schemes) Regulations 1999 was issued on October 15, 1999. As per the CIS Regulations, any person who has been operating a CIS at the time of commencement of the CIS Regulations was required to make an application to SEBI for the grant of registration under the provisions of the regulation, within a period of two months from the date of the notification. No entity was allowed to run a CIS scheme without obtaining the Certificate of Registration from SEBI.

- b. Having considered the above, it is now necessary to determine whether the scheme of Arohan is in the nature of CIS. For testing the same, the relevant provisions in this regard needs to be considered first. The definition for 'collective investment scheme' was inserted in the SEBI Act, 1992, vide the Securities Laws (Amendment) Act, 1999 w.e.f. February 22, 2000. According to the definition, CIS means any scheme or arrangement which satisfies the conditions specified in Section 11 AA of the SEBI Act, which provides as under:

"11AA(1) Any scheme or arrangement which satisfies the conditions referred to in sub section (2) shall be a collective investment scheme.

(2) Any scheme or arrangement made or offered by any company under which,

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;

(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;
(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;
(iv) the investors do not have day to day control over the management and operation of the scheme or arrangement."

The following activities have been exempted from the CIS Regulations:

Any scheme or arrangement:

- i. made or offered by a co-operative society*
- ii. under which deposits are accepted by non-banking financial companies*
- iii. being a contract of insurance*
- iv. providing for any scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund*
- v. under which deposits are accepted under section 58A of the Companies Act, 1956*
- vi. under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society*
- vii. falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982(40 of 1982);*
- viii. under which contributions made are in the nature of subscription to a mutual fund;*

The term 'securities' in section 2(h) of the Securities Contracts (Regulation) Act, 1956 was amended vide the Securities Laws (Amendment) Act, 1999, w.e.f. February 22, 2000, to include units or any other instrument issued by any CIS to the investors in such schemes.

c. I note that a scheme, in order to qualify as a CIS, has to satisfy all the four conditions mentioned in Section 11AA(2) of the SEBI Act:

- i. The first condition, under Section 11AA(2), is that the contributions or payments made by the investors, by whatever name called, are pooled and utilised for the purposes of the scheme/ arrangement. Arohan in its letter dated July 08, 2008, had submitted that '*LAF primarily deals with buying and selling of objects of art through contributions made by a select and clearly identifiable group of beneficiaries*'. Another submission that '*LAF is truly a trust formed for the benefit of persons who have an artistic interest and would like to pool their resources in the field of art*', confirms that Arohan had pooled the payments from its investors for the purposes of the scheme, thus, satisfying the first condition as stipulated in Section 11AA(2)(i) of the SEBI Act.
- ii. The second condition is that the *contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement.* Arohan has submitted that the investors/ contributors who were interested in the field of art had made investments with it. In this regard, reference is

given to the presentation material as submitted by Arohan vide email dated September 11, 2014, the relevant parts of the same are as under:

"Investment Strategy

... ..

- 50% of the corpus will be in important works of established artists These will assure reasonable appreciation and downside protection.
- 50% of the corpus will be in works of artists ... These buys could result in multi baggers.

...

Exit Strategy

...

- Exit will be timed when Art Experts believe the market for particular works is peaking. ...

... ..

Terms

... ..

- Profit sharing: 80:20 beyond 10% p.a.

... .."

As per the admission of Arohan, this presentation material was used for the discussions and there was no 'information memorandum' in respect of the fund. The same suggests that the presentation was used by Arohan for explaining the fund to the investors/ contributors, which also talks about the profits. Further, the 'Indenture of Trust' of Arohan clearly states the 'Hurdle Rate' as 8% per annum.

The same makes it clear that the investors/ contributors makes contribution/ payment with a view to receive the profits/ income/ property/ return on their investments that may accrue to them as applicable, thus attracting the second condition as stipulated in Section 11AA(2)(ii) of the SEBI Act.

- iii. The third condition is that the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors. Arohan had submitted that the funds were invested in the works of art which were sold by the year 2011 and the proceeds from such sales were distributed to the contributors. From the same and the discussion above, one can say that an investor only got an undivided interest in the works of art. The customer did not manage his investments in the scheme rather his investments were managed and utilized by Arohan. Thus, it is clear that the works of art were not managed by the investors at any stage of the scheme. The same therefore, satisfies the third condition as stipulated in Section 11AA(2)(iii) of the SEBI Act.

- iv. The fourth condition is that investors do not have day to day control over the management and operation of the scheme or arrangement. The submissions of Arohan that IAF operated the scheme and a reading of clause 17(o) of the 'Trust Deed which (as per the letter dated July 08, 2008) states that '*the trustee of LAF have the power to allow the beneficiaries to display works of art owned by the LAF in their homes or other places, on providing security and upon such terms and conditions as prescribed by the trustee, upon payment of such fees as may be decided by the trustee in consultation with the expert panel*', suggests that the investors do not have day to day control over the management and operation of the scheme, which satisfies the fourth and last condition as stipulated in Section 11AA(2)(iv) of the SEBI Act.
- d. In view of the foregoing, I am of the considered view that the scheme of Arohan was in the nature of a CIS as all the four conditions specified under Section 11AA(2) of the SEBI Act are satisfied. I, therefore, find that Arohan was engaged in the fund mobilising activity from the public by floating/ sponsoring/ launching CIS as defined in Section 11AA of the SEBI Act.
14. Now, let me deal with the argument of Arohan that IAF being a private trust cannot be registered with SEBI. It has also been said that the CIS Regulations are applicable only to the schemes made/ offered by a company, therefore, it does not fall within the definition under Section 11AA of the SEBI Act.

In this regard, I note that Section 11(2)(c) of the SEBI Act empowers SEBI, *inter alia* to register and regulate the working of a CIS. Section 12(1B) of the SEBI Act, *inter alia* prohibits every 'person' from sponsoring or causing to be sponsored or carrying on or cause to carry on any CIS unless he obtains a certificate of registration from the SEBI in accordance with the regulations. Further, Regulation 3 of the CIS Regulations also stipulates that 'no person' other than a 'Collective Investment Management Company' which has obtained a certificate under these regulations shall carry on or sponsor or launch a CIS. Provisions of both i.e. Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations are mandatory and contain substantive provisions of law, intended to cover the entire range of persons through registration. It is clear from a reading of Section 12(1B) of the SEBI Act that SEBI had not just meant to regulate CIS which are floated by the companies, but also those by the persons, be it natural or juristic. In my view, Section 11AA of the SEBI Act, being a definition of CIS should not be read in isolation rather the same should be read alongwith sections like Section 11(2)(c) and Section 12(1B) of the SEBI Act and be applied in furtherance of the objects of

the SEBI Act and CIS Regulations which would be defeated if Section 11AA is interpreted as sought to be done by Arohan as any person would float/ sponsor or cause to sponsor CIS, directly or indirectly through an entity that is not a company so as to keep itself out of the purview of the regulatory mechanism. The intent of the said provisions, are to cover all the schemes and arrangements that satisfy the conditions as provided in Section 11AA(2), except those specifically excluded in sub-section (3) of Section 11AA. Further, in terms of the Regulation 2(h) of the CIS Regulations, a person cannot sponsor or cause to sponsor a CIS through a private trust.

I now place reliance on the order of Hon'ble Supreme Court of India in the matter of *PGF Limited & Ors. Vs. Union of India & Anrs.* [MANU/SC/0247/2013] (hereinafter referred to as the 'PGFL case'), wherein the Hon'ble Court *inter alia* observed as under:

"A reading of sub-Section (3) of Section 11AA also throws some light on this aspect, wherein it is provided that those institutions and schemes governed by sub-clause (i) to (viii) of sub-Section (3) of Section 11AA will not fall under the definition of collective investment scheme. Therefore, by specifically stipulating the various ingredients for bringing any scheme or arrangement under the definition of collective investment scheme as stipulated under sub- Section (2) of Section 11AA, when the Parliament specifically carved out such of those schemes or arrangements governed by other statutes to be excluded from the operation of Section 11AA, one can easily visualize that the purport of the enactment was to ensure that no one who seeks to collect and deal with the monies of any other individual under the guise of providing a fantastic return or profit or any other benefit does not indulge in such transactions with any ulterior motive of defrauding such innocent investors and that having regard to the mode and manner of operation of such business activities announced, those who seek to promote such schemes are brought within the control of an effective State machinery in order to ensure proper working of such schemes."

In view of the above, it can be said that the prohibition under Section 12(1B) of the SEBI Act, is against all persons be it an individual/ trust/ company/ partnership firm/ association of persons, etc. except the entities specifically exempted under Section 11AA(3) of the SEBI Act. It is nobody's case that Arohan falls under the category of Section 11AA(3) of the SEBI Act. In view of the same, I note that SCN has rightly invoked such provisions while specifying the allegations.

15. At this juncture, I refer to the observation of Hon'ble Supreme Court of India in the matter of *SEBI Vs. Ajay Agarwal* [AIR 2010 SC 3466], has held that SEBI Act is a welfare legislation and it is necessary that the interpretation of its provisions should be done in furtherance of its purpose and object. In view of the above, it can be said that the prohibition under Section 12(1B) of the SEBI Act, is against all persons be it an individual/ trust/ company/ partnership

firm/ association of persons, etc. except the entities specifically exempted under Section 11AA(3) of the SEBI Act. It is nobody's case that Arohan falls under the category of Section 11AA(3) of the SEBI Act.

I now place reliance on the order of Hon'ble Supreme Court of India in the matter of *PGF Limited & Ors. Vs. Union of India & Anrs.* [MANU/SC/0247/2013] (hereinafter referred to as the 'PGFL case'), wherein the Hon'ble Court *inter alia* observed as under:

"... .. one can easily visualize that the purport of the enactment was to ensure that no one who seeks to collect and deal with the monies of any other individual under the guise of providing a fantastic return or profit or any other benefit does not indulge in such transactions with any ulterior motive of defrauding such innocent investors and that having regard to the mode and manner of operation of such business activities announced, those who seek to promote such schemes are brought within the control of an effective State machinery in order to ensure proper working of such schemes."

16. Arohan has argued that the SEBI Act and the CIS Regulations are intended to regulate the CIS offered/ made by the companies more particularly in the plantation companies which collected money for growing trees and forests and commercial exploitation of teak. In this regard, I note that the SEBI Act and the CIS Regulations defines CIS from the perspective of the 'scheme' and these do not prescribe any asset classes. This gives the CIS Regulations a far wider applicability. At this stage, I refer to the order of Hon'ble Supreme Court of India in the matter of PGFL case (supra), wherein Hon'ble Court while analysing the scope of Section 11AA(2) of the SEBI Act had held as under:

"sub-section (2) of Section 11 AA, which defines a collective investment scheme disclose that it is not restricted to any particular commercial activity such as in a shop or any other commercial establishment or even agricultural operation or transportation or shipping or entertainment industry etc. The definition only seeks to ascertain and identify any scheme or arrangement, irrespective of the nature of business, which attracts investors to invest their funds at the instance of someone else who comes forward to promote such scheme or arrangement in any field and such scheme or arrangement provides for the various consequences to result there from."

Having considered the above, I find no merit in the argument of Arohan. I note that the CIS Regulations are equally applicable to the schemes or arrangements that offer to invest in works of art.

17. Arohan has submitted that the subscription to the scheme is undertaken on a private invitation to the identified persons who are interested in the field of art with the minimum investment size of ₹25 lakh. Arohan vide its letter dated July 08, 2008, had submitted that it had 97 contributors who had invested a total of ₹24.50 crore in the scheme. Arohan vide its

letter dated February 01, 2014, submitted the Winding and Repayment Report (hereinafter referred to as 'WRR'). A perusal of the WRR revealed that the details in respect of only 94 contributors have given by Arohan instead of 97. Arohan vide its letters dated September 11, 2014 and September 22, 2014, has explained the correct number of contributors as 94. Arohan has argued that there was no advertisement/ solicitation to invest in IAF, the units are neither offered to public nor transferrable and these are offered to the select individuals.

In this regard, I note that the present proceedings are with respect to the unregistered activities of Arohan and adjudging whether the invitation to 94 persons was private or public may not be of any relevance. Having concluded the same, the other arguments of Arohan that the investments were accepted from the identified, like minded persons finds no relevance as the law does not make any distinction between the different classes of investors. In view of the above, I find no merits in the contentions of Arohan.

18. Arohan has contended that no security or other instrument as defined under the SEBI Act have been issued to the beneficiaries of IAF and that there was no provision for allotment of units. In note that 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. Accordingly, I find no merit in the a contention of Arohan. Also, it is an admitted position that Arohan pools the money from contributors of the funds for investment in works of art. As discussed above, the schemes of Arohan are found to be in the nature of CIS. Arohan has acknowledged the receipt of the funds from the investors under the scheme. Having observed above that the schemes of Arohan are in the nature of CIS as defined under Section 11AA, I note that in terms of Section 11(2)(c) of the SEBI Act, SEBI could take such measures to protect the interests of the investors in securities, to promote the development of and to regulate the securities market, *inter alia* by registering and regulating the working of collective investment schemes.
19. Having considered the contentions raised by Arohan, now I proceed with the submission of Arohan that the IAF was closed in the year 2011 and realization from the net assets were distributed to the contributors of the fund. In order to verify the claim of Arohan that all the investors of its scheme were repaid, it was asked to submit certain documents.

Arohan has submitted that the funds were collected from the investors through account payee cheques and the repayments were made by RTGS/ cheque. As regards the movement of NAV of the 'art fund' and the process of valuation, Arohan has submitted that the same was calculated by a professional valuer on the basis of stock of paintings as at March 31 each year. It was also submitted by it that the valuation was accepted by the auditors and appropriate provisions to the value of the collection were incorporated in the audited accounts.

Arohan has said that certain contributors had raised concerns regarding the diminishing value of fund to which it had clarified that the fund valuation is based on the prevailing art prices, which were adversely affected due to the general economic conditions. Arohan has submitted the audited financial statements for the period of April 2006 to March 2013. It has also submitted a table showing the value of fund, the same has been reproduced below, for reference:

TABLE A

	31/03/2007	31/03/2008	31/03/2009	31/03/2010	31/03/2011	31/03/2012	31/03/2013	30/11/2013
Contributions	₹ 24,50,00,000	₹ 24,50,00,000	₹ 24,50,00,000	₹ 24,50,00,000	₹ 24,50,00,000	₹ 24,50,00,000	₹ 24,50,00,000	₹ 24,50,00,000
Loss	₹ 1,83,01,468	₹ 5,27,69,942	₹ 11,18,87,871	₹ 10,88,28,767	₹ 11,49,29,996	₹ 13,23,26,559	₹ 16,39,51,641	₹ 16,38,56,322
Net	₹ 23,46,98,532	₹ 19,22,30,008	₹ 13,31,12,129	₹ 13,61,71,233	₹ 13,00,70,004	₹ 11,26,73,441	₹ 8,10,48,359	₹ 8,11,43,678
Fund Value	95.80%	78.46%	54.33%	55.68%	53.09%	45.99%	33.08%	33.12%
Repayment							₹ 4,89,00,000	₹ 3,15,35,950
Balance							₹ 3,21,48,359	₹ 7,07,728

From the above, it can be seen that the fund had incurred losses in every financial year except in the financial year of 2009-10. The value of funds of investors had diminished due to which losses have been suffered by them. I note that there are not no investor complaints as against Arohan.

As per the details submitted, I note that 94 investors had contributed an amount of ₹ 24.50 crore to the fund of Arohan and Arohan had distributed/ repaid an amount of ₹ 8.43 crore resulting into a total loss of ₹ 16.38 crore to the investors. On a pro-rata basis the same comes to a loss of about 66.88% loss on the investment into the fund.

20. Therefore, I find that Arohan had sponsored a Collective Investment Scheme without obtaining certificate under the CIS Regulations, in contravention of the Regulation 3 of the CIS Regulations and Section 12(1B) read with Sections 11 and 11AA of the SEBI Act.
21. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11 and 11B thereof and Regulation 65 of the SEBI (Collective Investment Scheme) Regulation, 1999, hereby issue the following directions:
- a. Arohan Trustee Company Private Limited 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. Arohan Trustee Company Private Limited is 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. Arohan Trustee Company Private Limited is directed to refund the entire monies collected by it under its scheme to all the investors along with an interest at the rate of 10% per annum (from the date of investment till the date of part refunds) 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. Arohan Trustee Company Private Limited is also directed to immediately submit the complete and detailed inventory of the assets owned by Arohan Trustee Company Private Limited.
 - e. In the **event of failure** by Arohan Trustee Company Private Limited to comply with the above directions, the following actions shall follow:
 - Arohan Trustee Company Private Limited 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 20 (b) above, till all the monies mobilized through such schemes are refunded to its investors with interest, which are due to them.

- SEBI would make a reference to the State Government/ Local Police to register a civil/ criminal case against Arohan Trustee Company Private 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, Arohan Trustee Company Private Limited.
- SEBI shall also initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder.

22. The order shall come into force with immediate effect.

23. Copy of this Order shall be forwarded to the stock exchanges and depositories for necessary action.

DATE: April 21st, 2015
PLACE: Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA