

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER**

ORDER

Under sections 11(1), 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999 in the matter of Royal Twinkle Star Club Private Limited.

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received a complaint dated January 2, 2012 alleging that “Royal Twinkle Star Club Private Ltd. (hereinafter referred to as “RTSCL”) was collecting “*thousands of crores*” from gullible investors under the garb of “*Comfort Holiday Plan*” (hereinafter referred to as “CHP”) which was tantamount to illegal mobilization of funds. Further, it was submitted that RTSCL was indulging in illegal deposit mobilization involving “*guaranteed returns of 1.5 times in 4 years, 1.7 times the investment in 5 years, double in 6.5 years and 3 times in 9 years*”.
2. In the light of the complaint received against RTSCL, SEBI decided to analyse the case in detail and seek information from RTSCL to determine whether the activities of RTSCL could be construed as "collective investment scheme" in terms of section 11AA (2) of the SEBI Act, 1992.
3. Accordingly, vide letter dated June 1, 2012 SEBI sought the following information from RTSCL:-
 - a. Memorandum and Articles of Association of the company as filed with the Registrar of companies.
 - b. Details of the past and present directors of the company.
 - c. Brochures pertaining to schemes/ offers to the public.

- d. Application forms that are required to be submitted by investors to participate in the schemes of RTSCL.
 - e. Sample copies of the registration letter and allotment letter issued to the investors who subscribed to the schemes.
 - f. Sample copies of the agreement letter / contract required to be entered into by investor /applicant under the schemes.
 - g. Structure of the Plans/ Schemes.
 - h. Main terms and conditions of the plan/ schemes.
 - i. Details of the scheme wise amount mobilized, along with the number of investors under the schemes.
 - j. Number of investors /applicants who opted for the rent out / sales option of the scheme.
 - k. Details of the regulatory approvals obtained, if any, provision of accidental death / disability benefits to investor, under the schemes of RTSCL.
 - l. Copies of annual reports/ financial statements for the last three years.
4. Vide letter dated June 15, 2012 RTSCL stated that they are an unlisted company with no intention of getting listed, and that RTSCL is a part of the Mirah Group of Companies, which is an integrated hospitality solution provider. RTSCL further submitted that the business being conducted by them is not a “collective investment scheme” and that they are in the business of providing travel and holiday facilities and services to their plan-holders on time-share basis. Therefore, RTSCL submitted that it was not required to be registered with SEBI nor does it fall within SEBI’s regulatory jurisdiction. RTSCL submitted certain details such as copy of Memorandum and Articles of Association, list of directors, plan certificates, brochures etc. However, RTSCL failed to furnish important details/information such as plan wise amount mobilised and number of investors under the schemes etc.
5. The Ministry of Corporate Affairs ("**MCA**") vide letter dated January 9, 2013 forwarded to SEBI an extract of its Inspection Report with respect to RTSCL in terms of section 209-A of the Companies Act, 1956.

6. As no further information was received by SEBI from RTSCL, SEBI vide another letter dated March 19, 2013 advised RTSCL to furnish the following additional information:-
- a. Total number of individuals/customers who have subscribed to the Comfort Holiday Plan (category wise and amount wise details)
 - b. Details (numbers of rooms available, etc.) about the accommodation provided/projected to be provided.
 - c. Total number of individuals/customers who have actually availed the services (accommodation) under the plan(s) subscribed to the plan(s).
 - d. Details of assets held by RTSCL.
 - e. Details of amount refunded by the company towards principal investments and towards interest (customer wise).
7. Vide letter dated August 5, 2013 RTSCL submitted that –
- i) RTSCL “sell(s) holidays plan on time share basis”, for which it receives “subscription from subscribers for which, either accommodation facilities are enjoyed by them or failing which in case of non-utilization of services offered (by RTSCL) they get non-availing compensation”.
 - ii) Total 368833 customers (103709 in the Comfort Holiday Plan, 237587 in the Economic Holiday Plan and 27537 in the Luxury Holiday Plan) have subscribed to various plans for Rs. 668.33 crores (Rs. 196.79 crores in the Comfort Holiday Plan, Rs. 149.59 crores in the Economy Plan and Rs. 321.95 crores in the Luxury Plan).
 - iii) The annual room inventory (owned by the group companies) at 11 locations are 233965.
 - iv) 6675 members/customers have actually availed the services (i.e. accommodation facilities) of RTSCL.
 - v) The complainant has already withdrawn the complaints.

8. In view of the aforesaid facts and on the basis of the material available on record, I shall now proceed to determine whether the schemes being operated by RTSCL are a 'collective investment scheme' in terms of section 11AA (2) of the SEBI Act.

9. Section 11AA (2) of the SEBI Act defines a collective investment scheme as follows:

“(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.

10. On an examination of the material available on record, it is *prima facie* observed that –

- i) The Comfort Holiday Plan of RTSCL has 4 sub-plans, i.e. Bronze, Copper, Silver and Gold. A tabular representation of the features of these sub-plans are reproduced for reference as follows:-

Plan	Term (in years)	Minimum Investment (in points)*	On Maturity (in points)*
Bronze	4	50	76
Copper	5	250	425
Silver	6.5	50	100
Gold	9	50	150

* one point is equal to Rs.100/- (Rupees One hundred)

- ii) A plan holder is required to make a one-time full payment.
- iii) The plan once purchased cannot be withdrawn. However, in exceptional circumstances, RTSCL may consider the withdrawal/ cancellation at its sole discretion.
- iv) Accumulation of un-utilized Holidays Points is allowed over the plan period and the said Points are redeemable on expiry of the said period.
- v) The plan-holder is allowed to ‘rent out’/sell the accrued portion of the Holiday Points. If the plan-holder desires for full/partial rent out or sales option, the company shall either rent out or sell such Holiday Points in the open market, and sale proceeds so received will be given to the plan holder. The rent so generated from the unutilized portion of the holidays purchased by the plan holder will be paid to plan-holder on or after the validity of the plan.
- vi) The offer document of RTSCL states - *“in the unlikely event of insufficient rent out realization of unutilized portion of holidays, the company undertakes and guarantees to make good to the plan holder out of the profits/ assets realization of the Twinkle Group Companies having common Board of Directors”*.

11. From the abovementioned details in respect of plans offered by RTSCL, including the Comfort Holiday Plan (“CHP”), I note the following:–

- 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.***

RTSCL is operating investment plans through its Holidays Plans including the CHP, which it offers to the public. Holiday Plan Certificates of confirmation are issued to individual investors who purchase the Holiday Plans. RTSCL has admitted to raising a sum of Rs. 669.33 crores from a total of 368833 investors under its Comfort Holiday Plan, Economic Holiday Plan and Luxury Holiday

Plan. Under the various Holiday Plans, Holiday Points are awarded by RTSCL to investors who purchase the Holiday Plans, and in any case the investor desires, the Holiday Points can be rented out or sold in the open market through RTSCL. Thus, apparently the contribution made by investors in response to the Holiday Plans offered by RTSCL are pooled and utilized for providing various holiday facilities, and in case the said facilities are not availed, then providing compensation. Thus, the condition specified in Section 11AA (2) (i) of the SEBI Act is prima facie fulfilled by Holidays Plans being offered by RTSCL.

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.

RTSCL is collecting money from investors and assuring them a certain return on investment, which is in the nature of profit. For example, in the Bronze scheme within the CHP, if any person invests an amount of Rs.10,000/- (i.e. 100 points) then after four years the investor gets a return of Rs.15,200/- (152 points). Similarly, in its Gold Scheme within the CHP, the investors are assured a return of Rs.15,000/- on an investment of Rs. 5,000/-, at the end of nine years. Further, as compared to the total number of investors in its Holiday Plans, only a small proportion (6675 out of total 368833 investors i.e. less than 2%) is actually seen to have availed the holiday facilities being marketed by RTSCL. This indicates that most investors in the said scheme invested in the plan on account of the promise of assured returns. It is further noted from the material on record that many of the other Holiday Plans of RTSCL – including the Citrus Fragrance and Citrus Strawberry Plans, appear to permit conversion of the Holidays Point purchased by investors into “Redemption Vouchers”.

Thus, it is clear that the contributions made by investors towards schemes offered under the CHP are with the view to receive profits or income. Thus, the condition specified in Section 11AA (2) (ii) of the SEBI Act is *prima facie* fulfilled in terms of the Holidays Plans being offered by RTSCL.

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 money collected from public in the form of investments made in the various Holidays Plans of RTSCL are used by RTSCL to manage and maintain various accommodation and other holidays facilities at different locations. It is mentioned, in clause 29 of the offer document for the CHP that RTSCL “reserves the right to add on, modify, delete or otherwise change any of the rules, conditions, privileges, benefits or rewards at its sole discretion”. Further, clause 32 in the Terms and Conditions of the Offer Document of the CHP states that “*the Company is at liberty to sell the unoccupied rooms in the absence of booking from Plan holder in the open market*”, indicating that the day-to-day management and control of the CHP lies with RTSCL and not the investors. Clause 36 of Terms and Conditions further states that “*the Company may assign these Terms of Offer Document to any third party and any such assignment shall be binding on Plan Holders when notice of assignment is given to them*”. Considering the fact that it is RTSCL which takes decisions regarding the management and use of the money collected from investors, and has day-to-day control over the operation of the schemes including the CHP, it is clear that the third and fourth criteria prescribed in Section 11AA (2) (iii) and (iv) are also *prima facie* fulfilled.

12. It is pertinent to note that RTSCL has submitted that it has mobilized an amount of Rs.668.33 crores under various plans including the CHP. I also note that RTSCL offered assured returns in case the facilities under the plan were not availed. Hence, the material on record indicates that RTSCL is operating collective investment schemes through its various plans and schemes involving Holiday Points and their accrual as well as redemption. Thus, the conditions specified in section 11AA (2) (iii) and (iv) of the SEBI Act is prima facie fulfilled by the Holidays Plan being offered by RTSCL.
13. The submission of RTSCL that the complaint against it has been withdrawn is not relevant for the purpose of considering whether the various Holidays Plan including the Comfort Holiday Plan of RTSCL are in nature of collective investment schemes.
14. RTSCL has submitted that it is in the 'Time Share' business and therefore falls outside SEBI's purview. However, I find that RTSCL is carrying on collective investment scheme in the garb of 'Time Share' as it is seen that out of the total number of investors in its Holiday Plans, around 98% did not avail the holiday facilities being provided by RTSCL. Further, I find that the scheme has been designed in a manner to provide an investment avenue.
15. It may be pertinent to refer to the observations of the Hon'ble Supreme Court of India in *P.G.F Limited & Ors. vs. UOI & Anr.* (MANU/SC/0247/2013), wherein it had observed: “...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.” In

view of these observations, I find that the SEBI Act is applicable to '*collective investment schemes*' which invite contributions from investors in order to pool them for investment with the objective of making a profit or getting returns on the investment. Therefore, the mobilization of funds by RTSCL under its various Plans including the CHP, with a promise of assured returns, when considered in light of the other features of the CHP as well as other Holidays Plans offered by RTSCL discussed earlier in this order, *prima facie* falls within the ambit of '*collective investment scheme*' as defined under section 11AA of the SEBI Act.

16. The other legal provisions which *prima facie* appear to have been violated by RTSCL are reproduced for reference as follows:-

Section 12 (1B) of the SEBI Act

"No person shall sponsor or cause to be sponsored or cause to be carried on a 'collective investment scheme' unless he obtains a certificate of registration from the Board in accordance with the regulations".

SEBI (Collective Investment Scheme) Regulations, 1999

"No person other than Collective Investment Management Company to launch scheme

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

"Application for grant of certificate

4. Any person proposing to carry any activity as a Collective Investment Management Company on or after the commencement of these regulations shall make an application to the Board for the grant of registration in Form A".

17. As per section 12(1B) of the SEBI Act, 1992, and Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "**CIS Regulations**"), a person can launch or sponsor or cause to sponsor a '*collective investment scheme*' only after obtaining registration from SEBI. Therefore, the

launching/floating/sponsoring or causing to sponsor any '*collective investment scheme*' by any 'person' without obtaining the certificate of registration in terms of the provisions of the CIS Regulations is in contravention of section 12(1B) of the SEBI Act read with regulation 3 of the CIS Regulations. I note that RTSCL has not obtained any certificate of registration under the CIS Regulations for its fund mobilizing activity from the public, under the Comfort Holiday Plan offered by it. Considering the above, I am of the view that RTSCL is *prima facie* engaged in fund mobilising activity from the public, by floating or sponsoring or launching '*collective investment schemes*' as defined in section 11AA of the SEBI Act without obtaining a certificate of registration from SEBI as required under section 12(1B) of the SEBI Act and the CIS Regulations.

18. I note that RTSCL was advised to respond to the preliminary enquiry conducted by SEBI, on two occasions through SEBI letters dated June 1, 2012 and March 19, 2013. However, on both occasions, RTSCL failed to furnish the complete details as sought by SEBI. In these circumstances, I find that reasonable opportunity has been afforded to RTSCL to respond to SEBI. When considered in the context of the abovementioned *prima facie* finding, the inescapable conclusion is that non-submission of the information to SEBI is nothing but an attempt to conceal the true nature and operation of the fund mobilising activity of RTSCL.

19. I further note that protecting the interests of investors is the first and foremost mandate for SEBI and therefore, steps have to be taken in the instant matter to ensure only legitimate investment activities are carried on by RTSCL and no investors are defrauded. In light of the same, I find there is no alternative but to take recourse through interim action against RTSCL for preventing it from further carrying on with its fund mobilising activity related to '*collective investment scheme*', without registration from SEBI.

20. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11(1), 11B and 11(4) of the SEBI Act read with Regulation 65 of CIS Regulations, hereby direct Royal Twinkle Star Club Private Ltd (CIN U55101MH2008PLC181944) and its Directors, namely, Shri Omprakash Basantlal Goenka (PAN-AECPG3854J), Shri Prakash Ganpat Utekar (PAN-AALPU9100E), Shri Venkatraman Natrajan (PAN-ACUPV4686K) and Shri Narayan Shivram Kotnis (PAN-ABIPK5022D).

- a. not to collect any more money from investors including under the existing schemes;
- b. not to launch any new schemes;
- c. not to dispose of any of the properties or alienate any of the assets of the schemes;
- d. not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of the company.
- e. submit the list of investors with full particulars such as PAN numbers, addresses etc within fifteen days from the date of receipt of this order.
- f. submit full inventory of 233965 rooms as mentioned in the letter of RTSCL dated August 5, 2013 within fifteen days from the date of receipt of this order.

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

22. This Order shall also be treated as a show cause notice. RTSCL and its Directors may show cause as to 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 taken against them.

23. RTSCL and its Directors shall, within fifteen days from the date of receipt of this Order, file their reply, if any, to this order. RTSCL and its Directors may also indicate, in such reply, whether they wish to avail an opportunity of personal hearing in the matter.

Place: Mumbai
Date: March 7, 2014

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA