WTM/AB/IMD-CIS/09/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL 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 and in the matter of Crayon Capital Limited.

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1. Present proceedings have emanated from show cause notice dated June 14, 2007 and October 12, 2007 (hereinafter referred to as "**SCN**") issued by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") to Crayon Capital Limited (hereinafter also referred to as "**Crayon**"), *inter alia* alleging violation of provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") read with the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as **"CIS Regulations"**) and calling upon Crayon to show cause as to why suitable directions under Sections 11 and 11B of the SEBI Act, 1992 should not be issued against them.

2. SEBI had come across certain media reports and newspaper articles during the year 2006, 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 these reports/ articles, it appeared to SEBI that Crayon was one such entity which had solicited investments in 'art fund'. SEBI, therefore, vide its letter dated January 02, 2007, *inter alia* advised Crayon to furnish certain information/ documents including structure of the fund, number of schemes launched, terms and conditions of the art schemes, names of the promoters/ directors, number of investors and the amount collected in each schemes.

3. Crayon vide its letter dated January 29, 2007, filed its reply and stated that it is a partnership firm comprising of Mr. Gaurav Karan and Mr. Amit Vadehra and the newspaper articles do not reflect the composition or structure of the 'art fund' accurately. Crayon also *inter alia* submitted as under:
   a. The 'Crayon Capital Art Fund' (hereinafter referred to as 'the Crayon Fund') is a trust formed under the Trusts Act, 1881 vide trust deed dated November 10, 2006 and is sponsored by Crayon (an Asset Management firm) for operating the schemes.
   b. It has launched only one scheme i.e. 'The Crayon Capital Art Fund Scheme 1', which was close ended and the offering period was November 15, 2006 to December 15, 2006. The term of the said scheme is 36 months, following which its assets shall be liquidated and proceeds shall be distributed *pro rata* amongst its investors. The minimum investment in the scheme is Rs.10,00,000 and in multiples of Rs.1,00,000 afterwards. The corpus of such schemes shall comprise of amounts raised by issuing 'units' to the investors.
   c. It was also said that the corpus of every scheme shall be held in trust for the benefit of the investors by the 'art fund' and shall be utilized for investing and dealing in art works with a view to maximizing returns from such investment.
   d. It has 474 investors and total amount collected in scheme is Rs.60.57 Crores.

4. SEBI analyzed the submissions of Crayon and *prima facie* observed that it is carrying out the activities in the nature of a 'collective investment scheme' (hereinafter referred to as "CIS") as defined under Section 11AA of the SEBI Act, 1992 without obtaining a certificate of registration in accordance with the CIS Regulations. Subsequently, SEBI issued a SCN dated June 14, 2007 to Crayon advising it to show cause as to why appropriate directions under Sections 11 and 11B of the SEBI Act, 1992 should not be issued against it for the alleged violations of the provisions of Section 12(1B) read with Sections 11 and 11AA of the SEBI Act, 1992 and the Regulation 3 of the CIS Regulations. The SCN also alleged that the property acquired i.e., works of art, directly or indirectly, with or with the

proceeds of subscription money, is covered under the definition of 'scheme property' as defined in Regulation 2(z) of the CIS Regulations.

5. Crayon vide its letter dated June 25, 2007, submitted its reply and stated that Crayon Fund is not a company but a trust formed under the Indian Trust Act, 1881, hence, the first component of the definition of a CIS in Section 11AA of the SEBI Act, 1992 is not met by such schemes as offered by the Crayon Fund. Thereafter, SEBI issued a clarification letter dated October 12, 2007 to Crayon, while explaining the provisions of Section 11AA of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations and again advised Crayon to show cause as to why it should not register with SEBI. Crayon replied to this vide its letter dated January 06, 2008 and *inter alia* submitted as under:

a. The Crayon Fund is constituted as a private trust under the Indian Trust Act, 1882. The sponsor and the Asset Manager of the 'art fund' is Crayon, a partnership firm. No company has acted as a sponsor, trustee or manager of the Crayon Fund. Therefore, it is not a CIS under Section 11AA(2) read with Section 2(1)(ba) of the SEBI Act, 1992.
b. The legislative intent of the introduction of Section 11AA and Section 2(1)(ba) to SEBI Act, 1992 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 livestock schemes as can also be seen from the Dave Committee report, which had formed the basis for framing of the CIS Regulations. The part II of the 9th Schedule of the CIS Regulations set out accounting norms only vis-a-vis plantation and livestock schemes. It has been said that none of these can apply to a fund investing in assets such as art works.
c. The CIS Regulations contemplates 'invitation to public' to subscribe to the units of a CIS. The contributors to the art fund would not fall within the meaning of an investor as the art fund is not a CIS under Section 11 AA of the SEBI Act, 1992 and its units are neither offered to general public nor marketable. The units

offered by the 'art funds' are to the eligible select individuals and the same cannot be termed as offer to a general public. The private and confidential 'Information Memorandum' was solely for the use of the person to whom it was addressed.

d. The minimum investment by a contributor is fixed at Rs.10,00,000, which is accepted from limited number of identified, eligible sophisticated, high net worth contributors on private/ confidential basis. The eligible investors of the fund were furnished with the Private Confidential Information Memorandum which disclosed risks, facts and aspects to the contributors and was intended solely for the use of the person to whom it is addressed, there will be no public market for the units and such units will not be transferable, there can be no guarantee of returns on any artists or artworks, the art fund and schemes made under it are not regulated by SEBI or any other regulatory body.
e. The powers of SEBI are confined to regulate the securities which are issued to the investors/ general public and traded in the securities market. The units of the funds are neither marketable nor freely transferable and therefore cannot be termed as securities under the Securities Contracts (Regulation) Act, 1956.
f. The contributors to the Crayon Fund have no grievances against the fund and are satisfied with the conduct of its affairs.

6. As requested by Crayon, an opportunity of personal hearing was granted to it on May 09, 2008, before the then Whole Time Member. However, the same was postponed to June 13, 2008, on the request of Crayon. The hearing date of June 13, 2008 had to be rescheduled to June 27, 2008, due to certain administrative exigencies. However, Crayon vide letter dated June 25, 2008 sought for an adjournment for the hearing scheduled for June 27, 2008. Thereafter, an opportunity of personal hearing was granted to Crayon on September 05, 2008, when the authorised representatives of Crayon appeared and made submissions. Pursuant to the personal hearing, Crayon Fund and Yatra Art Fund (another Art Fund) vide a common letter dated October 21, 2008, submitted a representation stating as under:

a. There is no general or public solicitation of funds as the scheme offered by these two are to the selected predetermined, informed high net worth contributors. Adequate disclosures are made to selected individuals regarding the risks associated with the investments and the fact that the scheme is not guaranteed or regulated by SEBI.
b. The 'art funds' are trusts regulated under the provisions of the Indian Trust Act. The funds are managed by Trustees or independent professionals on behalf of the contributors. The funds are utilized for the purpose of investing in art works and no investments are made in the securities market. The contributors have an interest in the art works which is co-terminus with their investments. The scheme is for a predetermined fixed period and there is no secondary market as there is no facility of transferring the units.
c. The scheme or arrangement to be a CIS has to be offered by a company. Hence, in their case the prerequisite condition of a CIS i.e. of a company offering the scheme is absent.
d. The contributions to the art funds can be compared to private placements being received by private companies or under venture capital guidelines as specified by SEBI. The current schemes have been offered only to high net worth contributors with a minimum amount of Rs.10 lakh.
e. It is impossible for the 'art funds' to comply with the provisions of the CIS Regulations as they stand. Given the similarities between privately placed investment funds with VCFs as a regulatory framework similar to that applicable to VCFs would be optimum for Investment Funds such as 'art funds' that are offered to select high net worth investors.

7. Subsequently, due to change in the Competent Authority, vide letter dated July 22, 2013, another opportunity of personal hearing was afforded to Crayon on August 19, 2013. In the meantime, Crayon vide its letter dated July 31, 2013, replied to the hearing notice of SEBI dated July 22, 2013 and submitted that Crayon Fund had floated only one scheme by name of 'Crayon Capital Art Fund Scheme 1' with a

corpus of Rs. 60,57,00,000/- only. The fund was closed with effect from November, 2012 and the realizations from net assets have been distributed to the investors. Accordingly, the funds as such does not exist anymore, thereby, the SCN has become infructuous. Crayon appeared for the hearing on August 19, 2013 and *inter alia* reiterated that the fund was closed with effect from November 05, 2012 and requested for another opportunity of personal hearing before passing of any adverse order.

8. Thereafter, another opportunity of personal hearing was granted to Crayon on September 11, 2013, which was later rescheduled to September 24, 2013. The hearing letter issued to Crayon dated August 26, 2013 for the date of hearing on September 24, 2013, was returned undelivered. Accordingly, another opportunity of personal hearing was granted to it on October 18, 2013, which was later rescheduled to November 06, 2013. However, Crayon requested for an adjournment for this date of hearing. The request of Crayon was acceded to and another date of personal hearing was granted to it on November 28, 2013. This time again, Crayon vide an email dated November 27, 2013, requested for an adjournment. In the interests of justice, the request of Crayon was considered and opportunity of personal hearing was granted to Crayon on January 16, 2014, which was rescheduled to January 20, 2014, on the request of Crayon. On January 20, 2014, Mr. Gaurav Karan and Mr. Amit Vadehra, authorized representatives of Crayon, appeared for the personal hearing and made submissions. During the course of personal hearing, the authorised representatives of Crayon were asked to submit the bank details to show how the funds were collected and were repaid. Crayon was asked to submit the proof for such repayment to the investors. Crayon was also asked to submit 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 and the documentation relating to the closure/ winding up of the fund/ scheme was also asked from Crayon. Crayon was advised to submit the details along with the supporting documents as certified by the

statutory auditors. The representatives of Crayon were granted four weeks' time to submit the details/ documents.

9. Crayon vide its letter dated February 20, 2014, submitted the details/ documents as asked and submitted that the total collection was done by way of account payee cheques/ demand drafts. Regarding source of funds, it was said that Crayon partnered with the India's leading banks to offer the same to their clients on private placement basis and by invitation only. The bank's legal departments had also studied the structure and approved the private placement offer to their clients. It has been said that all the six repayments were done by way of account payee cheques drawn in favour of the investor along with the name of bank and account number mentioned on the same. Crayon vide another letter dated February 26, 2014, again reiterated the submission made earlier that the fund was not offered by Crayon directly but by invitation and private placement. There was no general offer to the public nor was the same advertised.

10. Thereafter, SEBI vide its letter dated August 08, 2014, while considering the documents/ details as submitted by Crayon, advised it to submit certain clarification on the number of persons, management fee and NAV calculation process. Crayon vide its letter dated September 17, 2014, submitted the clarifications and certain additional documents. In the said letter following were also stated:

    a. The total collection was done by way of account payee cheques/ demand draft. All the collections were received in the same bank account.
    b. All the six repayments were done by way of account payee cheques drawn in favor of the investors along with the name of the Bank and Account number mentioned on the same.
    c. The Crayon fund had solicited contributions from 474 investors including six joint investors and hence, the repayment was done to 480 investors.
    d. Management fees was charges @ 2% per annum on the fund corpus based on quarterly NAV (as disclosed in the initial offer documents of the Fund).

e. No management fees was charged during the extended period of fund life, further 1/4th of the total management fees charged by the fund manager during the fund life was reversed during the financial year 2011-12.

f. The estimated NAV was calculated on quarterly basis considering the realizable value of 'art works' in hand and taking the other assets and liabilities at book value/ realizable value. The valuation of individual 'art work' is done based on market value derived from primary prices derived from art galleries, secondary market prices and auction prices.

11. Subsequent to the analysis of the documents submitted by Crayon, a further opportunity of personal hearing was granted to Crayon on February 11, 2015. Representatives of the Noticee appeared and made submissions and upon their request, another date of hearing was granted to the Noticee on May 18, 2015. On May 18, 2015, the Managing Partners i.e. Mr. Mr. Gaurav Karan and Mr. Amit Vadehra appeared and *inter alia* submitted that they have repaid almost the entire sum to the investors and a small amount remains to be paid to the investors and that they are in the advanced stage of repaying the investors. Accordingly, they sought for an adjournment and a final opportunity was granted to the Noticee on August 31, 2015. However, the Noticee vide its email dated August 27, 2015, submitted that they are in final stage of repayment and requested for more time.

12. The Noticee then vide email dated November 24, 2015, requested for an opportunity of personal hearing, submitting that they are able to raise 80% of the amount needed to make the final payment to the investors and balance 20% will be raised by the first week of December 2015 and that such payment will be made to the investors by the second week of December 2015. Accordingly, an opportunity of personal hearing was granted to Crayon on December 15, 2015. Further, vide email dated December 02, 2015, Crayon was advised to furnish updated repayment details in the WRR format, certified by a statutory auditor. On December 15, 2015, the Noticee appeared and submitted repayment details in WRR format. However, since the same did not have the seal of the auditor, vide

email dated May 18, 2016, Crayon was advised to submit an auditor certified WRR including the list of email addresses of investors. Further, from the a perusal of the copies of the cheques submitted by Crayon vide its letter dated February 20, 2014 and during the hearing dated December 15, 2015, certain discrepancies were observed and therefore, vide letters dated May 26, 2016 and May 27, 2016, account statements of Crayon were sought from the Royal Bank of Scotland. Upon receipt of the of the account statements from the Royal Bank of Scotland, it was observed that repayments were made in 7 tranches and from the 7 tranches, 6 tranches pertaining to October 2009, August 2010, December 2010, April 2011, September 2011 and November 2012, made from account no. 6583687, were not reflected in the bank account statement for the period October 01, 2009 to February 23, 2015.

13. Since Crayon had not replied to SEBI letters dated May 26, 2016 and May 27, 2016, vide emails dated June 22, 2016 and July 11, 2016, Crayon was reminded to submit auditor verified WRR to SEBI. Crayon vide its letter dated July 15, 2016, submitted an auditor certified repayment statement. However, the said WRR contained information pertaining to “Cheque issued: Verified” and not the actual debit of the cheque from the Noticees account. Then vide letter dated August 11, 2016, Crayon submitted investors list to SEBI. In order to conduct a verification of repayments, a sample of 42 investors was selected at random out of 480 investors and vide email dated August 24, 2016, information regarding repayment was sought from these investors. Confirmation of repayment was received from only 8 out of 42 investors, and one person stated that there was Rs. 1 lakh still owed to him. Letters dated September 12, 2016 were sent to 33 investors who had not replied to SEBI’s first email. Out of the 33, 3 replies were received, out of which 2 were confirmations of repayment. As on October 15, 2016, 30 investors had not replied to SEBI’s emails/letters, 2 had stated that they did not receive complete repayment and 10 had confirmed receipt of principal amount. To further verify the repayment for 32 remaining investors, it was decided to seek bank account statements of the investors and accordingly, vide email dated November 18, 2016,

information was sought from different banks where the investors had accounts. Further, vide email dated November 24, 2016, list of investors to whom cheques had been sent but had not been presented was sought from Crayon and also clarification regarding the repayment to investors in the sample set were sought from Crayon. Vide email dated December 10, 2016 the company submitted details of 79 investors for which the 7th tranche is pending repayment and submitted copies of cheques and courier receipts to claim that they had issued and sent cheques to these 79 investors.

14. During this period the present matter was assigned to another Whole Time Member, due to the end of tenure and retirement of the earlier Whole Time Member to whom it was assigned. Due to the matter being assigned to a new Whole Time Member, following the principles of natural justice, an opportunity of personal hearing was again granted to Crayon on February 10, 2017. Vide email dated February 07, 2017, Crayon requested for rescheduling the hearing and accordingly, as requested by Crayon, the hearing was rescheduled to February 13, 2017. The Noticee appeared for the hearing on February 13, 2017 and made submissions and were granted time till February 20, 2017 for submitting the following documents:

    a. Details of repayment made to the investors (certified by Auditor)
    b. Reconciliation Statement
    c. All the returned undelivered envelopes containing copies of cheques to investors.
    d. List of investors still to be paid (Certified by Auditor)

15. Vide email dated February 23, 2017, Crayon submitted a list containing details of repayment made to investors, and the bank statements from 2013 to 2017. Since the list was not certified by an auditor, vide email dated March 08, 2017, Crayon was advised to submit the same along with returned undelivered envelopes containing copies of cheques to investors. Since no reply was forthcoming, a

reminders were sent vide emails dated March 16, 2017 and March 23, 2017. Vide email dated March 29, 2017, Crayon submitted the auditor certified list of repayment, which stated that an amount of Rs. 1,15,74,150/- was still due to investors and also submitted that they were unable to locate any returned couriers containing cheques. SEBI vide email dated April 07, 2017, advised Crayon to return the amount due to investors as per the auditor certificate and report compliance by April 20, 2017. Crayon vide email dated April 24, 2017, submitted that it would need a period of one month to make another attempt to refund the investors and also sought for directions on how to create an escrow account. Thereafter, SEBI vide email dated May 09, 2017 advised the Noticee again to put the money in an escrow account and granted time to repay outstanding amount to investors by May 24, 2017.

16. Crayon vide email dated May 29, 2017 informed SEBI that it had been able to contact 9 investors from the 129 investors in the list submitted by it and has issued cheques to these investors. Further, Crayon extension of time stating that as soon as the cheques for the 9 investors are cleared, which is expected in 10-15 days, they shall submit the final status of non-cleared cheques and open an escrow account and transfer the funds that remain to be cleared into it, as directed by SEBI. Since Crayon did not submit details of the 9 investors such as the names, amounts paid by the cheques and outstanding amounts, the same was sought from Crayon vide email dated May 31, 2017. Vide email dated June 06, 2017, Crayon provided the requested details of the 9 investors and the outstanding amount. SEBI vide email dated June 19, 2017 sought a status update from Crayon on the submission of made by Crayon vide its email dated May 29, 2017 that it would within 10-15 days submit the final status of non-cleared cheques and open an escrow account. However, vide email dated June 28, 2017, Crayon sought extension of time to file submissions by July 07, 2017. Then vide email dated July 12, 2017 Crayon sent a list of investors for which cheques have actually been cleared and submitted that 123 investors were left to be repaid and outstanding was now Rs. 1,11,61,850/-. Further, vide email dated August 15, 2017, Crayon

submitted a list of 8 cheques which have been cleared and that 121 investors remained to be repaid. SEBI vide email dated August 18, 2017 advised Crayon to open an escrow account and transfer the remaining amount as per the directions of the then WTM in the hearing on February 13, 2017. Then Crayon vide email dated September 06, 2017 again sought advice and directions on the procedure and formalities regarding opening of escrow account. SEBI vide its letter dated January 11, 2018 and email dated January 16, 2018 advised Crayon to contact their bank to open an escrow account. Reminders in this regard were sent to Crayon vide emails dated February 09, 2018, February 14, 2018 and February 15, 2018.

17. During this period the present matter was assigned to another Whole Time Member, due to the end of tenure and retirement of the earlier Whole Time Member to whom it was assigned. Due to the matter being assigned to a new Whole Time Member, following the principles of natural justice, emails dated September 17, 2018 and September 21, 2018 were sent to Crayon asking them if they would want another hearing before the Whole Time Member or make any additional submission. Crayon vide email dated September 28, 2018, submitted that they did not want another hearing or file additional submissions.

18. Vide SEBI emails dated December 03, 2018 and December 13, 2018, Crayon was asked to give supporting documents to the auditor certificate submitted by it on March 14, 2017. Crayon vide email dated December 17, 2018 submitted a datasheet, duly stamped by the auditor, containing details of all 474 investors, including their PAN, address, their investment amount, bank details and dates and amounts of repayment made. However, it was observed that the figures in the datasheet did not tally with the figures mentioned in the auditor certificate dated March 14, 2017. Accordingly, vide email dated December 20, 2018, Crayon was advised to submit correct status of refunds made to investors along with supporting documents duly certified by auditor. Crayon then, vide email dated

December 21, 2018, submitted a new auditor certificate dated December 20, 2018 along with an auditor certified datasheet.

19. Due to the end of tenure and retirement of the earlier Whole Time Member to whom it was last assigned, the present matter was subsequently assigned and placed before me on November 25, 2020. Following the principles of natural justice, an opportunity of personal hearing was again granted to Crayon on December 31, 2020. However, Crayon vide email dated December 30, 2020 sought for an adjournment. A final opportunity of personal hearing was granted to Crayon on January 14, 2021 and Crayon was advised to file its latest WRR before the date of hearing. Representatives of Crayon appeared on January 14, 2021 via video conferencing and made submissions. Crayon was advised to submit the latest certificate of the details of distribution made to investors till date. Crayon undertook to submit the latest certificate within 2-3 days and had also undertaken to complete the exercise of newspaper publication to reach out and contact the investors and distribute the remaining amount to investors and file a report within one months' time. Thereafter, Crayon vide email dated January 30, 2021, filed the latest details of repayments vide certificate dated January 22, 2021, issued by the Chartered Accountant Firm, R. K. Batra & Associates, containing the following details of repayment:

Details	**% Distribution**	**Amount Distributed**	**Amount cleared from Bank**	**Amount remaining to be cleared**
1st Payout	30%	18,17,10,000	18,17,10,000	-
2nd Payout	20%	12,11,40,000	12,11,40,000	-
3rd Payout	20%	12,11,40,000	12,11,40,000	-
4th Payout	15%	9,08,55,000	9,04,05,000	4,50,000
5th Payout	5%	3,02,85,000	2,98,85,000	4,00,000
6th Payout	4.11%	2,48,94,270	2,35,58,520	13,35,750
7th Payout	5.89%	3,56,75,730	2,74,29,730	82,46,000
Total	100%	60,57,00,000	59,52,68,250	1,04,31,750

CONSIDERATION OF ISSUES AND FINDINGS:

20. I have considered the SCN issued to Crayon, the submissions and the documents furnished by Crayon and the material available on record. I note that the main allegation as against Crayon is that the schemes operated by it are in the nature of CIS and that Crayon 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 11AA of the SEBI Act. The question to be determined in the present proceedings is whether the scheme operated by Crayon was in the nature of an unregistered CIS? If yes, what are the consequential directions are required to be issued in the matter?

21. Before dealing with the issue, it would be appropriate to refer to the relevant provisions of law which are alleged to have been violated by the Crayon and relevant extract whereof is reproduced hereunder:

Relevant extract of provisions of SEBI Act, 1992 (at relevant time):

*"**11AA. Collective investment scheme:-***

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

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

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized 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."

(3)Notwithstanding anything contained in sub-section (2), any scheme or arrangement—

(i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

(ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(iii) being a contract of insurance to which the Insurance Act, 1938 (4 of 1938), applies;

(iv) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952);

(v) under which deposits are accepted under section 58A of the Companies Act, 1956 (1 of 1956);

(vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956 (1 of 1956); (vii) falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982 (40 of 1982);

(viii) under which contributions made are in the nature of subscription to a mutual fund;

shall not be a collective investment scheme."

Relevant extract of provisions of CIS Regulations:

"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.*

Directions by the Board

65. *The Board may, in the interests of the securities market and the investors and without prejudice to its right to initiate action under this Chapter, including initiation of criminal prosecution under section 24 of the Act, give such directions as it deems fit in order to ensure effective observance of these regulations, including directions:*

(a) requiring the person concerned not to collect any money from investors or to launch any scheme;

(b) prohibiting the person concerned from disposing of any of the properties of the 182[collective investment scheme] acquired in violation of these regulations;

(c) requiring the person concerned to dispose of the assets of the scheme in a manner as may be specified in the directions;

(d) requiring the person concerned to refund any money or the assets to the concerned investors along with the requisite interest or otherwise, collected under the scheme;
(e) prohibiting the person concerned from operating in the capital market or from accessing the capital market for a specified period."

22. CIS has been defined under Section 11AA of SEBI Act, 1992. As per Section 11AA (1), any scheme or arrangement can be termed as CIS if it satisfies all the four conditions mentioned in Section 11AA(2) of the SEBI Act, 1992. In the following sub-paras, the scheme of Crayon has been examined to determine whether it satisfies the four conditions laid down in Section 11AA(2).

a. The first condition, as specified under Section 11AA(2)(i), is that the contributions or payments made by the investors, by whatever name called, are pooled and utilised for the purposes of the scheme/ arrangement. Crayon in its letter dated January 29, 2007, had submitted that 'the corpus of such schemes shall comprise of amounts raised by issuing units in the schemes to investors'. It is noted that Crayon has collected Rs. 60.57 Crore, from 474 investors, which as per the submission of Crayon, has been utilized for investing and dealing in art works. Further, I note from the Confidential Information Memorandum (hereinafter referred to as "**Memorandum**") of the Crayon Capital Art Fund Scheme 1, as provided by Crayon, states in sub-para 1 of para I of the Memorandum that "*Crayon Capital (the Sponsor") has sponsored "The Crayon Capital Art Fund" (the "Art Fund/Fund") with the objective of investing in art works, including paintings, photography, installments, artifacts, miniatures sculpture etc. Eligible investors ("Investors/Unit Holders") shall be invited to invest in the corpus of various Schemes offered by the Fund by purchasing units, each of which represent a certain share in the corpus of that particular scheme. The amounts collected from such investments shall be utilized to purchase and sell art works with a view to maximize returns on investment in art*". This shows that Crayon pooled the money collected from the investors and utilized it for buying the Art works

which was the purpose of the scheme floated by it. From the same, it is clear that Crayon pools the payments from its investors for the purposes of the scheme, thus, satisfying the first condition as stipulated in Section 11AA(2)(i) of the SEBI Act, 1992.

b. The second condition, as specified under Section 11AA(2)(ii), 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. In this regard, again I refer to the letter of Crayon dated January 29, 2007, wherein, it had been said that it has launched only one scheme i.e. 'The Crayon Capital Art Fund Scheme 1', which was close ended and the term of the said scheme is 36 months, following which its assets shall be liquidated and proceeds shall be distributed *pro rata* amongst its investors. Further, that the minimum investment in the scheme is Rs.10,00,000 and in multiples of Rs.1,00,000 afterwards and the corpus of such schemes shall comprise of amounts raised by issuing 'units' to the investors and the corpus of every scheme shall be utilized for investing and dealing in the art works with a view to maximising returns from investments. Further, I also note that the Memorandum of the Crayon Capital Art Fund Scheme 1, in sub-para 2 of para V under "Investment Objective" of the Scheme, states that "*The Crayon Capital Art Fund focuses on enhancing wealth for the Investors. The Fund aims to take advantage of the current boom in the art market from the subcontinent and seeks to deliver superior returns to its investors through a fund that invests in a well-diversified portfolio of select works by leading artists from India, and South Asia as a whole. The objective of the Art Fund is to formulate schemes to collect capital from proposed investors in the trust for the purpose of investing the Unit Capital in Artworks by way of acquisition, holding, management, trading and disposal thereby providing facilities for the participation by investors as beneficiaries in such properties or investments and as pro rata beneficiaries in the profits or income arising therefrom*". This clearly shows that contributions

or payments were made to such scheme or arrangement by the investors with a view to receive profits or income from such scheme or arrangement. Thus, the scheme floated by Crayon satisfies the second condition as stipulated in Section 11AA(2)(ii) of the SEBI Act, 1992.

c. The third condition, as specified under Section 11AA(2)(iii), is that the property, contribution or investment forming part of the scheme or arrangement, whether identifiable or not, is managed on behalf of the investors. I note that Crayon, by its own admission, was managing the works of art, operating the schemes and carrying on the functions of the Crayon fund. Crayon in its letter dated January 29, 2007, had also submitted that it has a team of highly competent and talented professionals to enable it to manage the 'art fund'. I also note that the Memorandum of the Crayon Capital Art Fund Scheme 1, in sub-para 4 of para IV, states that "*Crayon Capital shall act as the AMF to the Art Fund and shall discharge all its obligations in accordance with the AMA dated 11th November, 2006*". Further, sub-para 5(a) and (b) of para IV under the heading "The Management of the Fund*",* states that *"The AMF has a team of highly experienced and talented professionals to enable it to manage the Art Fund in a way so as to meet its objectives.*

……...The AMF is committed to dealing with quality artworks which would enable it to maximize returns to the Investors of the Art Fund. It has appointed an Art Advisor and will work with Investment Associates who possess significant experience and credentials to extensively advise the AMF on identification, trading, valuation and authentication of art works. Accordingly, all the decisions on the sale and purchase of art works shall be taken by the AMF on the basis of the recommendation of its Art Advisor and Investment Associates." From the above, I find that the art works were not managed by the investors at any stage of the scheme and the same were managed by Crayon, who acted as the Asset Management Firm (hereinafter referred to as "**AMF**") to the Art Fund, on behalf of the investors. The same therefore,

satisfies the third condition as stipulated in Section 11AA(2)(iii) of the SEBI Act, 1992.

d. The fourth condition, as specified under Section 11AA(2)(iv), is that investors do not have day to day control over the management and operation of the scheme or arrangement. As stated above, Caryon acted as the AMF for managing the 'art fund'. Further, with regard to day to day control over the management and operation of the scheme, I note that the Memorandum of the Crayon Capital Art Fund Scheme 1, in sub-para 3 of para lV, states that "*The Trust is principally responsible to the Investors for the functioning of the Scheme and the day-to-day management of its assets. This includes, but is not limited to, statutory compliances, if any, the sale and purchase of art works, the collection and distribution of income, payment of tax, the dissemination of relevant information etc*.

…….

Essentially the Trustees are empowered to carry out the business of the Trust in order to meet the investment objectives. This necessarily involves the following:

- *The framing of Schemes with such regulations and rules as deemed fit and to deal with the assets of each such scheme with a view to meet the investment objectives;*
- *The power to appoint an Asset Management Firm to carry out the business of the Art Fund and to act on its advice and recommendations;*

……".

This makes it clear that the investors did not have day to day control over the scheme, which satisfies the fourth and the last condition as stipulated in Section 11AA(2)(iv) of the SEBI Act, 1992.

23. I also find that the scheme of the Crayon does not fall in the schemes or arrangements enumerated in Section 11AA(3) of the SEBI Act, 1992 which enumerates the schemes or arrangements which are excluded from the ambit of

definition of Collective Investment Schemes, as given under Section 11AA(1) of the SEBI Act, 1992. In view of the foregoing, I am of the considered view that the scheme of Crayon was in the nature of a CIS as all the four conditions specified under Section 11AA(2) of the SEBI Act, 1992 are satisfied.

24. Crayon has contended that Crayon Fund being a private trust and the sponsor and the asset manager of the Crayon Fund is a partnership firm, 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, 1992. Further, that 'art funds' are trusts regulated under the provisions of the Indian Trust Act. In this regard, I note that applicability of Section 11AA of the SEBI Act, 1992 to "private trusts" is no more *res integra*. Hon'ble Supreme Court in its judgment dated February 12, 2020 in the matter of ***Civil Appeal No. 19936 of 2017 - Pravin Gandhi Vs. SEBI*** relating to schemes of Yatra Art Fund Pvt. Ltd. (hereinafter referred to as "**Yatra matter**") held as under:

"……..Based on the aforesaid, Shri Vishwanathan argued that it would not be possible for him to fall foul of the law considering that Section 11AA uses the word "company" and not "person", and as his client carried on this business in the form of a Trust, the provisions of SEBI Act would not be attracted at all.

This argument would fly in the face of both Section 12(1B) and the CIS Regulations, in particular, Regulation 2(h), which defined a "Collective Investment Management Company" as follows:

> *"(h) "Collective Investment Management Company" means a company incorporated under the Companies Act, 1956 and registered with the Board under these regulations, whose object is to organise, operate and manage a collective investment scheme;"*

Regulation 3 of the CIS Regulations states:

> *"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."*

The statutory scheme, therefore, is that, if a collective investment scheme, as defined, is to be floated by a person, it could only be done in the form of a collective investment management company and in no other form. This is the reason why Section 11AA uses the expression "company" in sub-Section (2) and not the word "person" (as the CIS Regulations of 1999 had come into force on 15.10.1999; Section 11AA being enacted and coming into force on 22.02.2000).

Once the statutory scheme becomes clear, it is clear that the collective investment scheme that was being carried on by the appellants in the form of a private Trust would be in the teeth of the Statute read with the CIS Regulations and would thus be illegal……."

25. Similarly, Hon'ble SAT in its order passed in the ***Appeal No. 62 of 2013 - Osian's Connoisseurs of Art Pvt. Ltd. Vs. Securities and Exchange Board of India*** (hereinafter referred to as "**Osian's matter**") held as under:

> *"12. ……..Fact that Section 11AA(2) refers to any scheme or arrangement made or offered by any 'company' would not mean that the jurisdiction of SEBI to regulate CIS is restricted to any scheme or arrangement made or offered by any company, because, Section 11AA(2) merely sets out the conditions applicable to any scheme or arrangement made or offered by an entity to which SEBI, under CIS Regulations would grant registration for running a CIS. Section 11AA(2) merely enumerates the conditions applicable to a CIS in consonance with the provisions that were contained under the CIS Regulations.*
>
> *13. Appellants however contend that since Section 11AA(2) begins with the words "any scheme or arrangement made or offered by any company", it must be held that the expression "Collective Investment Scheme" defined under Section 11AA(1) is*

restricted only to a scheme or arrangement made or offered by any company which satisfy the conditions set out under Section 11AA(2). It is contended that in the present case the scheme is floated on behalf of a Trust and not by a company and therefore the scheme in question falls outside the purview of SEBI Act. There is no merit in the above contention because, as noted earlier, 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. The words 'any scheme' under Section 11AA(1) is wide enough to cover any scheme made or offered by any entity. Since SEBI is empowered under the SEBI Act to regulate CIS made or offered by any entity and SEBI has framed CIS Regulations in the year 1999 and in the said regulations it is provided that no person other than a collective investment management company which has obtained a certificate under CIS Regulations shall carry on CIS, Section 11AA inserted to SEBI Act with effect from 22.02.2000 reiterates that any scheme or arrangement made or offered by any entity which satisfies the conditions set out under Section 11AA(2) would be CIS, however, only a collective investment management company which satisfies the conditions set out under Section 11AA(2) shall be eligible to obtain registration from SEBI for operating CIS."

26. In addition to the law laid down by the Hon'ble Supreme Court in Yatra matter (*supra*), I find that Section 11AA (3) of the SEBI Act, 1992 provides that certain schemes and arrangement shall not be considered as CIS as provided under Section 11AA (2). Section 11AA (3) enlists *inter alia* schemes or arrangements by cooperative societies, mutual funds, various pension schemes framed under Employees Provident Fund and Miscellaneous Provisions Act, 1952 and schemes falling with in the chit business as defined in Section 2(d) of the Chit Funds Act, 1982. It shows that definition given under Section 11AA(2) covered all these schemes also which are not floated by companies or by companies only and therefore, the legislature specifically carved out exception for such schemes. If the contention of Crayon that Section 11AA(2) applies only to schemes and arrangements by companies only then there was no need for specifically excluding

the aforesaid schemes from the purview of Section 11AA(2). Thus, legislative scheme of Section 11AA of SEBI Act, 1992 and the law laid down by the Hon'ble Supreme Court makes it clear that the provisions of Section 11AA of the SEBI Act, 1992 applies to private trusts. Further, with regard to the contention that 'art funds' are trusts regulated under the provisions of the Indian Trust Act, I find that Trust Deed is also an agreement between the author/settlor of the trust and trustees which agrees to discharge obligation imposed on them by trust. If a trust deed contains certain activities which are governed by the provisions of other law (in the present case, SEBI Act, 1992 and CIS Regulations) then settlor and trustees are required to comply with the provisions of other laws and it is not open for such persons to contend that since, the trust is governed by the Trust Deed and the Trust Act, therefore, the provisions of other laws shall not apply. Therefore, I find that the contentions raised by Crayon in this regard is misplaced and hence, untenable

27. Crayon has also argued that Part II of the IX Schedule of CIS Regulations sets out accounting norms only vis-a-vis the plantation and live-stock schemes and this does not refer to any scheme whose investment objective is to invest in assets such as 'art works'. I agree with this argument of Crayon that accounting norms specified under Schedule IX does not specifically refer to the scheme or arrangements involved in Art Works. However, it does not mean that Crayon was at liberty to not comply with the requirement of seeking registration in terms of requirements laid down under SEBI Act, 1992 and CIS Regulations, when its schemes were falling in the definition of Collective Investment Schemes, as provided under Section 11AA of the SEBI Act, 1992. The appropriate course of action for Crayon would have been to seek registration as per law and then to approach the SEBI as to applicability of accounting policies required to be followed in terms of Schedule IX of CIS Regulations. In view of the clear scheme of the SEBI Act, 1992 and CIS Regulations, as explained by Hon'ble Supreme Court in Yatra Case (supra), it is too naïve to contend that since CIS Regulations did not provide for any specific accounting standards to be followed by schemes or

arrangements involved in Art Works, therefore, provisions of SEBI Act, 1992 and CIS Regulations are not applicable to such schemes. In view of the same, I do not find any merit in the argument of Crayon.

28. Crayon has also submitted that the subscription to the scheme is undertaken on a private placement basis to the identified, eligible sophisticated high networth individuals with minimum investment size of Rs. 10 lakh. From the submission of Crayon, I note that 474 investors had invested Rs. 60.57 crore in the scheme. Crayon has also argued that the units are neither offered to general public nor marketable and these are offered to eligible select individuals. It has been said that the 'Information Memorandum' was a private and confidential document and was solely for the use of the persons to whom it was addressed. Crayon has further said that Regulation 26 read with Regulation 21(1)(i) and 21(3) read with Regulation 21(1)(A) of the CIS Regulations contemplates invitation to the public to subscribe to the units of CIS. I note that said contention of Crayon is premised on the fact that CIS Regulations deals with schemes or arrangements which involve inviting subscription from public. In this regard, I note that in terms of Regulation 2(1)(t) of the CIS Regulations, as existing at the relevant time, "offer document" meant any document by which applications for subscribing to units of scheme are invited from the public. The term "public" has not been defined under the CIS Regulations. In such case, it would be appropriate to refer to the provisions of the Companies Act, 1956 which in proviso to Section 67 thereof used to provide that any invitation or offer of shares or debentures made to 50 or more persons shall be deemed to be made to public irrespective of the fact that Section 67 (3) used to provide that certain offerings (known as "private placement") would not be treated as made to public by virtue of Section 67(1) and 67 (2) on compliance with certain conditions of offering provided under Section 67(3). In other words private placement of shares or debentures, under Section 67(3), is permissible only to 49 persons and moment it is made to 50 or more persons, it is deemed as made to public. Thus, even after applying the standards provided under the Companies Act, 1956, the scheme of Crayon can be termed as offered to public because as

per own submissions of Crayon it had invited subscriptions from 474 investors. Therefore, the contention of Crayon, in this regard, are not tenable. Further, I note that similar contention was raised before Hon'ble SAT in the Osian matter (Supra) and Hon'ble SAT while dealing with the said contention in its order dated October 13, 2015, held as under:

"*27. Fact that the scheme was launched by the appellant only to select set of investors (high net worth investors) by way of private placement, does not in the facts of present case, absolve the appellant of its obligation to comply with the provisions of SEBI Act and the regulations made thereunder. As held by the Apex Court in case of Sahara India Real Estate Corporation Limited (supra) if offer is made to more than 49 persons, then it will automatically be deemed to be a public offer and not a private placement. In the present case, investments from more than 650 investors have been received in violation of SEBI Act and CIS Regulations and therefore SEBI is justified in passing the impugned order with a view to protect the interests of investors. Similarly, decision of the Apex Court in case of PGF Limited would also be squarely applicable to the facts of present case because amounts have been collected from the investors for the purpose of pooling the funds and investing the same in art works so that the profits arising therefrom could be passed on to the investors. Under the CIS Regulations it is not mandatory that there must be guaranteed return and it would be enough even if the funds collected are pooled and invested with a view to earn profit and distributing that profit to the investors.*"

29. As regards the contention of Crayon that it does not deal with or transact in securities as defined under the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCRA**"), I note that in terms of Section 2(h)(ib) of SCRA, the term "securities" includes units or any other instrument issued by any collective investment scheme to the investors in such schemes. Further, in terms of Regulation 2(1)(cc) of the CIS Regulations, as existing at the relevant time, the term "unit" includes any instrument issued under a scheme, by whatever name called, denoting the value of the subscription of a unit holder. Since, it has been found that the scheme of Crayon was collective investment scheme, then any document issued by Crayon to investor which denotes the value of the

subscription of such investor, is "unit" in terms of Regulation 2(1)(cc) of CIS Regulations and consequently, is also securities within the meaning of Section 2(h) of SCRA. Therefore, the contention of Crayon that it does not deal or transact in securities is not tenable. In this regard, reference may also be made to the Order dated July 23, 2013 of the Hon'ble SAT in ***Appeal No. 252 of 2012 – NGHI Developers Pvt. Ltd. Vs. SEBI***, wherein, Hon'ble SAT held as under:

"……20. Next, the Appellants contend that PGF Ltd. had issued unit certificates which have not been issued by the Appellants in the present case. In this connection it is pertinent to reproduce Regulation 2(dd) of the CIS Regulations which defines the word "unit":-
"2(dd)). "unit" includes any instrument issued under a scheme, by whatever name called, denoting the value of the subscription of a unit holder"

21. On a perusal of the above mentioned provision, it seems clear to us that all other investments such as the agreements and allotment letters alongwith the registration letters issued under the scheme would be covered under the expression "units" under Regulation 2(dd) of the CIS Regulations. Moreover, the non-issuance of unit certificates claimed by the Appellants cannot take the business of the Appellants outside the purview of the concept of CIS. The CIS Regulations lay down certain conditions to be adhered to by companies floating CISs, one of which is Regulation 32 which provides that the company in question ought to issue unit certificates at the earliest. The failure to do so without in the first place seeking registration with SEBI cannot by any stretch of the imagination be considered a valid reason to bring the schemes launched by the Appellants out of the scope of CISs. If this ludicrous submission of the Appellants were to be given any credibility, it would lead to the absurd consequence of companies being able to hoodwink the law governing CIS by not following the provisions enshrined in the SEBI Act and the CIS Regulations……"

30. In view of the aforesaid discussions, I find that the scheme of Crayon was in the nature of a CIS as all the four conditions stipulated under Section 11AA (2) of the SEBI Act, 1992, are satisfied. I, therefore, find that Crayon was engaged in the

fund mobilising activity from the public by floating/ sponsoring/ launching CIS as defined in Section 11AA of the SEBI Act, 1992 without obtaining certificate of registration from SEBI as required under Section 12(1B) of the SEBI Act, 1992 read with Regulation 3 of the CIS Regulations and that directions under Sections 11 and 11B of the SEBI Act, 1992 read with Regulation 65 of CIS Regulations are warranted in the present case.

31. Regarding the amounts collected it by under its unregistered CIS, Crayon has submitted that the 'Crayon Capital Art Fund Scheme I' was wound up with effect from November 05, 2012 and realization from net assets have been distributed to the investors. Crayon submitted that it had launched only one scheme i.e. 'The Crayon Capital Art Fund-I' and the funds were collected from the investors through account payee cheques/ demand drafts. It has also been submitted that repayments to the investors were made by the account payee cheque drawn in favour of the investors. In this regard, I note that Crayon has filed multiple certificates with SEBI containing details of repayment made to investors over the years, as recorded in detail in paras 7 to 19 above. Further, from the material available on record, I note that the 'Crayon Capital Art Fund Scheme I' was closed with effect from November 05, 2012 and Crayon has not raised any further funds from investors.

32. It is seen from the documents provided by Crayon that one Chartered Accountant firm**,** R.K Batra & Associates, New Delhi (Firm Registration no. 011514N) has verified copies of all the cheques issued to the investors and have also verified the details of the beneficiary along with the details of the bank and their account numbers. I note that Crayon, vide its email dated December 21, 2018, submitted a certificate dated December 20, 2018 from the CA Firm R. K. Batra & Associates along with the supporting data sheet. The status of repayment as on December 20, 2018, was as under:

1.	Total amount mobilized from investors	Rs. 60,57,00,000

2.	Total number of investors	474
3.	Number of investors who have been repaid fully	362
4.	Number of investors who have been repaid partially	112
5.	Amount that has not yet been repaid to these 112 investors	Rs. 1,04,31,750
6.	Total amount repaid to investors	Rs. 59,52,68,250

33. I note that during the personal hearing on January 14, 2021, Crayon was advised to file the latest certificate of repayment details. Further, during the said hearing, Crayon had undertaken to complete the exercise of newspaper publication and make further attempts to contact the investors and thereafter, file a report within one month. Crayon then vide their email dated January 30, 2021, submitted the latest details of repayment vide certificate dated January 22, 2021, certified by the chartered accountant R. K. Batra & Associates, the details of which are as under:

Details	**% Distribution**	**Amount Distributed**	**Amount cleared from Bank**	**Amount remaining to be cleared**
1st Payout	30%	18,17,10,000	18,17,10,000	-
2nd Payout	20%	12,11,40,000	12,11,40,000	-
3rd Payout	20%	12,11,40,000	12,11,40,000	-
4th Payout	15%	9,08,55,000	9,04,05,000	4,50,000
5th Payout	5%	3,02,85,000	2,98,85,000	4,00,000
6th Payout	4.11%	2,48,94,270	2,35,58,520	13,35,750
7th Payout	5.89%	3,56,75,730	2,74,29,730	82,46,000
Total	100%	60,57,00,000	59,52,68,250	1,04,31,750

34. From the above, it is observed that Crayon had collected a total of Rs. 60,57,00,000/-. Crayon has made 7 pay outs to the investors for making repayments wherein it has repaid Rs. 59,52,68,250/- and as on January 22, 2021, Rs. 1,04,31,750/- still remains to be repaid. Crayon has submitted that it has to refund remaining Rs. 1,04,31,750/- to 112 investors who have been partially repaid. I note that Crayon has not submitted a report or any letter on the exercise of newspaper publication or efforts in contacting the investors as undertaken by

Crayon during the hearing on January 14, 2021. Further, I note that vide email dated January 31, 2021, Crayon had submitted that they shall once again try and contact all the investors who they were not able to connect with earlier for the final payout and update SEBI on the result of this exercise in the next 30 days. However, I note that Crayon has not filed any update or letter in this regard till the date of passing this order. Therefore, I find that at present, Rs. 1,04,31,750/- is yet to be repaid to 112 investors by Crayon. I also note that as per the material available on record, there are no investor complaints pending against Crayon. In this regard, I note that Hon'ble Supreme Court in its judgment and order dated February 12, 2020 rendered in the Yatra matter (Supra) while dealing with a case of Art Fund wherein SEBI vide its order dated November 06, 2015 had directed to refund the entire monies collected by Yatra Art Fund under its scheme to all the investors along with the returns at the rate of 10% per annum and an appeal against the said SEBI order was disposed of by the Hon'ble SAT in terms of order passed by it in the Osian matter (Supra), held as under:

> *"…….. However, we find that this litigation has been going on for an extremely long period of time and instead of remanding the matter to SEBI to decide the refund issue afresh, we order as follows:*
>
> *The principal amount repayable to each investor of both the Schemes shall be paid back within a period of six months from today in the following manner:*
>
> *We are informed that so far as the first Fund is concerned, 81.32 per cent of the total principal sum of Rs.10.95 crores has been repaid.*
>
> *Insofar as Fund No. 2 is concerned, we have been informed that 50 per cent of the principal amount of Rs.21.92 crores has been repaid.*
>
> *The balance owing to the 50 investors of Fund No. 1 and to the 132 investors of Fund No. 2 be therefore, repaid within six months from the date of this judgment.*

So far as the interest at the rate of 10 per cent is concerned, this amount will be paid on the principal outstanding amount from the date on which it becomes due to each such member, till the date on which each Fund came to an end, i.e., insofar as Fund No. 1 is concerned till 15.09.2011 and so far as Fund No. 2 is concerned till 31.01.2012. The aforesaid interest shall be paid within nine months from the date of this judgment.

Once the amounts are actually paid within the time period specified, compliance report be filed with SEBI in this behalf……..."

35. From the documents submitted by Crayon including the certificate dated January 22, 2021 from R. K. Batra & Associates, Chartered Accountant, it is revealed that out of the total amount of Rs. 60,57,00,000/- collected by Crayon from the 474 investors, an amount of Rs. 1,04,31,750/- is yet to be refunded to 112 investors. Thus, Crayon must return the amounts, in accordance with principle underlying the aforesaid directions issued by the Hon'ble Supreme Court in Yatra matter (Supra).

36. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11 and 11B read with Section 19 of the SEBI Act, 1992 and Regulation 65 of CIS Regulations, hereby issue the following directions:

a. Crayon shall refund the balance amount to the remaining investors who are yet to be repaid. Crayon shall also pay on the total principal amount collected from each of the remaining investors, an interest at the rate of 10% per annum, from the date when amount to such investors first became due and till the date of closure of its scheme. The aforesaid balance amount collected shall be refunded within a period of Six months from the date of coming into force of this order and the aforesaid interest on total amount collected shall be paid within a period of Nine months from the date of coming into force of this order.

b. Crayon shall file winding up and repayment reports, duly certified by an auditor, to SEBI in the format provided under SEBI (Collective Investment Schemes) Regulations, 1999, along with the trail of funds claimed to be so refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds, within a period of 15 days after the expiry of aforesaid Six months and Nine months period, respectively, as referred in para 36(a) above. These reports shall be forwarded by Crayon to "The Division Chief, CIS Division, Investment Management Department, Securties and Exchange Board of India, SEBI Bhawan, Plot NO. C4 A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051.

c. Crayon shall not alienate or dispose of or sell any assets except for the purpose of making refund to its investors, as directed above.

d. Crayon 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 or till the payment of amounts as directed in para 36(a) above, whichever is later.

e. Crayon shall not launch any Collective Investment Scheme or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws after the expiry of period of debarment as mentioned above.

f. SEBI, on failure of Crayon to effect the refunds as directed in the para 36(a) or to file reports as directed in para 36(b), above, within the period provided thereunder, shall recover such amounts, in accordance with Section 28A of the SEBI Act, 1992.

g. The directions in para 36(c) above shall cease to operate once Crayon has complied with the directions in para 36(b) above.

37. The order shall come into force with immediate effect. However, in view of the exceptional circumstances emerged due to the outbreak of a COVID-19 and consequential lockdowns imposed in different parts of the country, the direction given in paragraph 36(a) shall come into force on June 15, 2021.

38. A copy of this order shall also be sent to the Noticee, recognised Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

Sd/-

Date: May 20, 2021 **ANANTA BARUA**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA