

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 YATRA ART FUND

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**Date of Hearing:** January 15, 2015, May 05, 2015

**Appearance:**

**For Noticee:** Mr. Pravin Gandhi, Former Trustee, Yatra Art Fund,  
Mr. V. Sanjay Kumar, Former Trustee, Yatra Art Fund,  
Mr. Geetha Mehra, Former Trustee, Yatra Art Fund,  
Mr. D. Satish Kumar, Advocate,  
Ms. Bushra Shad, Advocate.

**For SEBI:** Mr. Pradeep Kumar, Assistant General Manager,  
Mr. Pankaj Bhageria, Manager.

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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 Yatra Art Fund (hereinafter referred to as 'Yatra') had solicited investments in the 'art fund'. SEBI therefore *inter alia* advised Yatra to furnish certain information/ documents of the art schemes. Yatra vide its letter dated February 02, 2007 (*sic*) (received by SEBI on January 02, 2007), replied to the SEBI letter and submitted an opinion from 'M.P. Chitale Law Associates' issued to 'Yatra Art Fund -II' (hereinafter referred to as 'Fund - II') dated November 27, 2006.
2. On consideration, SEBI *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 Yatra 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 vide letter dated June 18, 2007, called upon Yatra to explain as to why appropriate directions under Sections 11 read with 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. The letter also asked Yatra as to why it should not be directed *inter alia* to refund the money raised through the subscription to 'art funds' to the investors of the fund.

3. Yatra vide its letter dated July 16, 2007, submitted its reply to the SEBI letter. The submission of Yatra, in brief are as under:
  - a. 'Yatra Art Fund - I' (hereinafter referred to as 'Fund I') was a unit scheme of Yatra Art Fund Trust (hereinafter referred to as 'Trust') constituted as an irrevocable trust under the Indian Trusts Act. The 'Fund I' was a contributory unit scheme constituted for the purpose of making investment in Indian art works (in which the trustees had accepted investments from about fifty select contributors, with each contributor investing a minimum of ₹ 20 lakh in the 'Fund I') and to provide an opportunity to the art lovers to further invest in art world.
  - b. The Settlers of the Trust were Mr. Pravin Gandhi, Mr. V. Sanjay Kumar and Ms. Geetha Mehra. The trustees of the 'Fund I' were Ms. Geetha Mehra, Mr. V. Sanjay Kumar, Mr. Pravin Gandhi and Mr. Nilesh Shah.
  - c. 'Fund I' was a close ended fund and its term was for four years from August 16, 2005. The term was extendable to five years from the initial closing date, at the discretion of the trustees.
  - d. The object of the 'Fund I' was to invest in contemporary art works and all powers relating to the funds were vested under the indenture with the trustees and exercisable by them in accordance with the provisions of the indenture.
  - e. The objective of the CIS Regulations is to regulate the CIS, which make an offer to public. The 'Fund I' has not made any invitation to the public or a section of the public to

subscribe. The investment were accepted from limited number of identified sophisticated, high net worth contributors on private placement basis.

- f. The 'Fund I' has not issued any offer document to the general public. It had furnished the Confidential Private Placement Memorandum (hereinafter referred to as 'Memorandum') to the selected contributors. The memorandum had also stated that the fund is not regulated by any regulatory authority in India.
- g. For investing in the 'Fund I' the contributor had to enter into a contribution agreement with the trustees of the fund. The agreement had contained that the contributor understands that the 'Fund I' is an unregulated pool, units will not be repurchased or redeemed at any time before the redemption and the units cannot be freely transferable or sold.
- h. There was no company/ body corporate involved in the fund either as a sponsor/ offerer/ promoter/ trustee of the fund. The settlors, sponsors, trustees and manager of the 'Fund I' were all individuals. In view of the same, it will not constitute a CIS as defined in Section 11AA(2) read with Section 2(ba) of the SEBI Act. Therefore, the question of requiring the 'Fund I' to register with SEBI as a CIS does not arise.
- i. The legislative intent of the introduction of Section 11AA and Section 2(1)(ba) to SEBI Act was to regulate the CIS offered or made by the companies more particularly the plantation companies. Further, the CIS Regulations are not applicable to any schemes other than plantation schemes or live stock schemes as can also seen from the Dave Committee report, which had formed the basis for framing of the CIS Regulations. The part II of the 9<sup>th</sup> Schedule of the CIS Regulations set out accounting norms only vis-a-vis the plantation and livestock schemes. None of these apply to a fund investing in assets such as art works.
- j. Section 12(1B) of the SEBI Act which requires a sponsor of a CIS to register with SEBI will not come in operation as the Fund is not a CIS under Section 11AA(2) read with Section 2(ba) of the SEBI Act. Further, the Fund is also not acting as asset management company.
- k. It was not restricted by the SEBI Act or the CIS Regulations from accepting the investments from select high net worth contributors on a private placement basis and investing in art for carrying on its operation.

4. On consideration of the reply of Yatra, SEBI issued a show cause notice (hereinafter referred to as 'SCN') dated October 12, 2007 and called upon Yatra to show cause as to why it should not be registered with SEBI as a Collective Investment Management Company and in case of failure to do so, refund the moneys collected under the scheme/ funds floated/ managed by it within a period of 30 days. It was also stated that in case no reply was received within the aforesaid period, it shall be assumed that it did not have any submissions to make and SEBI shall be free to take action in terms of the SEBI Act and the CIS Regulations.
  
5. Yatra vide its letter dated November 05, 2007, replied to the SCN which was signed by its trustees on behalf of 'Fund - I'. While reiterating the earlier submissions, the following submissions were made and an opportunity of personal hearing was requested:
  - a. The definition of CIS is provided under Section 2(ba) of the SEBI Act and not under section 11AA of the SEBI Act. The same is not an inclusive definition and is exhaustive as the word 'means' cannot be construed as inclusive. Any scheme to fall under the definition shall satisfy the conditions specified under Section 11AA of the SEBI Act.
  - b. Section 11AA of the SEBI Act cannot be taken as a definition section and is in fact a substantive provision. Section 11AA of the SEBI Act cannot dilute the substantive provision of Section 11(2)(c) and 12(1B) of the SEBI Act. Any scheme or arrangement that is made or offered by individuals and not companies would not constitute a CIS as defined in Section 11AA(2) read with Section 2(1)(ba) of the SEBI Act.
  - c. The legislature had made amendment to Section 2(h) of the Securities Contracts (Regulation) Act, 1956, by including the units of the CIS as securities in order to ensure that the regulatory jurisdiction of SEBI will not travel beyond the purview of the SEBI Act.
  - d. Since the fund is not a CIS, nor operating in the securities market, the question of requiring the Fund to register under Section 12(1B) of the SEBI Act with SEBI as a CIS does not arise.
  - e. The word 'investor' in Section 11AA(2) of the SEBI Act would be applicable only for the investors investing in the securities issued by the CIS covered under Section 11AA of the SEBI Act.

- f. The units offered by the Fund were to the select individuals and the same cannot be termed as offer to public. The objective of the CIS Regulations is to regulate the CIS, which make an offer to public. Regulation 2(1)(t) of the CIS Regulations defines offer document of a CIS to mean inviting the public to subscribe to the units of the scheme. The memorandum of Fund was confidential and intended solely for the use of the person to whom it was addressed. The units of the funds are neither marketable nor freely transferable and therefore cannot be termed as securities under Securities Contracts (Regulation) Act, 1956.
- g. Adequate disclosures about the unregulated nature of the Fund have been made to the investors with whom the units of the fund are privately placed. The contributors of the fund have no grievance against the fund and are satisfied with the conduct of the affairs of the fund and the returns on their contribution.
6. As requested, before proceeding further, an opportunity of personal hearing was granted to Yatra on May 09, 2008, before the then Whole Time Member. Yatra vide its letter dated May 02, 2008, sought an adjournment as two of its trustees were unavailable for the personal hearing on the designated date. On request, another opportunity of personal hearing was granted to Yatra on June 27, 2008. This time again, Yatra vide letter dated June 24, 2008, requested for an adjournment. The request of Yatra was acceded to and the hearing was re-scheduled to July 31, 2008. However, the said date of hearing was later postponed to September 05, 2008 when Mr. Pravin Gandhi and Mr. V. Sanjay Kumar, both Trustees of the Fund appeared along with Mr. D. Satish Kumar, Advocate and Mr. Rajendra P. Chitale, Chartered Accountant and made submissions.
7. In the meantime, SEBI received an investor complaint vide e-mail dated March 06, 2012, from one Ms. Rita Shah, against 'Fund II'. The said complaint was forwarded by SEBI to Yatra vide letter dated March 20, 2012. Fund II replied to the SEBI letter vide its letter dated March 30, 2012 and also forwarded a copy of the reply given by it to the complainant.
8. Due to change in the Competent Authority, another opportunity of personal hearing was afforded to Yatra on August 16, 2013. However, vide letter dated July 29, 2013, the trustees of 'Fund I' submitted that the Fund was closed w.e.f. September 15, 2011 and that they have ceased to be the trustees of it and have no authority to represent the case in the

personal hearing. It was also said that only one scheme was floated by it in the name of 'Fund I', with a corpus of ₹ 10,95,00,000. Further, it was submitted that as the 'Fund I' has been closed, the SCN has become infructuous.

9. SEBI considered the submission and granted a further opportunity of personal hearing on September 24, 2013. The trustees of 'Fund I' vide letter dated September 14, 2013, again submitted that the tenure of 'Fund I' had expired in terms of its fund documents and the same was accordingly wound up with effect from September 15, 2011. Further, the assets of the 'Fund I' were disposed off and the proceeds thereof were distributed to the contributors. It was also said that if, SEBI intends to initiate any action against them in any capacity, the reasons thereof may be provided.

SEBI vide its letter dated September 20, 2013, intimated Yatra that as the scheme offered by it appeared to be falling within the definition of CIS, sponsoring such schemes without certificate of registration is in violation of the SEBI Act and the CIS Regulations. Further, no evidence about the winding up and the distribution of the proceeds to the contributors has been furnished by Yatra to SEBI. Therefore, the persons managing the affairs of the fund (the trustees) are liable for the acts of Yatra. The SEBI letter also referred to certain investor complaints as received against Yatra. The trustees of the 'Fund I' vide letter dated September 23, 2013, requested for the copies of the investor complaints made against Yatra ('Fund I') and its trustees and also requested for an adjournment for the personal hearing dated September 24, 2013.

The request was considered and another opportunity of personal hearing was granted to Yatra on December 30, 2013, which was later rescheduled to December 31, 2013. The trustees of 'Fund I' vide letter dated December 11, 2013, submitted that 'Fund I' was the only scheme floated and intimated that the investor complaints forwarded by SEBI are regarding 'Fund II'. Vide this letter, a request was made for the investor complaints against 'Fund I'. A similar request was made vide letter dated December 19, 2013.

10. On the date fixed for personal hearing (i.e. December 31, 2013), Mr. Pravin Gandhi appeared for the personal hearing along with Mr. Satish Dinavahi and Ms. Bushra Shad, both Advocates and submitted that the 'Fund I' was closed in September 2011. Further,

as on date no fund exists and the SCN has become infructuous. It was also said that 'Fund II' was also closed in the year 2012.

Considering the submissions made during the course of personal hearing, the authorised representatives of Yatra were asked to submit the bank details to show how much funds were collected and the sources thereof, how much funds were repaid and the proof for such repayment to the investors; the details/ documents to show the movement of NAV of the fund, the process of valuation and by whom such valuation of NAV, if any, was done; the financial statements from the year the fund/ scheme was initiated/ commenced, till the period of closure. Further, it was asked to submit the details of the investor complaint/ court matters, if any. Yatra was also advised to submit the details along with the supporting documents as certified by the statutory auditors. Yatra was granted time of three weeks for submitting the said details/ documents.

11. Thereafter, SEBI also issued a letter dated January 01, 2014, advising Yatra to submit the details/ information as asked during the course of personal hearing. The trustees of 'Fund I' vide letter dated January 20, 2014, submitted that 'Fund I' was the only scheme of Yatra. It was submitted that 'Fund I' was a close ended fund, therefore the NAV of the fund was never calculated. It was also said that the valuation of the art works acquired by the 'Fund I' was done by the trustees as set out in the memorandum. For some period the valuation report from Saffron Art was also taken, however, due to illiquid art market, they were not willing to provide the valuations. It was also said that the inventory in the books was carried at the cost of acquisition. Vide this letter, following documents/ details were also submitted:
  - a. Winding up and repayment report(WRR) of 'Fund I'.
  - b. Statement reflecting the bank details to show how much funds were collected and the source of such funds.
  - c. Details/ bank details to show how much funds were repaid and to whom along with proof for such repayments to investors.
  - d. The audited financial statements for the period from the commencement of the fund till the period of closure.
12. Vide another letter also dated January 20, 2014, the information regarding the scheme of 'Fund II' was also submitted, while arguing that it was not a CIS under Section 11AA of

the SEBI Act. It was said that 'Fund II' was a close ended fund, therefore the NAV of the fund was never calculated and informed to the contributors. The valuation of the art works acquired by the Fund was done by the trustees as set out in the memorandum. It was said that the inventory in the books was carried at cost of acquisition and 'Fund II' was wound up and the realised proceeds were distributed to the contributors. It has also been argued by these that the matter cannot be proceeded with 'Fund I' as no SCN has been issued to 'Yatra Art Fund II' by SEBI and requested to pass separate orders in the matters after granting a personal hearing as there are certain complaints from investors regarding this fund. Vide this letter, following documents/ details were also submitted:

- a. Winding up and repayment report ('WRR') of 'Fund II',
- b. Statement reflecting the bank details to show how much funds were collected and the source of such funds.
- c. Details/ bank details to show how much funds were repaid and to whom along with proof for such repayments to investors.
- d. The audited financial statements for the period from the commencement of the fund till the period of closure.

It was submitted that 'Fund II' had received 5 investor complaints from SEBI in the month of December 2013. It was also said that 'Fund II' had received four other investor complaints.

13. I have considered the written submissions filed by the trustees of 'Fund I' and 'Fund II' along with their respective letters both dated January 20, 2014, wherein while reiterating the earlier submissions, the following has been submitted:
  - a. The SCN issued by SEBI has become infructuous as 'Fund I' and 'Fund II' have already been wound up in terms of the fund document. It has been said that 'Fund I' was established on June 15, 2005 and that it had only one scheme i.e. 'Fund I'. The tenure of the trust was four years from the initial closing date. The fund had its tenure originally upto September 15, 2009. In terms of the fund document, the tenure of fund was extended by one year till September 15, 2010, by the trustees of the fund. As the market situation of the art works had not improved, the fund term was further extended by one more year with the consent of the investors i.e. till September 15, 2011. Investors having 85% of the capital in fund had voted on the resolution and about 95% of the investors

had voted in support of the extension of the fund term. As regards, 'Fund II' it has been said that the same was a single fund trust which became operational in January 2007. The fund had its tenure originally upto January 2011. In terms of the fund document, the tenure of fund was extended by one year i.e. till January 2012, by the trustees of the fund. On expiry of the Fund term on January 2012, the assets of the Fund were disposed off and the proceeds were distributed to the investors in July 2012.

- b.** The investors were aware of the pending SEBI proceedings as the same was disclosed in the audited financial statements furnished to the investors. On expiry of the term of 'Fund I' i.e. on September 15, 2011, the assets of the fund were disposed of and the proceeds thereof were distributed to the investors. The fund stands dissolved w.e.f. November 01, 2012.
  - c.** Since, the term of 'Fund I' had expired, the trust ceased to exist during the pendency of proceedings of SEBI. Therefore, the SCN has become infructuous.
  - d.** As no company was involved in sponsoring of the fund or as the sponsors or trustees or managers, it would not fall within the definition of CIS.
  - e.** CIS Regulations are not suitable to and meant for 'Art Funds' and therefore these are not applicable to 'Fund I' and 'Fund II'.
- 14.** SEBI on examining the details submitted by the trustees of the Funds (i.e. 'Fund I' and 'Fund II'), vide an email dated July 21, 2014, advised these to furnish the following information.
- a.** Confidential Information Memorandum (hereinafter referred to as 'CIM') circulated for 'Fund I' and 'Fund II'.
  - b.** Indenture of Trust related to the 'Fund I' and 'Fund II'.
  - c.** Signed application forms of the complainants in case of 'Fund II'.
  - d.** Any other legal document which is binding on the investors and Yatra.

Vide separate letters both dated August 05, 2014, the copy of the CIM, Contribution Agreement and Indenture of Trust were submitted by Yatra in respect of the 'Fund I' and 'Fund II'.

- 15.** SEBI vide its letter dated September 11, 2014, asked 'Fund I' to submit the clarification regarding:

- a. the PAN numbers of a few investors which were not reflecting in the Winding and Repayment Report ('WRR') and
- b. the process of calculating the trusteeship fees and the workings of calculation of trusteeship fees at different points of time.

Yatra vide its letter dated September 19, 2014, submitted the PAN details of the investors and details of trusteeship fee/ COO compensation payable at different points of time in terms of the provisions of the Contribution Agreement and CIM. As per the details, the compensation payable to Chief Operating Officer (Ms. Geetha Mehra who was also a trustee) was ₹ 7,00,000 per annum and the trusteeship fees payable collectively to Mr. Pravin Gandhi and Mr. V. Sanjay Kumar (who were also the trustees) was ₹ 8,00,000 per annum. It was said that the amounts paid towards trusteeship fee/ COO compensation did not exceed the amount payable in accordance with the provisions of the Contribution Agreement and CIM. Along with this letter, Yatra also submitted the certificate of Chartered Accountant dated September 18, 2014, confirming therein that the Fund has paid the trusteeship fees as per the CIM.

16. SEBI vide another letter also dated September 11, 2014, asked 'Fund II' to submit certain clarification like the cheque belonging to its two investors i.e. Ruchir Prakash Shah HUF and Mr. Rajeev Panwar were not presented, payment of advisory fees, calculation process of advisory and trustee fees at different points of time, etc.

Yatra vide its letter dated September 19, 2014, replied to the said SEBI letter and explained that the redemption proceeds had been paid to the said two investors. As regards, one cheque of Mr. Rajeev Pawar, Yatra has submitted the same was towards one of the redemption tranche and has not been encashed. Yatra also submitted that he is the only customer whose one redemption is pending to be encashed. Further, it had been said that as the CIM was circulated prior to the offer period which commenced from December 04, 2006 and was to the end on December 18, 2006, the date was extended by the trustees upto January 31, 2007. As per the submission of Yatra, the allotment of the units was made on March 07, 2007 and the same was inadvertently mentioned in the 'notes to the accounts' as the date on which the CIM was circulated. Yatra also submitted

the clarifications on the advisory fee and the fee payable to the trustees and the compensation payable to COO and CIO.

17. As considerable time had elapsed from the date of earlier hearing i.e. December 31, 2013 and examination of the documents submitted by Yatra after the personal hearing, one more opportunity of personal hearing was granted to Yatra on January 15, 2015. Yatra while confirming its presence for the personal hearing on January 15, 2015, had submitted that 'Fund II' is a fund floated under separate trust i.e. 'Yatra Art Fund II Trust' and is independent of 'Fund I'. On the date of personal hearing, Mr. Pravin Gandhi, Mr. V. Sanjay Kumar and Ms. Geetha Mehra, all Trustees of the 'Fund I' and 'Fund II' appeared along with Mr. D. Satish Kumar, Advocate and Mr. Bushra Shad, Advocate and made submissions. During the course of personal hearing, Yatra was provided with the copies of two investor complaints i.e. of 'Yatra Art Fund II Investors' Grievance Forum' and Mr. Sharukh M. Doctor. Yatra was given one week's time to submit its written submission, if any, on the same. Yatra vide its letter dated January, 22, 2015, submitted that the allegations made in the complaints were baseless/ unsubstantiated and were made with an intent to coerce the trustees from making the payment of their capital contribution together with return though the fund had lost the money due to the illiquidity in the art market affected by global recession during the tenure of the fund.
18. As during the course of personal hearing, it was submitted that 'Fund II' was a fund floated under separate trust, independent of 'Fund I' and the same cannot be proceeded with 'Fund I'. Therefore, SEBI vide its letter dated April 16, 2015, intimated Yatra that the SCN dated October 12, 2007, had mentioned 'Yatra Art Fund' and as both the schemes (i.e. 'Fund I' and 'Fund II') were in existence on the date of SCN, and an opportunity of personal hearing was granted to it on May 05, 2015, with a liberty to submit additional submissions and documents, if any. On the date fixed, Ms. Geetha Mehra appeared along with Mr. D. Satish Kumar, Advocate and Mr. Bushra Shad, Advocate and made oral submissions. Yatra was given one week's time to submit its written submission, if any. Yatra vide its letter received by SEBI on May 12, 2015, filed the written submissions, which were taken on record. The submissions in brief are:

- a. 'Fund I' and 'Fund II' were established under separate constitutional documents and therefore 'Fund II' may be dealt separately and separate order may be passed in relation to 'Fund II'.
  - b. Proceedings against 'Fund II' are infructuous since the fund was already wound up in terms of fund documents.
  - c. 'Fund II' would not fall within the definition of CIS under Section 2(1)(ba) read with Section 11AA of the SEBI Act.
  - d. The amendment made to Section 11AA(2) by substituting the word 'company' by the word 'person' vide Securities Laws (Amendment) Act, 2014 w.e.f. from July 18, 2014 makes it clear that the said amendment was done at the instance of SEBI to ensure that any scheme offered by any person could fall under Section 11AA(2) if it satisfies the other ingredients of the said section. The said amendment is prospective in nature and cannot be made applicable to 'Fund II' which was terminated much earlier.
19. I have considered the SCN issued to Yatra, the submissions and the documents furnished by the trustees of Yatra and the material available on record. I note that till the letter dated December 11, 2013, the trustees of Yatra had maintained that 'Fund I' was the only scheme floated. From the records and discussion above, it is noted that SEBI had received certain complaints as against 'Fund II'.

I note that Yatra had two schemes i.e. '**Yatra Art Fund I**' and '**Yatra Art Fund II**'. The trustees of both these funds were common and as on date both the funds have been wound up. It has been argued by Yatra that 'Fund II' was floated under separate trust and the same is independent of 'Fund I'. The trustees of Yatra have contended that the matter as against 'Fund II' cannot be proceeded with the present SCN. It has also been said that 'Fund I' and 'Fund II' were established under separate documents.

Before proceeding further with the matter, it is necessary that this submission of Yatra be dealt first. In this regard, it is noted that the SCN dated October 12, 2007, was issued to Yatra wherein Yatra was called upon to register as a Collective Investment Management Company. Yatra vide its letter dated February 02, 2007 (*sic.*) received by SEBI on January 02, 2007, had replied to the letter of SEBI and submitted an opinion from one M.P. Chitale Law Associates addressed to 'Yatra Art Fund II'. This opinion shows that 'Fund II'

was in existence on the date of issue of SCN i.e. October 12, 2007 and was being operated by the similar set of trustees who were operating 'Fund I'.

It is important to note that SEBI at no stage of the proceedings had differentiated between 'Fund I' and 'Fund II' of Yatra as both these schemes were similar in nature and were operated by the common set of trustees. The main office for both 'Fund I' and 'Fund II' was same i.e. Currimjee Building, Ist Floor, 111 M.G. Road, Fort, Mumbai 400 023 and the objective was also similar as noted from the 'indenture of trust(s)' for both the funds. Further, it is noted that Yatra in its reply to SEBI letters dated January 01, 2014 and email dated July 21, 2014, had provided the details in respect of both the funds. Further, the CIM of 'Fund II' under the head investment objective states that *'Unique Positioning: This fund is the second offering. The first fund focused on the Masters. In the second fund there is a greater emphasis on growth. The desire is to take measured risks and yet offer quality returns.'* The same is an evidence that Yatra was offering two schemes. In such circumstances, I find no merit in the submission of Yatra and conclude that the SCN covers both 'Fund I' and 'Fund II', as both the schemes were similar in nature. I note that SEBI vide its letter dated April 16, 2015, had communicated to Yatra on the similar lines and thereafter an opportunity of personal hearing has also been granted to it on May 05, 2015.

As regards the argument regarding the investors complaints in 'Fund II' and request to deal these separately, it is noted that the copies of such complaints had been forwarded/ provided to Yatra and the reply provided by it will be duly considered in the present proceedings.

20. Having considered the above, I note that the main allegation as against Yatra is that the schemes operated by it are in the nature of CIS and that Yatra 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 read with Section 11 AA of the SEBI Act. The issue that now arises for my consideration is: Whether the schemes operated by Yatra were in the nature of an unregistered CIS?
21. **Whether the schemes operated by Yatra were in the nature of an unregistered CIS?**

- a. As noted above, Yatra had launched two scheme i.e. 'Fund I' and 'Fund II'. It is noted that Yatra had launched the scheme with the objective to raise funds through schemes/ fund to make portfolio investments in art works mainly to achieve capital appreciation. Yatra had circulated an information memorandum inviting investments from the investors/ contributors. I note that the 'Fund I' and 'Fund II' are private trusts.
- b. For proceeding further, let me examine the first document i.e. 'Indenture of Trust'.The relevant clauses of 'Indenture of Trust' for Fund I [noted as **YATRA Art Fund Trust**] executed on June 15, 2005, have been reproduced below:

"... ..

**1. Definitions**

"... ..

*"Confidential Information Memorandum" or "CIM" means the confidential private placement memorandum issued in respect of a Fund by the Trustee setting out the terms and conditions for inviting offers for capital commitments to a scheme or Fund, form prospective Contributors on a private placement basis, and would include any modifications or amendments thereto from time to time;*

*"Contributor" or " investor" means any Person who has made or agreed to make contributions to the Trust Fund ...*

"... ..

*"Fund" means "Scheme"*

"... ..

*"Portfolio Investment" means Investment in any Art Work.*

*"Scheme" or "Fund" means any scheme or fund forming part of the Trust, conceived and promoted by the Trustee as an investment pool towards which the Contributors make their respective Capital Commitment, such that the Contributors acquire, subject to the provisions of the Indenture, the Confidential Information Memorandum and the Contribution Agreement, a right to become Unit-holders of the scheme or Fund;*

"... ..

*"Unit" means one unit of such par value of such class representing such rights and interest, including such right to distributions from the net assets, accretions and/ or income of schemes of funds as may be specified in the Confidential Information Memorandum and the Contribution Agreement.*

*"Unit-holder" means an Individual holding Unit(s) in any Scheme or Fund and shall include a Contributor.*

**2. Establishment of YATRA Art Fund Trust**

**2.1 Settlement:** *The Settlers hereby settle or transfer the Initial Settlement unto the Trustees the receipt whereof Trustees hereby admit and acknowledge, and the Settlers hereby declare that the Trust Fund shall be held by the Trustees in trust for the benefit of the Contributors and Unit-holders in accordance with and subject to the powers, rights, duties, obligations and other terms, conditions and provisions set out in this Indenture, the Confidential Information Memorandum, the Contribution Agreement and any other agreement or contract made in pursuance of any of the foregoing.*

"... ..

**2.3 Name and Office of the Trust:** *The Trust hereby created shall be called "Yatra Art Fund Trust" or such ..*

**2.4 Objects of the Trust:** *The object and purpose of the Trust is to raise resources through Schemes or Funds or any other means or sources to make Portfolio Investments into Art Works. Without prejudice to the foregoing, the object and the purpose of the Trust include the following:*

- a. to carry on the activities of the Trust, primarily in the form of investor and trader in Art Works.
- b. to achieve capital appreciation primarily by undertaking Portfolio Investment in Art Works.
- c. to invest in Art Works in conformity with the investment objectives and investment policy of the respective Scheme or Fund.
- d. to promote any scheme or fund to make Portfolio Investment in Art works.

...

**2.6 Contributions of the Trust:** The trustee shall invite Capital Commitments and/ or receive Capital Contributions from the Contributors only by way of private placement after identifying the target investors. The minimum subscription from any Contributor shall be not less than such amount as stipulated in the relevant CIM and Contribution Agreement or as may be decided by the Trustees.

...

**2.8 Management:** The Trustees shall irrevocably held and be responsible for the management of the Trust Fund in accordance with the provisions of this indenture.

### **3. Authority of Trustees to manage Portfolio Investments**

**3.1** The Settlers hereby irrevocably authorise the Trustee to manage the Trust Fund and/ or one or more of its Schemes. The Trustee shall, inter alia be responsible for conception and promotion of the concerned Scheme, and for management of the Schemes forming part of the Trust Fund in accordance with the provisions of this Indenture, the Applicable Laws, the Confidential Information Memorandum and the Contribution Agreement. ...

...

**4.2 Power to promote Schemes or Funds:** The Trustees shall have the power to conceive and promote various Schemes or Funds. Without prejudice to the generality of the foregoing, the Trustees shall have the power to determine the minimum and maximum size of the respective Scheme or Fund, the investment objectives and investment policy, the different Classes of Units, and their rights and obligations, the transferability, distribution and other rights attached to the different Classes of units, conditions of closing period of drawn-down ... ..

**4.4 Power to accept subscription to Units of Scheme or Fund:** The Trustees shall have the power to do all the following either by themselves or through any agent that the Trustee may appoint:

- a. cause the offering of the Scheme or Fund to be set out in a Confidential Information Memorandum;
- b. cause the Confidential Information Memorandum to be furnished to the target investors;
- c. enter into Contribution Agreement with the persons who agree to become contributors.

...

**4.8 Power to pay Duties and Taxes:** In the event of any sales tax, value added tax, capital gains tax, stamp duty or other duties, fees or taxes (and any interest or penalty chargeable thereon) whatsoever being attracted, or becoming payable, in any jurisdiction in respect of the Trust Fund or any part thereof or in respect of documents issued or executed in pursuance of this indenture or the Confidential Information Memorandum or the Contribution Agreement in any circumstances whatsoever, the Trustees shall have the power and duty to pay all such duties, fees or taxes (and any interest or penalty chargeable thereon) out of the Trust Fund or the income thereof in accordance with statutory compliance and advice of any tax consultant and/ or legal consultant and the Trustee may pay such duties, fees or taxes (and any such interest or penalty) notwithstanding that the same shall not be recoverable from the Trustees or the Contributors/ Unit holders ...

... ..

### **5. Duties of the Trustees**

**5.1 Holding of Trust Fund:** The Trustee shall hold the Trust Fund and Portfolio Investments in their own name (or in the name of the Trust) on behalf of the Trust.

...

**5.3 Portfolio Investment:** The Trustees shall take all reasonable care to ensure that the Portfolio Investments made conform to the investment objectives and investment policy of the Scheme or Fund, the provisions of this Indenture, the respective Confidential Information Memorandum, respective Contribution Agreement and the Applicable law.

...  
**5.5 Promotion of Schemes or Funds:** The Trustees shall conceive or promote one or more Schemes or Funds to achieve the objects of the Trust.

...  
**5.11 Valuation of Net Asset Schemes or Funds:** The Trustees shall periodically value, or cause to value, the Portfolio Investments and the Net Asset of the respective Scheme or Fund and to compute the Net Asset value per Unit of each Class in accordance with the provisions of this Indenture, the Confidential Information Memorandum, the Contribution Agreement, the Applicable law, and any guidelines which may be issued by the Trustees having regard to the interests of the Contributors/ Unit-holders. Without prejudice to the generality of the foregoing, the valuation of the Portfolio Investments shall be made by the Trustee based on valuation parameters considered appropriate and reasonable by the Trustees in their best judgment, given the unquoted and underdeveloped nature of the market for Art Works.

...  
**7. Limitation of Liability of Trustees**

**7.1** The Trustees shall not be liable on account of any acts, deeds or things done in good faith.

...  
**7.3 Acts done in good faith:** The Trustee shall not be under any liability on account of anything done or omitted to be done or suffered to be done by the Trustee in good faith.

**7.4 Discretion of the Trustee:** Except in so far as otherwise expressly provided herein, the Trustee shall as regards all the Trust's powers, authorise and discretion vested in them have absolute discretion as to the exercise thereof whether in relation to the manner or as the mode of and time for exercise thereof and in absence of fraud or negligence the Trustees shall not be in any way responsible for any loss, costs, damages or inconvenience that may result from the exercise or non exercise thereof.

**7.5 Conflicts of interests:** Nothing herein, shall prevent the Trustees from contracting or entering into any financial, banking or other transaction with any Contribution/ Unit holder or any Person of whose Art Work forms part of the Portfolio Investments of the Trust or being interested in any such contract or transaction.

...  
**7.8 Acts or things required to be done by the Trustees under Applicable Law:** The Trustees shall incur no liability to the Contributors/ Unit-holders for doing so (as the case may be) failing to do any act or thing expected of the Trustees under these presents, if by reason of any provision of any Applicable law or of any decree, order judgment of any court, or by reason of any request announcement or similar action that may be taken or made by any Person or body purporting to exercise the authority of any government it shall be directed or requested to do or perform or to forbear from doing or performing, it becomes impossible or impracticable to carry them out.

...  
**7.13 Depletion in the value of the Trust Fund:** The trustees shall not incur any liability by reason of any loss which a Contributor/ Unit holder may suffer by reason of any depletion in the value of the Trust Fund including its Portfolio Investments on account of: (a) any Portfolio Investments becoming uncertain, doubtful of recovery or becomes irrecoverable; or (b) any fluctuation in the market prices of Portfolio Investments; or (c) any changes in interest rates, exchange rates or any other economic, political, legal, regulatory, fiscal or financial markets developments or events.

...  
**9.2 Withdrawal and transfer of Units:**

**9.2.1** Save as otherwise provided for in the Confidential Information Memorandum and the Contribution Agreement, the Contributors/ Unit holders may not be permitted to withdraw from the Trust or transfer the Units or their Capital Contributions made to the Trust.

... .."

I have also perused the 'Indenture of Trust' of 'Fund II' and note that the same is mostly similar in spirit except a few differences. The settlors and trustees of both the funds i.e. 'Fund I' and 'Fund II':

- i. The 'Indenture of Trust' of 'Fund I' [noted as **YATRA Art Fund Trust**] was executed on June 15, 2005. Mr. Pravin Gandhi, Mr. V. Sanjay Kumar and Mr. Rohit Chopra were its settlors/ sponsors. Mr. Pravin Gandhi, Mr. V. Sanjay Kumar and Mr. Rohit Chopra were also its trustees. On resignation of Mr. Rohit Chopra, Ms. Geetha Mehra was appointed as trustee of the said trust.
  - ii. The 'Indenture of Trust' of 'Fund II' [noted as **YATRA Art Fund II**] was executed on December 01, 2006. Ms. Geetha Mehra and Mr. V. Sanjay Kumar were its settlors/ fund sponsors. Ms. Geetha Mehra, Mr. V. Sanjay Kumar, Mr. Pravin Gandhi and Mr. Nilesh Shah were the trustees of this fund.
- c. I note that Yatra had circulated 'Confidential Information Memorandum' (CIM) soliciting subscription/ purchase of units for both the funds i.e. 'Fund I' and 'Fund II'. It is seen that CIM for both the funds are pre-printed documents with blanks to be filled. The CIM for 'Fund I' is being considered for analysis on sample basis, its relevant contents are the following:

“...

*The offering involves a highly illiquid investment with substantial risks including risk of loss of the entire principal investment. This offering is only being made to select high net worth investors. This offering involves an investment with substantial risk. ...*

...

*Neither the trust nor the fund is regulated by any regulatory authority in India nor is the fund or the trust registered either with the SEBI or under the registration Act, 1908.*

...

*The fund sponsors and or trustees reserve the right to withdraw or modify this offer at any time prior to the acceptance of subscriptions from investors. The fund sponsors and trustees also reserve the right to close the subscription books before the targeted amount of capital has been subscribed to any may continue after the first closing of the subscription books.*

...

*In making an investment decision, investors must rely on their own examination of the fund and the terms of the offering including the merits and risks involved. These units have not been recommended by SEBI any governmental, regulatory, statutory authority or commission. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this memorandum... ...*

**Section I: Summary of Principal Terms and Features**

...

**Funds Structure:** *Yatra Art Fund I is being established as a unit scheme of Yatra Art Fund Trust, an irrecoverable trust established under the Indian Trust Act, 1882. The sponsors will act as Trustee of*

*the fund as set out in "Trustees of the Fund". Investors agreeing to invest into the fund will subscribe Class A Unit of the Fund by entering into the Contribution Agreement.*

***Investment Objective & Approach:****The Fund would invest in contemporary Indian artwork including paintings, sculptures, photographs and other forms of art which in the opinion of the Trustees, fall within the category of India Artwork. The Fund's investment objective is to achieve attractive returns with relatively lower risk. Accordingly, subject to any change that may be necessary in response to changing market conditions and investment environment in the Indian art work space, the approach will be more predicated on the capital protection terms rather than risk oriented in nature. ...*

...  
***Section II: Investment Opportunity Indian Contemporary Art***

...  
***2. Attractive Returns:****Art has potential to deliver the best average annualized return among the above described asset classes on a sustained basis in the foreseeable future i.e. over the next 3-5 years. Currently the market is at a phase where it offers capital conservation (subject to adequate holding period) and simultaneously good returns.*

...  
***4. Possibility of buying quality works from the fund.***

...”

A perusal of the CIM for 'Fund II' reveals that the same is similar in nature as that of 'Fund I'. I note that the CIM contains the statement about the objective of achieving attractive returns with relatively lower risk, in order to attract the investors. For 'Fund I', it has been said that the investors agreeing to invest into the Fund will subscribe to units of the Fund by entering into the 'Contribution Agreement'. As regards, 'Fund II', it has been said that the investors agreeing to invest into the Fund will subscribe to units of the Fund by submitting a 'Unit Subscription application'. The same shows that the manner of taking investment is almost similar for both the funds. The investment/ contribution of investors were used for buying and marketing art works for the purposes of the scheme. It is noted that the trustees of both the funds were responsible for the management of the Funds and the portfolio investment.

- d. Another document is the 'Contribution Agreement' for 'Fund I'. I note that the contribution agreement of 'Fund II' has not been submitted by Yatra. The relevant clauses of 'Contribution Agreement' are as under:

“ ... ..

***D.*** *The aforesaid Indenture of Trust provides inter alia that the Trustees will frame one or more Schemes or Fund and offer Units in any or all Schemes of Fund to prospective Contributors on a private placement basis and accordingly, the Trustees have named **Yatra Art Fund I** (hereinafter referred to as the "FUND") as its first scheme of the Trust.*

...

***1. Definitions***

***1.1 ...***

**"Contributor" or "Investor" or "Beneficiary" or "Unit-holder"** means an investor who has made a Capital Commitment of an aggregate amount less than ₹ 20,00,000 (Indian Rupees Two Million only) or such smaller amount as may be accepted ...

...

**"Fund"** means **YATRA Art Fund I**, a unit scheme of the Trust with its capital comprising of two classes of Units, namely Class A Units and Class B Units.

...

**"Hurdle Rate"** means the simple rate of 10% per annum.

...

**"Portfolio Investment"** means investment in any Art work.

**"Statement of Accounts"** means a statement of account issued by the Trustee to each Contributor, indicating inter alia the number and class of units held by such Contributor; ...

**"Trust"** means **YATRA Art Fund Trust** created by the indenture, of which the Fund is a Unit Scheme.

**"Unit Certificate"** means a certificate that may be issued by the Trustee to the Contributor ...

...

### **2.3 Allotment of Units and issuance of Unit Certificates**

**2.3.1** Upon receipt of the Contributor's Capital ..., the Trustees shall allot the Class A unit ...

...

## **3. Fundamental Attributes of the Fund**

### **3.1 Investment Objective of the Fund**

**3.1.1** The investment objectives of the fund are as stipulated in the CIM .... The fund seeks to invest in Art Works enfolding contemporary Indian Art Work with the objective of generating returns through eventual sale/ divestment of the Art Works in which it invests. The Fund makes no assurance regarding the return that will be achieved.

### **3.2 Term of the Fund**

**3.2.1** Subject to the provisions of Clause 3.2.2. hereof, the Fund is a 4 (four) years closed ended unit scheme fund scheduled to terminate on the 4<sup>th</sup> anniversary of the Initial Closing Date.

**3.2.2** The Trustees may at their sole discretion extend the term of the Fund from 4 (four) years to 5 (five) years upto the 5<sup>th</sup> anniversary of the Initial Closing Date through an extension to take effect on the 4<sup>th</sup> anniversary of the Initial Closing Date. And every Contributor shall be deemed to have consented and ratified the decision of the Trustee in this regard.

**3.2.3** If, in the opinion of the Trustees, it would be in the best interest of the Contributors or the Trustees to terminate the fund before the expire its term, the Trustee may with the consent of the Super Majority of Class A Unit-holders terminate the fund prior to the expiry of its term ...

...

### **3.5 Chief Operating Officer, Investment Committee**

**3.5.1** The Trustee shall manage the fund in accordance with the provisions of the Indenture and this Agreement. Without prejudice to the foregoing, the Trustees shall appoint GM as the Chief Operating Officer (COO) who shall be responsible for managing the day-to-day activities and affairs of the Fund under overall control and supervisions of the Trustees.

**3.5.2** Investment Committee: The Trustees shall constitute an Investment Cmmittee to which it shall be entitled delegate the authority to make decisions relating to investment and divestment of Art Works. ...

**3.5.5** The Trustees and Investment Committee shall not be accountable or held liable by any Contributor or any third party in respect of any investment made or investment decision taken in respect of the Fund in accordance with the procedure stated herein.

...

### **3.6 Fees and Compensation**

**3.6.1** ..., the terms of appointment including compensation of the GM at the COO shall not exceed Rs.15,00,000. For acting as Trustee of the Fund and discharging the functions and responsibility as trustees, the trustees shall be entitled from the fund to annual trusteeship fees, payable quarterly in advance. Subject to the foregoing limit of Rs.15,00,000, the amount of trusteeship fees payable quarterly in advance

and the compensation of COO payable monthly in arrears shall be mutually decided by the Trustees. Additionally, PG shall be paid a one time fee of Rs.50000 for his role in the structuring and designing of the Fund and related matters.

...

#### **4. Beneficial Interest and Rights of Holders of Class A units of the fund**

##### **4.1 Rights of the Holders of Class A Units.**

**4.1.1** Class A Units do not carry any rights or beneficial interest other than those set forth in this Agreement and in the indenture.

##### **4.2 Distributions by the Fund**

**4.2.1** During the term of the Fund, unless otherwise decided by the Trustees at their sole discretion, the Fund shall reinvest all proceeds from divestment from Art Works, net of expenses, liabilities (including liabilities under any tax laws) and obligations of the Fund. ...

...

**4.2.3** The Net Liquidation Proceeds so computed would be distributed to the holders of the Class A Units and Class B Units within 45 days from the expiry of the Term of the Fund as follows:

- a. First 100% to the holders of Class A Units, pro-rata in proportion to their respective Capital Contribution, until each Investor has received (after taking into account all distributions made to such investor) an amount equal to 100% of their capital contribution.
- b. Second, 100% to the holders of Class B Unit, pro-rata in proportion to their respective capital contribution until such time as the amount distributed to Class B unit holders (after taking into account all distributions made to such Class B units holders) equals 100% of the capital contributed by the Class B Unit-holders.
- c. Third 100% to the holders of Class A Units pro-rata in proportion to their respective Capital Contribution, until each Investor has received (after taking into account all distributions made to such investor under this sub clause) an amount equal to simple rate of return of 10% per annum in case of Class A Units, on the Capital Contribution of the respective investor ("**Hurdle Return**") from the date of the respective Capital Contribution to the date(s) of return of the Capital Contribution under sub-clause (a) hereof;

...

##### **4.4 Other rights attaching to Class A Units of the Fund**

...

##### **4.6 Limitation to the liability of Contributors and Class B unit holders**

**4.6.1** Except as specifically set forth therein, no Contributor or holder of Class B Units shall have any personal liability whatever in the capacity as Contributor or holder of Class B Units whether to the Fund or to any of the other Contributors or to the creditors of the Fund for the debts, liabilities, contracts or any other obligations of the Fund or for any losses of the Fund. The contributor shall be liable only to pay its Capital Commitment to the Fund and the holder of Class B Units shall be liable to pay its commitment to the Fund ...

...

#### **6. Withdrawals and Transfer of Class A Units**

##### **6.1 No Withdrawals permitted of Class A Units**

**6.1.1** The contributor shall not be entitled to withdraw from the Fund and demand repurchase or redemption of the Class A Units held by it at any time before their redemption ...

##### **6.2 No right of transfer of Class A Units**

**6.2.1** An investor shall not be entitled to transfer the Class A Units or related rights or obligations except ...

...

#### **8. Contributor's Representation**

**8.1** In connection with the Capital Commitment of the Contributor, the Contributor makes the following representation and warranties on which the Fund is entitled to rely upon:

- a. The Contributor has received and read and understood the contents of the Confidential Information Memorandum relating to the fund, the Indenture and this Agreement.

...

**d.** *The Contributor has such knowledge and experience in financial and business matters that the Contributor is capable of evaluating the merits and risks of the investment evidenced by its Capital Commitment and the Contributor is able to bear the economic risk of such investment.*

...

**f.** *The Contributor understands that the Class A units of the Fund, are not being offered to Indian public or a section of the public for sale or subscription, but are being privately placed with a limited number of sophisticated individual investors in India, such as the Contributor and have not been registered with or approved by the Securities and Exchange Board of India or any other legal or regulatory authority in India. ...*

**g.** *The Contributor agrees and understands that the Fund is unregulated investment pool and is neither registered with nor regulated by Securities and Exchange Board of India or any other legal or regulatory authority in India. The Contributor agrees and understands that neither the Trust nor the Fund is registered under the Registration Act, 1908 or under any other law.*

...

### **9. Representation and Warranties of the Trustees**

...

**c.** *This agreement and the Indenture create valid and binding obligations of the Fund and are enforceable against the Fund in accordance with their terms except where enforcement may be limited by applicable bankruptcy,....*

...

### **13. Fund's condition to Final Closing**

**13.1** *The Fund's obligations hereunder are subject to the fulfillment, prior to or on the Final Closing Date, of each of the following conditions:*

**a.** *The representations and warranties of the Contributor contained in this Agreement shall be true and correct on the Final Closing Date.*

**b.** *All proceedings in connection with the transaction contemplated hereby and all documents and instruments incident to such transaction shall be satisfactory in substance and form to the Trustees, and the Fund shall have received all such counterpart originals or certified or other copies of such documents as the Trustee may request."*

- e.** From the discussion above, I also note the following:
- i.** As per the objects of the trust, the money raised was invested in art works and units were allotted to the investors in both the funds.
  - ii.** The management of the trust and its fund were retained by the trustees of the both the funds.
  - iii.** The objective of both the funds was to achieve attractive returns with relatively lower risk.
  - iv.** No right of withdrawal/ transfer of units was provided to the investors.
- f.** Having considered the above, now I proceed to deal with the charge leveled against Yatra. The main allegation leveled against Yatra is that it was operating CIS without obtaining registration from SEBI. I note that the scheme in order to qualify as a CIS has to satisfy all the four conditions under Section 11AA(2) of the SEBI Act.

- i. The first condition under Section 11AA(2) is that *the contributions or payments made by investors, by whatever name called, are pooled and utilized for the purposes of the scheme/ arrangement.* In this regard, I note that Yatra had invited investments for purchasing art works. The investors of Yatra were only issued units. Yatra in the 'Indenture of Trust' of both the funds (i.e. Fund 'I' and Fund 'II') had set the objects as "*to raise resources through Schemes or Funds or any other means or sources to make Portfolio Investment into Art Works*". Further, under the head 'Tax Considerations' in CIM, Yatra has stated that it is an investment pool and the fund shall treat itself as an 'association of persons'. These facts show that the 'contributions, or payments made by the investors, are pooled and utilised by Yatra for the purposes of the scheme or arrangement', the scheme being to accept contributions/ payments for investing in art works. Thus, the first condition as stipulated in Section 11AA(2)(i) of the SEBI Act is satisfied.
- 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.* I refer to the CIM (of 'Fund I') and 'Indenture of Trust' (of Fund 'I' and Fund 'II') circulated by Yatra. With respect to the investment objective, it states that *'The Fund's investment objective is to achieve attractive returns with relatively lower risk'*. The same document also speaks about the attractive returns by explaining the potential to deliver the best average annualized return. The document further states about the possibility of buying art works from the fund. Further, the 'Contribution Agreement' for 'Fund I' and 'Fund II' clearly states that the 'Hurdle Rate' as 10% and 12% per annum (respectively). Thus, the same satisfies the second condition as stipulated in Section 11AA(2)(ii) of the SEBI Act.
- iii. The third and fourth conditions under Section 11AA(2) of the SEBI Act can be discussed together. 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.* The fourth condition is that *the investors do not have day to day control over the management and operation of the scheme or arrangement.* In this regard, I note that the trustees of the Funds were authorized to manage the trust money as per the 'Indenture of Trust'.

The 'Contribution Agreement' of fund 'Fund I' contains that the trustees of the Fund shall appoint Ms. Geetha Mehra as the Chief Operating Officer who shall be responsible for managing the day-to-day activities and affairs of the Fund. Further the 'Indenture of Trust' for 'Fund II' as regards the management and authority to manage portfolio investments states that *'The Trustees shall be entitled to appoint GM as the Chief Operating Officer and SK as the Chief Investment Officer...'*.

The document also discusses about the 'Investment Committee' and states that the trustees shall constitute an investment committee to which it shall be entitled to delegate the authority to make decisions relating to investment and divestment of the art works. In this regard, I note that the investors/ customers were not even provided with the specific/ identified plot details at the time of making payments. Further, the clause in the 'Indenture of Trust' for 'Fund I' states that *'The Settlers hereby irrevocably authorise the Trustee to manage the Trust Fund and/ or one or more of its scheme.'* Similarly the clause in the 'Indenture of Trust' for 'Fund II' that *'The Settlers hereby irrevocably authorise the Trustee to manage the Trust Fund and its Portfolio Investments. The Trustees shall irrevocably held and be responsible for the management of the Fund in accordance with the provisions of this indenture'*.

The same shows that the investor did not manage his investments in the plans/ schemes of Yatra rather his investments were managed and utilized by Yatra and the investors have no control over it except the returns. The above discussion, makes it very clear that the contribution and investment pertaining to the plans/ schemes were managed by Yatra. Further, it is also clear that the customer did not have day to day control over the management and operations of the schemes of Yatra. Such day to day control over management and operations of such schemes were also looked after by the trustees of the Trusts, which satisfies the conditions as stipulated in Section 11AA(2)(iii) and (iv) of the SEBI Act.

- g.** In view of the foregoing, I am of the considered view that the schemes of Yatra i.e. 'Fund I' and 'Fund II', were 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 Yatra was engaged in the fund mobilising activity from the public by floating/sponsoring/launching CIS as

defined in Section 11AA of the SEBI Act. To carry on CIS, the entity needs to be registered with SEBI in that capacity.

22. It is now necessary to deal with the argument of Yatrathat 'Fund I' and 'Fund II' being private trusts 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 a certificate of registration is obtained 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 CISs 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 Section 11(2)(c) and Section 12(1B) of the SEBI Act, keeping in mind the objects of the SEBI Act and the CIS Regulations. On a combined reading of the Section 11(2)(c), 11AA and 12(1B) of the SEBI Act, it is clear that all the schemes and arrangements irrespective of whether the same are private trusts or not, fall within the definition of CIS. 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. Therefore, the argument of Yatra that trusts cannot be registered with SEBI is not tenable.

I now place my reliance on the order of Hon'ble Supreme Court of India in the matter of *PGFLimited & 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."*

I also place reliance on the order of Hon'ble Securities Appellate Tribunal dated October 13, 2015, in the matter of *Osian's-Connoisseurs of Art Private Limited Vs. SEBI and Anr.* (hereinafter referred to as the 'Osian case'):

“ ...

*13....the expression 'Collective Investment Scheme' defined under Section 11AA(1) is wide enough to cover any scheme or arrangement made or offered by any entity and is not restricted to any scheme or arrangement made or offered by any company ... .*

...

*15. ... In other words, prior to the CIS Regulations were notified, any entity could carry on CIS and after CIS Regulations came into force it is only a Collective Investment Management Company which has obtained a certificate from SEBI under the CIS Regulations is entitled to carry on or sponsor or launch a CIS.*

...

*16. ... Thus reading Section 11AA(1) with Section 11(1), 11(2)(c) and Section 12(1B) of the SEBI Act along with the CIS Regulations it becomes abundantly clear that SEBI is empowered to regulate CIS made or offered by any entity and under the regulatory mechanism, only the scheme or arrangement of a collective investment management company which satisfy the conditions set out under Section 11AA(2) would be entitled to carry on CIS by obtaining registration from SEBI. Therefore, after the CIS Regulations coming into force and after insertion of Section 11AA, running CIS by any entity other than a collective investment management company without obtaining registration from SEBI would be in violation of SEBI Act. Consequently, argument of the appellant that the scheme sponsored by the appellant as AMC of the Trust which satisfies the conditions set out under Section 11AA(2) falls outside the purview of SEBI cannot be accepted.*

...”

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 Yatra falls under the category of Section 11AA(3) of the SEBI Act. Hon'ble Supreme Court of India in the matter of *PGFL case* (supra), *inter alia* has also 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."*

In view of the above, it can be said that the 'Fund I' and 'Fund II' were only the arrangements for inviting investment, while keeping the management and control of the schemes with persons mainly Mr. Pravin Gandhi, Mr. V. Sanjay Kumar and Ms. Geetha Mehra. In view of the above discussion, I note that SCN has rightly invoked such provisions while specifying the allegations.

- 23.** Yatra 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 as applicable to schemes and does not confine itself to 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."*

Reliance is also placed on the order of Hon'ble Securities Appellate Tribunal dated October 13, 2015, in *Osian case* (supra):

*“25. ... Neither the provisions contained under the SEBI Act nor the provisions contained under the CIS Regulations even remotely suggest that the provisions contained under the SEBI Act and the CIS Regulations are intended to apply only to plantation and agro schemes.”*

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

24. Yatra has submitted that the subscription to the scheme was undertaken on a private invitation to the identified persons who are interested in the field of art with the minimum investment size of ₹ 20 lakh in 'Fund I' and ₹ 10 lakh in 'Fund II'. Yatra vide its letter dated January 01, 2014, has submitted the Winding and Repayment Report (WRR). A perusal of the WRR in respect of 'Fund I' revealed that number of investors was 50 and the total funds collected were ₹ 10,95,00,000. The amount returned to the investors in 'Fund I' was 81.32 % of their invested amount is ₹ 8,90,45,400. A perusal of the WRR in respect of 'Fund II' revealed that number of investors was 132 and the total funds collected were ₹ 21,92,00,000. Further, the amount returned to the investors is ₹ 10,96,00,000. The amount returned to the investors in 'Fund II' was 50 % of their invested amount.

I note that the present proceedings are with respect to the unregistered activities of Yatra and adjudging whether the invitation to persons was private or public may not be of any relevance. I note that merely by writing words 'for the exclusive use of' on the 'Information Memorandum' will not take it out of the category of the offer to public. Having concluded the same, the other arguments of Yatra 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 Yatra.

25. Further, I note that Yatra by its own admission has issued 'units' to its investors. 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*'. Considering the same, I note that the units issued by Yatra in 'Fund I' and 'Fund II' were covered under the definitions.

26. I note the claim of Yatra that it had made disclosure of all risk factors in its CIM, cannot absolve it from the mandatory obligation to comply with the provisions of Sections 12(1B) read with Section 11AA of the SEBI Act and Regulation 3 of the CIS Regulations. In view of the above, I find that the Yatra had sponsored and carried out Collective Investment Schemes without obtaining the certificate of registration 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. In this regard, I again place my reliance on the order of Hon'ble Securities Appellate Tribunal dated October 13, 2015, in *Oslan case* (supra):

*“28. ... Once the scheme or arrangement satisfies the four conditions set out under Section 11AA(2) then, the scheme or arrangement would be covered under CIS and the provisions of SEBI Act and CIS Regulations would apply accordingly. Similarly, fact that there are no Appraising Agencies or Credit Rating Agencies approved by SEBI to appraise or rate the assets of the Art Funds would have no relevance because, having operated CIS without following the provisions contained in the SEBI Act and the regulations made thereunder, appellant cannot escape liability by alleging that the CIS Regulations are unworkable in case of Art Funds. Any scheme or arrangement made or offered by any company which satisfy the conditions set out under Section 11AA(2) must follow the procedure prescribed under CIS Regulations. For all the aforesaid reasons, in the facts of present case, decision of SEBI in holding that the scheme floated by the appellant constitutes CIS and since the said scheme was operated without obtaining registration from SEBI, appellant has contravened the provisions of the SEBI Act and CIS Regulations cannot be faulted.  
...”*

27. Yatra in its submissions has also said that 'Fund I' and 'Fund II' were closed in the September 2011 and January 2012, respectively and the proceeds were distributed to the investors of the funds. In order to verify the claim of Yatra that all the investors of its scheme were repaid, it was asked to submit certain documents. I note the submission of Yatra that the funds were collected from the investors through cheques and the repayments were also made by cheque. As regards the movement of NAV of the Funds and the process of valuation, Yatra has submitted that the funds were close ended fund and therefore the NAV of the fund was never calculated. It was also said that the valuation of the art works acquired by the Funds were done by the trustees as set out in the memorandum. It was also said that the inventory in the books was carried out at the cost of acquisition.

I note that there is no investor complaint as against Yatra in 'Fund I'. However, as regards 'Fund II', SEBI has received complaints alleging *inter aliam* mismanagement of the fund and its assets by the trustees and claimed that the fund did not allow the inspection of books of account to any investor, fund tenure was extended twice and in the process the losses increased, fire/ slump sale was made to the entity belonging to the promoters itself, purchases without adequate holding period, etc. It is seen that these complaints were forwarded to Yatra and the submission of Yatra regarding the complaints mainly are as under:

- a. The trustees of the erstwhile 'Yatra Art Fund II' had acted transparently and in accordance with the Fund documents. The trustees had made efforts to reduce the expenses of the Fund rather than siphon off monies in the guise of expenses. Various concessions were extended by 'Sakshi' on the commissions on sale of Art Works of the Fund, providing office space inclusive of staff support, telephone, electricity expenses, etc.
- b. The trustees namely Mr. Pravin Gandhi, Ms. Geetha Mehra and Mr. V. Sanjay Kumar have received only 50% of the invested amount in the Fund like any other investors. The losses have been suffered in same proportion.
- c. No promise of any assured returns was made in the CIM and it was specifically mentioned that there may be loss of return and even the entire principal. Further, the contributors were aware that SEBI has no regulatory jurisdiction over 'Yatra Art Fund II' as it would not fall under CIS.
- d. The contributors were provided with the quarterly reports and the audited annual financial reports in accordance with the terms of the fund documents. The advisory fee charged was less compared with the advisory fee due under the fund documents.
- e. The Fund term was extended by one year till January 31, 2012, due to difficult market conditions and to avoid distress sale of the Art Works.
- f. For disposal of the unsold art works the approach adopted was transparent and each contributor was provided with the same opportunity to acquire art works.

I note that the reply given by Yatra for justifying the losses is not of much relevance as the present proceedings are with respect to the unregistered illegal activities of Yatra.

28. At this stage, I note that Yatra vide its letter dated January 20, 2014, had admitted that the NAV of the funds were never calculated which is in the clear deviation from the statement made in the 'indenture of trust'. I also note that the investors in both the schemes i.e. 'Fund I' and 'Fund II' of Yatra had suffered considerable losses as detailed in paragraph 24 above. The investment objective of both 'Fund I' and 'Fund II' as noted from the CIM (of 'Fund I') and 'Indenture of Trust' (of Fund 'I' and Fund 'II'), is 'to achieve attractive returns with relatively lower risk'. The same also speaks about the attractive returns by explaining the potential to deliver the best average annualized returns.

Having considered the above and having found that Yatra had sponsored unauthorised CISs without obtaining certificate of registration 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, the next step has to be direct the entity to refund the monies collected under its unauthorised and illegal CIS activity. In terms of Regulation 65 of the CIS Regulations, SEBI in the interests of investors is empowered to issue directions to refund any money or the assets to the investors along with the requisite interest or otherwise, collected under the scheme.

I note that Yatra had collected investments from the investors and had used the same for its unregistered and illegal schemes. The investments made by the investor would have fetched certain interest if the money would have invested elsewhere. I note that the CIS Regulations have not provided the rate of interest which can be awarded to the investors. The same is a discretionary power. Hon'ble Supreme Court of India in the matter of *Clariant International Limited Vs. SEBI* ([2004] 8 SCC 524) has *inter alia* held that "*In absence of any agreement or statutory provision or a merchantile usage, interest payable can be only at the market rate.*" Taking note of the same and in order to protect the interest of investors who had invested the monies with the 'Fund I' and 'Fund II', it will be reasonable to order refund of the investments made by the investors along with the returns at the rate of 10% per annum.

29. 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. Yatra Art Fund 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. Yatra Art Fund is directed to refund the entire monies collected by it under its scheme to all the investors along with the returns at the rate of 10% per annum, 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.
- c. Yatra Art Fund 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.
- d. Yatra Art Fund is also directed to immediately submit the complete and detailed inventory of the assets owned by Yatra Art Fund.
- e. In the **event of failure** by Yatra Art Fund to comply with the above directions, the following actions shall follow:
  - Yatra Art Fund 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 29(c)** 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 Yatra Art Fund, 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 shall also initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder.

30. The order shall come into force with immediate effect.
31. Copy of this Order shall be forwarded to the stock exchanges and depositories for necessary action.

**Date: November 06, 2015**  
**Place: Mumbai**

**PRASHANT SARAN**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**