BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SR/SJ/2020-21/8539-8545/51-57

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

Name of the Entity	PAN of Entity	Order No.
Pancard Clubs Limited	**AAACP9093R**	**Order/SR/SJ/2020-21/8539/51**
Mr. Manish Kalidas Gandhi	**AITPG8933H**	**Order/SR/SJ/2020-21/8543/55**
Mr. Chandrasen Ganpatrao Bhise	**AADPB6103E**	**Order/SR/SJ/2020-21/8544/56**
Mr. Ramachandrandran Ramakrishnan	**AAIPR9196G**	**Order/SR/SJ/2020-21/8545/57**
Mrs. Shobha Ratnakar Barde	**ASLPB1204C**	**Order/SR/SJ/2020-21/8541/53**
(Late) Mr. Sudhir Shankar Moravekar	**AADPM2933M**	**Order/SR/SJ/2020-21/8540/52**
(Late) Mrs. Usha Arun Tari	**ABYPT8841M**	**Order/SR/SJ/2020-21/8542/54**

In the matter of Pancard Clubs Limited

FACTS OF THE CASE IN BRIEF

1. A Department (hereinafter referred to '**OD**') of Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination into the alleged unauthorised mobilization of money from public by Pancard Clubs Limited (hereinafter referred to as **PCL)** and into possible violation of provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and various rules and regulations made thereunder. The said Examination revealed that PCL was carrying out Collective Investment Schemes (hereinafter referred to as '**CIS**') under the gab of

time share business without obtaining a certificate of registration, in accordance with SEBI (Collective Investment Scheme) Regulations, 1999 (hereinafter referred to as '**SEBI (CIS) Regulations**'), from SEBI.

APPOINTMENT OF ADJUDICATING OFFICER

2. **For PANCARD CLUBS Ltd.:** Based on the said examination, OD of SEBI initiated Adjudication Proceedings against the Pancard Clubs Ltd.(hereinafter referred to as '**PCL/Noticee 1**') and vide order dated April 30, 2014 appointed Shri A. Sunil Kumar as Adjudicating Officer, under section 15-I of SEBI Act and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under section 15HA of SEBI Act the alleged violations of provisions of Section 12(1B) of the SEBI Act read with regulation 3 of SEBI (CIS) Regulations and regulation 4(2)(t) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the '**SEBI (PFUTP) Regulations')** by PCL. The said matter was thereafter transferred to Shri S V Krishnamohan and then to Shri Nagendraa Parakh. Lastly, the said matter was transferred to Ms. Sangeeta Rathod, undersigned Adjudicating Officer (in short AO) by the Competent Authority vide order dated July 10, 2017.

3. **For Directors of PCL:** After initiating adjudicating proceedings against PCL, OD undertook an examination and OD initiated adjudication proceedings against directors of PCL viz. Mr. Manish Kalidas Gandhi (hereinafter referred to as '**Manish / Noticee 2**')**,** Mr. Chandrasen Ganpatrao Bhise (hereinafter referred to as '**Chandrasen / Noticee 3**')**,** Mr. Ramachandran Ramakrishnan (hereinafter referred to as '**Ramakrishnan / Noticee 4**'), Mrs. Shobha Ratnakar Barde (hereinafter referred to as '**Shobha / Noticee 5**'), Mr. Sudhir Shankar Moravekar (hereinafter referred to as '**Sudhir / Noticee 6**')**,** Mrs. Usha Arun Tari (hereinafter referred to as '**Usha / Noticee 7**')**.** SEB**I** vide order dated June 01, 2016 appointed Shri Nagendraa Parakh as Adjudicating Officer, under section 15-I of SEBI Act and rule 3 of Adjudication Rules to inquire into and adjudge under section 15HA of SEBI Act the alleged violations of provisions of regulation 4(2)(t) of SEBI (PFUTP) Regulations by the Noticees 2 to 7. Subsequently, the Competent Authority vide order dated July 10, 2017 appointed undersigned as AO for the adjudication proceedings pending against PCL and its directors i.e. Noticees 2 to 7.

4. As common question of law and facts is involved in the separate adjudication proceedings initiated against PCL and its directors, I decide to dispose of the said adjudication proceedings by passing a common order for both i.e. the Noticee 1 and Noticees 2 to 7.

SHOW CAUSE NOTICES, REPLIES AND PERSONAL HEARINGS

5. A show cause notice no. ASK/RGA/18264/2014 dated June 26, 2014 and a supplementary show cause notice no. EAD/AO-NP/VVK/16885/1/2016 dated June 10, 2016 were issued to PCL under rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held against it and why penalty under section 15HA of SEBI Act be not imposed on it for the violations alleged and specified in the said show cause notices. The show cause notice dated June 26, 2014 issued to PCL was sent through hand delivery and the same has been served upon PCL. Further, supplementary show cause notice dated June 10, 2016 issued to PCL was sent through speed post acknowledgment due (in short SPAD) and the same had been served upon PCL.

6. A common show cause notice no. EAD/AO-NP/VVK/16886/1/2016 dated June 10, 2016 was issued to the directors of PCL i.e. Noticees 2 to 7 under rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held against them and why penalty under section 15HA of SEBI Act be not imposed on them for the violations alleged and specified in the said show cause notice. The said common show cause notice dated June 10, 2016 issued to each of the Noticees 2 to 7 were sent through speed post acknowledgment due and the same had been served upon the Noticees 2 to 7.

Allegations levelled against PCL (Noticee1) in show cause notice dated June 26, 2014

7. The summary of the allegations levelled by OD against PCL in the said SCN dated June 26, 2014 is as follows:

a) The main object of PCL is to carry on business as proprietors of all types of clubs, gaming rooms, card rooms and billiard rooms, golf club and creating recreation and club facilities and generally as amusement caterers and organisers, promoters, providers and managers of all kinds of entertainments.

b) PCL is a part of Panaromic Group of Companies having interest in hospitality, timeshare, Travel & Tourism and Information Technology. PCL has presence in India, USA, Thailand and New Zealand. It owns and operates hotel properties at 31 locations across the globe with 22 hotels in India, four hotels in USA, one hotel in New Zeeland and condominium units in Thailand. It also has reciprocal club affiliation with several clubs and resorts across India. A copy of Brochure was provided to the Noticee as Annexure II to the said show cause notice.

c) PCL is in the business of providing timeshare services for over 16 years to thousands of families across India.

d) PCL is offering following schemes to general public.

i. Pancard Clubs-Desire Holiday for 37 months

ii. Pancard Clubs-Relax Holiday for 3.3 years (39 months)

iii. Sunrise Holiday for 5 years

iv. Devine Holiday for 66 months

v. Pancard Clubs- Delight Holiday for 6.3 years (75 months)

vi. New Royal Holiday 9 years

vii. New regular Holiday for 10 years

viii. Pancard Clubs-New premium Holiday for 10 years.

e) From the perusal of the scheme details provided by PCL it was observed that Pancard Club- Relax Holiday for 3.3 years, Delight Holiday for 6.3 years and New Royal Holidays for 9 years have some common features. The details of these schemes of PCL are provided as under:

Pancard Clubs –Relax Holiday for 3.3 years (39 months): (with effect from May 02, 2008):

Current Average Tariff for three room nights	Offer price of three room nights at a discount	Minimum room nights to be bought	Estimated surrender value of three unused room nights @Rs. 1260/- per room nights
Rs. 6,000 (2000*3)	Rs. 2700 (900*3)	3	Rs 3780

Pancard Clubs- Delight Holiday for 6.3 years (75 months): with effect from May 02, 2008):

Current Average Tariff for three room nights	Offer price of three room nights at a discount	Minimum room nights to be bought	Estimated surrender value of three unused room nights @Rs. 1800/- per room nights
Rs. 6,000 (2000*3)	Rs. 2700 (900*3)	3	Rs 5400/-

New Royal Holiday 9 years: (with effect from May 22, 2007):

Current Average Tariff for three room nights	Offer price of three room nights at a discount	Minimum room nights to be bought	Estimated surrender value of three unused room nights @Rs. 1800/- per room nights
Rs. 2,000 (2000*1)	Rs. 900 (700*3)	1	Rs 2700/-

f) As per PCL policy, applicant can commence utilizing his room night entitlements after 60 days from the date of acceptance of application. Further an applicant shall be entitled to utilize a maximum of 33% of the total room nights purchased by him in a single financial year.

g) Upon expiration of tenure under the aforesaid scheme, the applicant may surrender his unutilized room nights and opt for following :

The applicant PCL at the time of surrender of room nights and shall be paid after the expiry of tenure under the scheme.

i. The applicant may opt to exchange or barter or utilize the products and services of the company or group companies.

ii.The applicant may opt to convert his unutilized room nights to the extent of surrender value entitlement into life membership of various clubs of the company/group.

iii.The company in its discretion may give an option to its applicant to convert his unutilized room nights, to the extent of surrender value, into shares, debentures.

h) The applicants are also offered free insurance benefits from IRDA approved Insurance Companies. The other schemes details was provided to PCL as Annexure III to the said show cause notice.

i) PCL used to issue certificate specifying that acceptance of the application and all the benefits due to the investors (copy of the certificate issued to the applicant was provided to PCL as Annexure IV to the said show cause notice).

j) The details of the financial statements provided by PCL for the financial year 2009-10, 2010-11, 2011-12 and 2012-13 has been analysed and the relevant summary of the same was provided to PCL as Annexure V to the said show cause notice.

k) From the above financial details and the noting provided by the auditors (copy provided to PCL as Annexure VI to the said show cause notice), OD observed that approximately 0.2% of the investors are availing the room nights compared to approximately 99.8% investors are surrendering the room nights.

l) Further, PCL's submission, with respect to amount mobilized, and no of room nights actually utilized for the financial year April 01, 2012 to March 31, 2013 under various schemes is provided as under:

S. No.	Scheme	Amount mobilized	Total no of applicants	Room nights sold	Room nights utilized	% of room nights actually utilized
1	Delight holiday	327.19	314576	3635525	8326	0.23
2	Dezire Holiday	0.03	341	416	0	0.00
3	Divine Holiday	171.34	488539	1903779	567	0.03
4	New Premium	3.86	639	90880	116	0.13
5	New Regular Holiday	24.17	1449	568720	630	0.11
6	New Royal Holiday	85.61	112494	951243	5708	0.60
7	Relax Holiday	577.93	302727	6421506	30545	0.48
8	Sunrise Holidays	0.73	48	8160	18	0.22
Total		**1190.88**	**1220813**	**13580229**	**45910**	**0.34**

m) Analysis with respect to amount mobilized, and number of room nights actually utilized for the financial year 2010-11 and 2011-12 was provided to PCL as Annexure VII to the said show cause notice.

n) From the above analysis, OD observed that for the financial years 2010-11, 2011-12 and 2012-13, only the maximum of 0.34% of the investors / customers utilized the purchased room nights.

o) PCL has a total of 1420 rooms (723 domestic and 697 foreign) of its own. In this regard, in a whole year PCL has available room nights of 5,18,300 of its own. However, PCL sold around 1.35 crores room nights.

p) As per section 11AA(2) of SEBI Act, 1992 a scheme is termed as Collective Investment Scheme if (a) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement, (b) 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, (c) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors, (d) the investors do not have day to day control over the management and operation of the scheme or arrangement.

q) The activities and schemes operated by PCL satisfies all the four ingredients of a collective investment scheme as provided in section 11AA(2) of the SEBI Act, 1992. Accordingly, PCL is carrying out collective investment scheme activities under the grab of time share business, without obtaining a certificate of registration in accordance of CIS Regulations, 1999.

r) The activities of PCL are in violation of section 12(1B) of SEBI Act, 1992 read with regulation 3 of CIS Regulations, 1999 and regulation (4)(2)(t) of PFUTP Regulations, 2003.

<u>Allegations levelled against PCL (Noticee 1) in Supplementary show cause notice dated June 10, 2016:</u>

8. Previous AO issued a supplementary show cause notice dated June 10, 2016 to PCL. In the said supplementary show cause notice, it was informed to PCL that adjudication proceedings has also been initiated against its six directors / promoters / persons in charge of PCL (viz. the Noticees 2 to 7) for the alleged unauthorized mobilization of money from public by PCL and the following is alleged in the said Supplementary show cause notice issued to PCL:

a. SEBI in its Examination Report (**ER**) which is based on the information provided by PCL to SEBI for the period 2010 to June 19, 2015 [hereinafter referred to as **Examination Period**/**EP**] with regard to the activities of PCL and with respect to applicability of Section 11AA of the SEBI Act and SEBI (CIS) Regulations has observed that the activities and schemes operated by PCL satisfies the four ingredients of a collective investment scheme as provided in Section 11AA(2)(i),(ii),(iii) and (iv) of the SEBI Act and PCL is carrying out CIS activities under the garb of time share business, without obtaining a certificate of registration in accordance with SEBI (CIS) Regulations.

b. OD further observed in the said report that PCL has pooled more than Rs.100 crores under the 20 schemes as mentioned in the report and that fall under the provisions of deemed CIS (Section 11AA(1) of the SEBI Act) and that such activities of PCL are alleged to be in violation of Section 12(1B) of the SEBI Act read with regulation 3 of SEBI (CIS) Regulations and regulation 4(2)(t) of SEBI (PFUTP) Regulations. A copy of the SEBI Examination Report was provided to PCL as Annexure B to the said supplementary SCN.

<u>Allegations / observations of OD in ER provided to PCL as an Annexure to Supplementary show cause notice dated June 10, 2016:</u>

9. The summary of the ER provided to PCL is as follows:

a. It was stated in ER that said examination is based on the information provided by PCL to SEBI for the Examination Period i.e. period 2010 to June 19, 2015. PCL claimed that it is in the business of providing timeshare services for over 16 years to thousands of families across India. PCL is offering following schemes to general public during the period 2002 to 2014.

- Pancard Clubs – Comfort Membership for 3 years
- Pancard Clubs – Luxury Membership for 6 years
- Pancard Clubs – Premium Holiday Membership for 10 years
- Pancard Clubs – Regular Holiday Membership for 10 years
- Pancard Clubs – Royal Membership for 9 years
- Pancard Clubs – Standard Membership for 9 years
- Pancard Clubs – Supreme Holiday Membership for 9 years
- Pancard Clubs – Golden Holiday Membership for 5 years
- Pancard Clubs – Platinum Holiday Membership for 6 years
- Pancard Clubs – Regal Holiday Membership for 9 years
- Pancard Clubs – New Comfort Holiday Membership for 3 years
- Pancard Clubs – New Luxury Holiday for 3 years
- Pancard Clubs – New Royal Holiday for 9 years

- Pancard Clubs – Delight Holiday for 6.3 years
- Pancard Clubs – Relax Holiday for 3.3 years
- Pancard Clubs – New Premium Holiday for 10 years
- New Regular Holidays for 10 years
- Sunrise Holidays for 5 years
- Divine Holiday for 66 months
- Pancard Clubs – Dezire Holiday for 37 months

b. The brochures of the said 20 schemes were provided to PCL as annexures. After examination of the said schemes by OD of SEBI, it is observed that under all schemes, upon expiration of tenure under the aforesaid schemes, the applicant may surrender his unutilised room nights and opt for the following:

   i. The applicant may opt for surrender value. The actual surrender value shall be determined by the company at the time of surrender of room nights and shall be paid after the expiry of the tenure under the scheme.

   ii. The applicant may opt to exchange or barter or utilise the products and services of the company or group companies.

   iii. The applicant may opt to convert his unutilised room nights to the extent of surrender value entitlement into life membership of various clubs of the company / group.

c. Under all the above mentioned schemes, the applicants were also offered free insurance benefits from IRDA approved insurance companies.

d. The analysis of each of the above mentioned schemes were also provided in the said ER which led to show that most of the customers / investors of PCL preferred surrendering the room nights to PCL and the percentage of such customers / investors who opted to surrender room nights in all but one schemes was over 99% of the total customers / investors of PCL in the particular scheme. In one scheme viz. “Pancard Clubs-Golden Holiday Membership for 5 years” till March 31, 2014, 100% of room nights were surrendered by the customers / investors of PCL. Further, in few of the above schemes {for example “Pancard Clubs-Dezire Holiday for 37 months (with effect from March 01, 2013)} apart from the above three options to the investors / customers, fourth option of converting the unutilized room nights to the extent of surrender value into shares, debentures at the discretion of PCL was provided to the customers / investors of PCL in the said schemes.

e. The financial details of PCL (such as Income from membership and annual subscription fee, Provision for surrender value, advance against sale of room nights, current liability, Holiday members surrender value and market expenses) as per financial year from 2001-2002 to 2013-2014 in a tabular format was provided in said ER. It is observed from the same that actual utilization of room nights is insignificant compared to surrender value.

f. Further, analysis with respect to applicability of Section 11AA of SEBI Act, analysis of the features of the aforesaid schemes of PCL vis-avis the four essential features of a CIS engraved in Section 11AA of SEBI Act and how timeshare business is different from the activities of PCL were also explained in the said ER.

Allegations levelled against directors of PCL i.e. Noticees 2 to 7 in a common SCN dated June 10, 2016

10. A common show cause notice dated June 10, 2016 was issued to each of the Noticees 2 to 7 by previous AO and they were advised to refer to the show cause notice dated June 26, 2014 issued to PCL and to be read in conjunction with the show cause notice issued to the Noticees 2 to 7 who were the directors of PCL at the relevant time. The copy of show cause notice dated June 26, 2014 issued to PCL was provided to the Noticees 2 to 7 as Annexure A to their show cause notice dated June 10, 2016. The summary of the allegations levelled against directors of PCL (Noticees 2 to 7) in the common SCN dated June 10, 2016 are as follows:

i. SEBI in its ER which is based on the information provided by PCL to SEBI for the examination period (i.e. 2010 to June 19, 2015) with regard to the activities of PCL and with respect to applicability of Section 11AA of the SEBI Act and SEBI (CIS) Regulations has observed that the activities and schemes operated by PCL satisfies the four ingredients of a collective investment scheme as provided in Section 11AA(2)(i),(ii),(iii) and (iv) of the SEBI Act and alleged that PCL is carrying out CIS activities under the garb of time shares business, without obtaining a certificate of registration in accordance with SEBI (CIS) Regulations.

ii. OD further observed in the said report that PCL has pooled more than Rs.100 crores under the 20 schemes as mentioned in the report and that may fall under the provisions of deemed CIS (Section 11AA(1) of the SEBI Act) and that such activities of PCL are alleged to be in violation of Section 12(1B) of the SEBI Act read with regulation 3 of SEBI (CIS) Regulations and regulation 4(2)(t) of SEBI (PFUTP) Regulations. A copy of the ER was provided to the Noticees 2 to 7 as Annexure C to the said show cause notice. The contents of the ER provided to the Noticees 2 to 7 remained the same as that was provided to PCL.

iii. The Noticees 2 to 7 were issued the said common show cause notice based on allegation of unauthorised mobilization of money from public by PCL, applicability of Section 11AA of SEBI Act and SEBI (CIS) Regulations and the Noticees 2 to 7 being the directors of PCL during the relevant time are alleged to have violated the provisions of regulation 4(2)(t) of SEBI (PFUTP) Regulations.

Replies of the Noticees

11. PCL (represented by Manish Kalidas Gandhi i.e. Noticee 2) vide letters dated September 03, 2014, January 11, 2018 and January 22, 2018 replied to the show cause notices. Further, the Noticees 2, 3 and 4 filed their replies dated January 11, 2018 and the Noticees 5 and 7 filed their replies dated January 11, 2018 and January 22, 2018. Further, the Noticees 1 to 5 and 7 also sought inspection and copies of certain documents vide their letters dated December 12/13, 2016. The then AO vide letters dated February 07, 2017 provided certain documents to them and it was also intimated to them that they already carried out inspection of documents during the proceedings under section 11B of SEBI Act and their present request for inspection of documents have been forwarded to Enforcement Department of SEBI. I note that process of inspection of documents has been completed in third week of June 2017.

12. The summary of the above dated replies submitted by the Noticees are as under:

a. The AO did not get into the details of the documents submitted by PCL. There was no analysis of the genuineness of the various holiday option, services and products provided by PCL. The AO, without a detailed examination, concluded in the paragraphs that PCL was carrying out CIS activities “under the garb of time share business”, without having obtained a certification of registration as per the SEBI (CIS) Regulations. Subsequently, the AO merely quoted Section 12(1B) of the SEBI Act, regulation 3 of the SEBI (CIS) Regulations and regulation 4(2)(t) of the SEBI (PFUTP) Regulations and in paragraph 7 alleged that PCL’s activities were in violation of these provisions.

b. PCL engaged in timeshare business and SEBI lacks jurisdiction over it. PCL is unlisted company incorporated in 1997 in Mumbai and engaged in business of owning, developing, and operating hotels, clubs and resorts across India as well as offering different timeshare options. PCL is engaged in the business of timeshare wherein its customers have the opportunity to avail of accommodation, ancillary facilities and services in hotels and holiday resorts across India by paying a certain amount upfront or in instalments, depending on the customer's convenience. The primary activities of PCL are describes in main object clause of Memorandum of Association (MoA) of PCL "…To carry on business as proprietors of all types of clubs, gaming rooms, card rooms and billiard rooms, golf club and creating recreation and club facilities…". Additionally, an object incidental to the attainment of the main objects, in MoA read as "to afford to its members all the usual privileges, various types of cards, advantages, conveniences..".

c. The customer may select the agreement depending upon his/her requirement and preferred frequency of payment. Advance payment for hospitality services entitles PCL's customers to stay in its properties for a certain number of nights, each year, in a pre-chosen category of rooms, depending on the tenure and nature of agreement chosen. The payment, in effect, represents a discount on the prevailing tariff rates at the various PCL hotels or affiliate hotels.

d. The entitlements received by the customers on entering into an agreement with PCL are characterised as 'Room Nights', the number of which depends upon the terms of agreement. These room nights may be availed at any time during the year, by giving advance notice of the same to PCL.

e. Customers of PCL are free to either utilise these room nights themselves or gift or transfer the same to their friends or family members. The gifting of room nights is nothing but in the nature of assignment of rights or benefits under the Indian Contract Act, 1872. The customers additionally been granted the facility of redeeming their room nights against their stay at non-PCL hospitality properties on prior notice to PCL. This practice entitles customers to redeem their room night cost against tariff which is to be paid to non-PCL hospitality properties, consequently allowing greater flexibility, access and utilization rights.

f. In case of all the available agreement tenures, customers can commence the utilisation of their room nights entitlement after 60 / 30 days from the date of entering into an agreement with PCL. Additionally PCL customers can gift their entitlements of room nights to their near and dear ones or may opt to sell them in accordance with the procedure set out in PCL's agreements with the customers, to anyone after prior intimation to PCL in writing. Such a sale of room nights by the customers during the subsistence of agreement has no involvement of PCL. There is no assurance of a certain return or price and there is no refund by it. Sale of room nights does not negate PCL's agreements with the customers.

g. PCL's business relates primarily to the development of hospitality properties and offering its customers the facility to stay and enjoy the accommodation at a discounted tariff compared to the prevailing market rate, at any time in the future. Under European Union Directive 2009, a timeshare contract is defined as a contract of a duration of more than one year under which a consumer, for consideration, acquires the right to use one or more overnight accommodation for more than one period of occupation.

h. PCL's timeshare agreement does not qualify as a value or return bearing investment proposition. The business of PCL cannot be regulated by SEBI as PCL does not operate or manage a CIS or deal in securities. In fact no units or securities are issued to any of the customers and therefore, business of PCL is outside the purview of SEBI. SEBI Act and any regulations made thereunder are meant to deal with securities which are marketable on a securities market. In the light of business of PCL relating to timeshare of leisure properties, advance payment towards enjoyment of leisure facilities at PCL's properties or those of its affiliates cannot be considered to be securities and benefits availed by the customers under the agreement are not capable of being marketed on any stock exchange. The definition of securities under Securities Contract (Regulation) Act, 1956 does not relate to service level agreements evidencing a customer's right to avail of hospitality facilities at a later date.

i. There is no element of profit sharing, return on any investment or consideration paid by the customers or assurances of buy-back at a fixed price given to the customers by PCL or any other mechanism that would serve as promise of any return.

j. The show cause notice is constitutionally invalid. An entity operating in the domain of leisure and hospitality products is not under the regulatory ambit of SEBI and therefore, unreasonable restriction is being imposed by the issue of such notice.

k. The customers of PCL are not investors as envisaged under SEBI Act and PCL does not carry on its business activities in a securities market and therefore, no inquiry under section 15-I of SEBI Act should be undertaken. In the absence of securities and investors, SEBI is jurisdictionally barred from initiating an inquiry against PCL.

l. A timeshare is an interest purchased in a plan that grants the purchaser the rights of occupancy and the right of use to accommodations, facilities or recreation sites. The consumer acquires only the rights attached to a standard form of timeshare, the kinds that PCL is engaged in, and no ownership of any asset or marketable security. The business of PCL cannot be regulated by the SEBI as the Noticee does not operate or manage a CIS or deal in securities. SEBI would not be within its jurisdiction to regulate any transaction or matter which does not deal with securities, as defined in Section 2(h) of the Securities Contract(Regulation) Act, 1956 ("SCRA") or is carried out by a person associated with the securities market. In fact, no units or securities are issued to any of the customers. PCL's customers, in essence, purchase a pure play timeshare product, which allows them to avail of the multiple facilities for leisure and entertainment at any of the group properties or set off the payment made to PCL against their stay at any non PCL or non-affiliated properties. No units or securities are involved and the business of PCL is therefore, outside the purview of SEBI. In light of the business activities of the PCL relating to timeshare of leisure properties, it is submitted that the advance payment towards enjoyment of leisure facilities at PCL's properties or those of its affiliates cannot be considered to be securities and the benefits availed by the customers under the agreement are not capable of being marketed on any stock exchange or in any other securities market.

m. Upon perusal of documents viz. brochures, application forms and agreements executed by PCL with its customers, it is clear that the same are for limited purpose of allowing customers to pre-pay for availing hospitality services including timeshare and not for generating any return or investment.

n. The show cause notice is constitutionally invalid and not in accordance with the spirit of Section 15I of SEBI Act. The customers of PCL are not investors as envisaged under SEBI Act.

o. PCL does not engage in CIS activities and referred a Dave Committee Report to get the sense of scope of applicability of the CIS Regulatory Framework. PCL activities do not represent any investment of funds in a common enterprise and there is no premise on which profits of any nature are earned or expected to be earned by any of its customers. Upon purchasing a holiday plan, the customers of PCL has a right to use any of the properties in accordance with the terms and conditions of the holiday plan and not a scheme as envisaged by Section 11AA(2) of SEBI Act. There is no common pooling of funds being done. The consideration received by PCL from its customers may be used for any purpose: paying wages, business development, internal costs or training expenses of staffs and not utilised for the purpose of scheme or arrangement. The monies received from customers are neither maintained in any common fund nor are invested for any specific purpose but are considered as payments received for provision of services.

p. The SCN states that approximately 0.2% of customers are availing the room nights while 99.8% of the customers are surrendering the room nights. While there is no doubt that utilization of room nights are much lower than desired, this does not automatically imply that the customers purchase the services provided by PCL with a view to not use the same and receive a refund. Success of its business also depends on number of factors.

q. PCL has not violated SEBI (PFUTP) Regulations. None of the activities of PCL falls within the scope of securities transactions and moreover, even an analysis of the various aspects of the definition of fraud would indicate that none of the elements of fraud are present in any of the activities being carried out by PCL. PCL denied that it violated Section 12(1B) of SEBI Act read with Regulation 3 of SEBI (CIS) Regulations and Regulation 4(2)(t) of SEBI (PFUTP) Regulations. The agreement between PCL and its customers is similar to any other standard form of contract for performance of service.

r. On or around the year 2001, PCL commenced its business of offering holiday plans to customers for the utilization and enjoyment of leisure facilities at any of it's or affiliated properties. PCL made correspondences with Reserve Bank of India (RBI) so as to know whether its activities fell under the jurisdiction of RBI to which RBI replied in negative. Further, PCL made correspondences with SEBI with a view to seek SEBI's clarification on applicability of CIS Regulations to its activities to which SEBI sought information and details of the holiday options from it. SEBI was well aware that PCL was conducting its business of refundable holiday options and took no steps to curtail the same.

s. SEBI also came across a complaint filed by one Mr. Papu Singh and SEBI opined that the activities of PCL appears to be in nature of timeshare and timeshare activities do not fall under the purview of SEBI. Further, SEBI also informed Ministry of Corporate Affairs that the activities of PCL does not come under the purview of SEBI. Moreover, a reference was also received by SEBI from the then Member of Parliament Mr. Sanjay Patil to which SEBI replied that activities of PCL do not attract SEBI (CIS) regulations.

t. Despite SEBI itself having consistently and repeatedly taken a stand that activities of PCL did not constitute a CIS and not having raised any objections since 2001, all of a sudden SEBI through its AO issued the show cause notices more than 13 years later alleging that the schemes / holiday plans of PCL appeared to be in the nature of CIS. This was sudden and unwarranted change in the stand of SEBI.

u. SEBI's change in position at such belated stage was not just knee jerk and unwarranted but also catastrophic, more so, because till date SEBI had not provided any objective evidence to substantiate the basis and grounds on which SEBI had changed its stand.

v. SEBI did not provide certain documents such as minutes of meeting dated October 20, 2010 with Mr. Papu Singh, file noting / records / findings touching upon or relevant to or having any bearing upon SEBI's opinion in pursuance of the complaint of Mr. Papu Singh that the activities of PCL are in the nature of timeshare and that timeshare activities do not fall under the purview of SEBI (CIS) Regulations, SEBI's reply to CBI letter dated July 23, 2013 etc. in an inspection undertaken by the Noticees. Vide email dated June 21, 2017 the representatives of SEBI rejected the request of the Noticees to inspect these documents. The Noticee relied on the Supreme Court judgment in SEBI Vs. Pricewater House in support of its contention.

w. PCL always acted and carried out its business in a bonafide manner which is established by the fact that they sought clarification from RBI, SEBI and legal opinion form legal luminaries. This establishes that the Noticees wanted to conduct its activities in compliance with all applicable laws.

x. The Noticees has placed its reliance on the decision of Supreme Court in SEBI Vs. Cabot international Capital Corporation, R.S Gosain Vs Yashpal Dhir cases.

y. The AO vide supplementary SCN dated June 10, 2016 invoked the proviso to Section 11AA(1) as inserted by the Securities Laws (Amendment) Ordinance, 2013 which states that any pooling of funds under any scheme or arrangement, which is not registered with Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a CIS. This provisions is a substantive amendment to law and can not be retrospective. In view of this, it is only the monies collected with effect from July 18, 2013 which shall be deemed to be CIS and the monies collected before July 18, 2013 cannot be deemed to fall within the purview of CIS.

z. The Noticees also relied on decisions of Income Tax Appelate Tribunal in Kanbay Software India (P) Ltd. Vs DCIT, Circle 8, Pune, Supreme Court in Dharamendra Textile Processors case.

aa. The Noticees 2, 3, 4, 5 and 7 being non-executive directors cannot be held responsible for any act of the company merely because he or she is the director of the company. The Noticees 2, 3 and 4 were appointed as an independent and non-executive directors of PCL on April 03, 2009, October 07, 2009 and April 26, 2011 respectively. The Noticee 3 resigned from the directorship of PCL due to health problems on December 22, 2016.

bb. The SCN no statement whatsoever has been recorded which implicates or specifically brings out any allegations against them. The Noticees placed their reliance on the decision of Bombay High Court in Chaitan M Maniar Vs. State of Maharashtra, Supreme Court decision in Hindustan Steel Limited Vs. State of Orissa. The very fact that PCL sought the guidance of SEBI establishes that Noticees 5 and 7 had exercised due diligence.

cc. When the Noticees 2, 3 and 4 joined PCL, they were informed that the activities of PCL are bonafide and PCL was in the activities since 1997. They were informed that all necessary registration and permissions were in place. During the years they came across letters from SEBI wherein it was stated that the activities of PCL do not fall under SEBI (CIS) Regulations.

dd. The show cause notice dated June 10, 2016 does not specify what alleged offence has been committed by them. The said show cause notice vaguely alleged violation of regulation 4(2)(t) of SEBI (PFUTP) regulations but fails to explain their roles or in what manner they have illegally mobilized funds by sponsoring or causing to be sponsored carried on or caused to be carried on CIS as alleged.

ee. The Noticees became the independent and non-executive directors as mentioned above and SEBI itself had the view that the activities of PCL do not construe/attract the regulations of SEBI (CIS) regulations. Had SEBI at any point of time between 2001 and 2014 written to PCL that its activities fall within the scope of SEBI (CIS)

Regulations, the Noticees as directors would have ensured that the schemes were discontinued and present state of affairs would not have arisen.

ff. The Noticees took opinions of legal luminaries and experts and also sought guidance and clarifications from SEBI which established their bonafides.

gg. The Noticees have acted in good faith and there was no mens rea or intent to commit any offence. They are independent and non-executive directors and not involved in day to day affairs and business operations of PCL. The so called fund mobilization and carrying on CIS were done by PCL under the decision of late Mr. Sudhir Moravekar who held 99.78% shares of the said company. They do not hold any shares of PCL. (No evidentiary proof submitted along with reply)

hh. The alleged violation, if any, which may have been committed were not in their knowledge and they had no role to play in the same. The very fact that PCL had sought guidance from SEBI established that the Noticees had exercised due diligence.

ii. PCL had not committed any violation of Section 12(1B) of SEBI Act read with Regulation 3 of SEBI (CIS) regulations and regulation 4(t) of SEBI (PFUTP) Regulations as alleged due to grave procedural irregularities and violations of principles of natural justice, bonafide action of PCL in not registering under Section 12(1B) of SEBI Act, ambiguity in interpretation of provisions of Section 11AA of SEBI Act, no mens rea and the Noticees 2, 3, 4, 5 and 7 being Non-Executive directors (no evidentiary proof submitted in the reply) be absolved from penalty proceedings and they denied any violation of provisions of regulation 4(2)(t) of SEBI (PFUTP) Regulations.

jj. the Noticees 1, 5 and 7 filed additional Submissions dated January 22, 2018 wherein they retreated the above previous submissions

kk. Noticees 2 to 7 have informed that recovery proceedings have been initiated by SEBI against them for another quasi judicial proceeding and their bank accounts, demat accounts etc have been attached.

12. In the interest of natural justice and in term of rule 4 of Adjudication Rules, the then AO issued a hearing notice dated September 05, 2014 to PCL asking it to appear before him on September 25, 2014. However, the said hearing was adjourned by the office of then AO vide letter dated September 22, 2014. Thereafter, as the matter was transferred to another AO, he issued a hearing notice dated September 08, 2015 to

PCL asking it to appear before him on September 15, 2015. However, PCL vide letter dated September 14, 2015 sought adjournment of personal hearing on the ground that writ petition filed by PCL before Hon'ble Bombay High Court against AO in reference to show cause notice dated June 26, 2014 is pending. The then AO vide hearing notice dated September 15, 2015 granted another opportunity of personal hearing to PCL and asked it to appear before him on September 22, 2015. The Authorized Representative (AR) of PCL appeared on September 22, 2015 and submitted that the activities of PCL are exempt from the purview of SEBI (CIS) Regulations since there is the component of insurance available to the investors in both life and health segments. The AR sought time for filing additional submissions which were made before WTM, SEBI under section 11B of SEBI Act. The hearing was therefore, adjourned and the AR of PCL was advised to file reply expeditiously. At the time of personal hearing it was explained to the AR of PCL that there is no restraint order from the Hon'ble Bombay High Court and therefore, the adjudication proceedings shall continue. The minutes of the said personal hearing are on record.

13. The then AO also granted an opportunity of personal hearings to the Noticees on December 13/14, 2016. The minutes of the said personal hearings are on record. Further, after the said matter was transferred to me by the Competent Authority vide order dated July 10, 2017, I granted opportunity of personal hearings to the Noticees after few adjournments sought by the Noticees from time to time and the hearing proceedings with respect to all the Noticees were completed on January 11, 2018 and March 19, 2019. The minutes of the said hearings are on record and taken into consideration. During the hearings, it was informed to me that the Noticees 6 and 7 have expired. The death certificates dated 26.07.2017 (Sudhir) and 21.09.2018 (Usha) of the Noticees 6 and 7 respectively, are on record. Further, that the hearing of the Noticee 2 was completed on January 11, 2018 and he along with other Noticees were granted another opportunity of personal hearing on March 19, 2019. The hearing notices issued to all the Noticees were sent through SPAD and E-mails. The hearing notices sent to Noticee 2 through SPAD retuned undelivered. The Noticee 2 did not respond to the hearing notices sent through E-mails and did not appear for another hearing granted to him along with others on March 19, 2019. The AR of the Noticees 1,3,4 and 5 appeared on March 19, 2019 and the hearing minutes are on record. However, neither the Noticee 2 nor his AR appeared for another hearing granted on March 19, 2019 but his AR appeared in previous hearing granted to him by me on January 11, 2018 and minutes of the said hearing are on record. Before passing of

instant order, a final opportunity was given to Noticees for additional submissions vide letter dated March 05, 2020. Accordingly Noticee 3 has replied reiterating this earlier submissions and that owing to his old age and health issues, the SCN may be dropped, said latest replies from the Notices are vide letters received in March-April 2020 reiterating earlier submissions.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

14. I have carefully perused the charges levelled against PCL and its directors (Noticees 2 to 7) in the respective show cause notices, the material enclosed with the show cause notices, replies of the Noticees and other material available on record. In the instant matter, the following issues arise for consideration and determination:-

a. ***Whether PCL has violated the provisions of Section 12(1B) of the SEBI Act read with regulation 3 of SEBI (CIS) Regulations and regulation 4(2)(t) of SEBI (PFUTP) Regulations?***
b. ***Whether the Noticees 2 to 7 have violated the provisions of regulation 4(2)(t) of SEBI (PFUTP) Regulations?***
c. ***Do the violations, if any, on the part of the Noticees attract monetary penalty under Section 15HA of the SEBI Act for their alleged violations?***
d. ***If yes to c, then what would be the monetary penalty that can be imposed upon the Noticees, taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?***

15. Before proceeding further, I would like to refer to the relevant provisions of the SEBI Act, SEBI (CIS) Regulations and SEBI (PFUTP) Regulations:

The SEBI Act

Regulation of stock brokers, sub-brokers, share transfer agents, etc.

Section 12

12(1)……………………..

(1A)……………………….

(1B) no person shall sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations

SEBI (CIS) Regulations

No person other than collective Investment Management Company to launch collective investment scheme

Reg 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.

SEBI (PFUTP) Regulations

Reg.4 -

(1) ......

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

(a) to (s) ....

(t) illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any collective investment scheme by any person."

EVIDENCES and FINDINGS:

16. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings for each of the issues under consideration as follows.

Issue a: ***Whether PCL has violated the provisions of Section 12(1B) of SEBI Act read with regulation 3 of SEBI (CIS) Regulations and regulation 4(2)(t) of SEBI (PFUTP) Regulations?***

i. I observe from the show cause notices and the ER that the PCL was allegedly offering above schemes as noted in previous paragraph numbers seven to ten of this order. I further note that the said show cause notices and ER provide the date when each scheme came into operation, the average price for the room nights, the offer price of the package at a discount, the surrender value, the total amount collected under each scheme, the amount paid to the customer on surrendering the room nights amongst other things. Further, analysis of each of the schemes was also provided in the ER.

ii. I note that PCL has not contended against the fact of offering of the said schemes, including details thereof provided in the said show cause Notices and ER, by PCL to its investors /customers. For instance, details of two of the 20 schemes offered by PCL to its investors / customers are as under:

i. Pancard Clubs – Comfort Membership for 3 years (with effect from 1st July, 2002)

Current Average Tariff Actual Price for five Room Nights Package	Offer Price of the package at a Discount	Entitlement of Room Nights	Current Surrender Value for the Five Room Nights @ Rs. 850/-per Room Nights
Rs. 5,000/- (1,000*5)	Rs. 3000/- (600*5)	5	Rs. 4,250/- (850*5)

As per the terms and conditions for the scheme, the applicant can commence utilising his room night entitlements after 60 days from the date of acceptance of application. Further, an applicant shall be entitled to utilise a maximum of 25% of the total room nights purchased by him in a single financial year.

The details of the year wise room nights sold and redeemed during the period 2002-03 to 2013-14 is provided as under: (Comfort Plan)

Year	**Total amount collected**	**No of room nights sold**	**No. of applicants**	**No. of room night utilised**	**No. of applicants utilised the room nights**	**No. of room nights surrendered**	**Amount paid for surrendering the room nights**	**No. of applicants surrendered the room nights**
2002-03	117,151,200	195,252	15,554	1	1			
2003-04	173,715,200	289,525	19,890	68	27			
2004-05	268,122,400	446,871	27,420	66	27			
2005-06	496,698,671	827,831	52,034	51	17	125,479	106,656,861	9,086
2006-07	989,856,575	1,649,761	87,227	87	40	255,969	217,573,606	7,121
2007-08	201,670,929	336,118	18,060	132	55	478,772	406,956,259	43,021
2008-09				59	26	902,379	767,021944	60,708
2009-10				49	19	1,544,024	1,312,420,188	77,260
2010-11				3	1	412,425	435,561,200	18,955
2011-12						14,380	18,493,655	2,265
2012-13						9,888	8,404,670	1,130
2013-14						1,565	1,330,300	639
Total	**2,24,72,14,975**	**37,45,358**	**2,20,185**	**516**	**213**	**37,44,881**	**327,44,18,683**	**2,20,185**

From the above table, it can be observed that PCL has mobilised around Rs. 224.72 crore from 2,20,185 customers/investors by selling 37,45,358 room nights under Comfort Plan Membership. Except a few investors (213 investors) preferring partial utilisation of the room nights purchased by them, most of the investors preferred surrendering the room nights to PCL. From the said details, it is concluded that 0.013% room nights sold by PCL were utilised and 99.97% of the room nights purchased by the investors / customers were surrendered and estimated surrender value was opted.

b.Pancard Clubs – Royal Membership for 3 years (with effect from 1st July, 2002)

Current Average Tariff Actual Price for five Room Nights Package	Offer Price of the package at a Discount	Entitlement of Room Nights	Current Surrender Value for the Five Room Nights @ Rs. 850/-per Room Nights
Rs. 18,000/- (1,000*18)	Rs. 5,040/- (280*18)	18	Rs. 15,300/- (850*18)

As per the terms and conditions for the scheme, the applicant can commence utilising his room night entitlements after 60 days from the date of acceptance of application. Further, an applicant shall be entitled to utilise a maximum of 25% of the total room nights purchased by him in a single financial year. Members can avail their room nights entitlements throughout the year and at any of the existing, affiliated or proposed clubs / resorts of the PCL.

The details of the year wise room nights sold and redeemed during the period 2002-03 to 2013-14 is provided as under: (Royal Plan)

Year	**Total amount collected**	**No of room nights sold**	**No. of applicants**	**No. of room night utilised**	**No. of applicants utilised the room nights**	**No. of room nights surrendered**	**Amount paid for surrendering the room nights**	**No. of applicants surrendered the room nights**
2002-03	105,058,800	375,210	10,581	20	8			
2003-04	79,150,120	282,679	6,947	63	17			
2004-05	98,562,520	352,009	6,226	106	38			
2005-06	125,668,118	448,815	5,839	113	34	906	770,000	306
2006-07	365,051,952	1,303,757	20,998	106	45	2,329	652,170	119

2007-08	59,561,205	212,719	3664	136	59	3,559	996,445	65
2008-09	8,644,890	30,875	20	80	25	34,439	9,658,775	552
2009-10	132,280	472		148	43	2,342	655,760	23
2010-11				151	40	974	272,720	9
2011-12				104	8	62,363	52,384,671	3,825
2012-13					40	304,113	258,496,200	7,808
2013-14				378	26	321,085	272,922,190	6,954
Total	**841,829885**	**3,006,536**	**54,275**	**1,405**	**383**	**732,110**	**596,808,931**	**19,661**

From the above table, it can be observed that PCL has mobilised around Rs. 84.18 crore from 54,275 customers/investors by selling 30,06,536 room nights under Royal Membership Plan. It is further observed that out of 30,06,536 room nights sold, as on March 31, 2010 only 1405 room nights were utilised by 383 investors / customers and 7,32,110 room nights were surrendered and 22,73,021 are about to be either utilised or surrendered. Out of the total room nights either utilised or surrendered (7,33,515), 0.19% room nights were utilised and 99.80% of room nights were surrendered and es and estimated surrender value was opted. Thus, out of total room nights sold (10,09,898) till 2014-15, which have completed the scheme tenure of 9 years, only 1405 room nights were utilised and 7,33,515 room nights were surrendered.

iii. As per the terms and conditions of the schemes offered by PCL, it is observed that under all the schemes, upon its expiration of tenure of the schemes, an applicant may surrender his unutilized room nights and opt for following:

a) The applicant may opt for surrender value. The actual surrender value may be determined by the company at the time of surrender of room nights and shall be paid after the expiry of tenure under the scheme.

b) The applicant may opt to exchange or barter or utilise the products and services of the company or group companies.

c) The applicant may opt to convert his unutilised room nights to the extent of surrender value entitlement into life membership of various clubs of the company/group.

And in few of the schemes like Pancard Clubs – Delight Holiday for 6.3 years, Pancard Clubs-Relax Holiday for 3.3 years etc. there was an additional option, to convert unutilised room nights to the extent of surrender value into shares, debentures. Under all schemes offered by PCL, the applicants are also offered free insurance benefits from IRDA approved Insurance Companies.

iv. I note that for any scheme to be a CIS it must satisfy all the following four conditions of Section 11AA(2) of SEBI Act.

    a. The contributions or payments made by investors are pooled and utilised solely for the purpose of such scheme or arrangement;
    b. The contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property;
    c. The property, contribution or investment forming part of the scheme or arrangement is managed on behalf of investors;
    d. The investors do not have day to day control over the management and operation of the scheme or arrangement.

v. I observe that certificates issued by PCL to its investors/customers indicate the contribution made by the investors/customers who purchase holiday plans from PCL and by virtue of those subscription to those Plans, the customers/investors can utilise properties specified by PCL, however, these scheme did not result in actual ownership of PCL properties etc by customers/investors, thus I find that PCL pooled monies akin to investment plans through its Holiday Plans. Therefore, the first condition of section 11AA(2) of SEBI Act regarding pooling of investment from investors is satisfied. Under all holiday plans referred above, room nights are awarded by PCL to investors/customers at a discounted price. If investor/customer desires, the room nights can be used, rented out or surrendered to PCL. The surrender value of room nights is always found to be more than the offer price in all the Holiday Plans offered by PCL. The said return on surrendering room night is the profit/income to the investors/customers. For example in the Divine Holiday Scheme, if a person invests an amount of Rs.3600 (i.e. for four room nights) then after 66 months the investor gets a return of Rs.4800 for surrendering the four room nights. In all the aforementioned schemes offered by PCL, more than 99% of the investors/customers have availed surrender value and the said surrender value was more than the amount invested by them in a particular scheme. Therefore, the second condition of Section 11AA(2) of SEBI Act that contributions or payments made by the investors with a view to earn profits, income is fulfilled. Further, the money pooled or collected from investors/customers are utilised by PCL in acquiring hotels, resorts, managing and maintaining various accommodations and other holiday facilities at different locations. It is mentioned in Clause 16 of the brochure of the schemes that PCL "reserves the right to modify/alter/amend/revoke the benefits/privileges and or the terms and conditions contained herein in whole or in part at its sole discretion or according to the prevailing condition / cost factors which led to prove that the said contributions collected from investors are managed by PCL on behalf of the investors. Therefore, the third condition of Section 11AA(2) of SEBI Act is also fulfilled. With regard to fourth condition of Section 11AA(2) of SEBI Act, it is observed that the money collected from investors by PCL in the form of investments made in various holiday plan are used by PCL to manage and maintain various accommodation and other holiday facilities at different locations, payment of surrender value amount and other expenses. PCL took the decisions regarding the management and use of the money collected from investors/customers and has day-to-day control over the operations of the schemes. It is pertinent to note that investors/customers do not have any say over the management and day-to-day affairs of PCL.

vi. Further, I observe from the financials and other details of PCL (such as Income from membership and annual subscription fee, Provision for surrender value, advance against sale of room nights, current liability, Holiday members surrender value and market expenses) as per financial year from 2001-2002 to 2013-2014 that actual utilization of room nights is insignificant compared to surrender value. Therefore, it is clear that the above schemes offered by PCL had the ingredients of Section 11AA(2) and are therefore, in the nature of CIS. Record shows that PCL operated the above schemes which are in the nature of CIS without obtaining the certificate of registration under SEBI (CIS) Regulations and therefore, violated Section 12(1B) of SEBI Act, Regulation 3 of SEBI (CIS) Regulations and Regulation 4(2)(t) of SEBI (PFUTP) Regulations.

vii. Further, the contributions to the holiday schemes from the investors is well above Rupees 100 Crore and therefore, is also deemed CIS in terms of proviso of Clause 1 of sub-section 2 of Section 11AA of SEBI Act. The Noticees submission that deemed CIS proviso came into effect in 2013 is correct but at the same time I find that PCL collected in total more than Rs. 100 crore in Financial Year 2013-2014 from its customers/investors in various schemes like Pancard Clubs-New Regular Holiday for

10 Years (Rs.21.36 crore), Pancard Clubs-New Royal Holiday for 9 Years (Rs.87.43 crore, Pancard Clubs-New Premium Holiday for 10 years (Rs.2.58 crore), Pancard Clubs-Delight Holiday for 6.3 years (Rs. 38.63 crore), Pancard Clubs-Relax Holiday for 3.3 Years (Rs.79.79 crore), Sunrise Holiday for 5 years (Rs.5.05 crore), Divine Holiday for 66 months (Rs.26.49 crore).

viii. In the present case, the allegations levelled against PCL and its directors are that they operated CIS under the guise of timesharing business without obtaining registration from SEBI as required under the provisions of SEBI Act and SEBI (CIS) Regulations. In this regard, I note that the submissions of the Noticees are that SEBI does not have jurisdiction over it due to following reasons:

   a. the scheme operated by it is not CIS and it’s a time share business and there is contract between the PCL and the customers thereby making it a contract for services;
   b. there is no securities and investors in the business of PCL
   c. the schemes contain element of insurance;
   d. SEBI has been consistently taking a stand in past that the schemes operated by PCL are in the nature of timeshare and not CIS.

ix. I find that for the same facts of the case, proceedings under sections 11 and 11B of SEBI Act was initiated against the Noticees 1 to 7 for violation of Section 12(1B) of SEBI Act read with regulations 3 and 65 of SEBI (CIS) Regulations. I note that the arguments placed by the Noticees before me are similar to the arguments placed before The Whole Time Member (WTM) of SEBI and Hon’ble Securities Appellate Tribunal (SAT) as the facts of the case are same in each of the proceedings. Therefore, I place reliance on order dated February 29, 2016 of WTM and order dated May 12, 2017 of Hon’ble SAT while passing this order against the Noticees.

x. I find that the said issue whether or not the schemes operated by PCL was CIS and whether SEBI has jurisdiction over it has been extensively dealt with by WTM of SEBI vide Order dated February 29, 2016. WTM of SEBI vide order dated February 29, 2016 found that the schemes launched by PCL were in the nature of CIS in terms of Section 11AA(1) and (2) of SEBI Act. PCL was operating the said schemes without obtaining registration as required under Section 12(1B) of SEBI Act and regulation 3 of SEBI (CIS) Regulations. Vide said order, the WTM of SEBI issued certain directions to the

Noticees. The Noticees filed appeals against the said order of WTM of SEBI before Hon'ble SAT. The Hon'ble SAT vide order dated May 12, 2017 upheld the said order of WTM of SEBI and dismissed the appeals filed by the Noticees. I note that there is nothing on record to suggest that the Noticees filed an appeal before Hon'ble Supreme Court against the said order of Hon'ble SAT and therefore, the said Order of WTM, SEBI has attained finality. Thus, the question of jurisdiction, it has already been settled and that SEBI does have jurisdiction over the Noticees and schemes operated by the Noticees were CIS, therefore said contentions of Noticees regarding jurisdiction are not acceptable to me.

xi. As regards, Noticees' contentions regarding SEBI's view on the question whether a particular scheme satisfied the provisions of section 11AA (to call it a CIS) is a pure question of law. It is a settled principle of law that there can be no estoppel against a statute. The Hon'ble Supreme Court of India in Air India v. Nergesh Meerza and others [AIR 1981 SC 1829] held "It is well settled that there can be no estoppel against a statute much less against Constitutional provisions". The Hon'ble Supreme Court in State of Bihar and others v. Project Uchcha Vidya Sikshak Sangh and others [(2006) 2 SCC 545] observed "We do not find any merit in the contention raised by the learned counsel appearing on behalf of the respondents that the principle of equitable estoppel would apply against the State of Bihar. It is now well known, the rule of estoppel has no application where contention as regards a constitutional provision or a statute is raised". The Hon'ble High Court of Orissa in Jatindra Prasad Das vs State of Orissa and others (decided on 15.11.2011–W.P. (civil) No. 21449/ 2011) has held that there can be no estoppel against statutes and the statutory provisions and therefore, the said statutory provisions cannot be ignored on the grounds of an earlier administrative decision or precedent. In the present case, SEBI may have taken a view earlier that the alleged schemes were not CIS. However, on a reconsideration of the actual business activities/schemes of the PCL, SEBI had changed its views and had initiated adjudication proceedings. Therefore, the plea of estoppel would not hold good against the statutory provisions as may be applicable in this present matter.

xii. I further note that the Noticees were provided with all the documents relied on while issuing the show cause notices. Further, I observe that the Noticees also carried out inspection of documents during both the proceedings i.e. proceedings under sections 11 and 11B of SEBI Act and present adjudication proceedings. Further, the Noticees state that certain documents were not provided to them. In this regard I find that the nature of said documents sought hinted at the purpose of the Noticees to seek these documents was to show that SEBI is estopped from contending that the said schemes of PCL are CIS. As explained in above paragraphs, I note that there is no estoppel against law.

xiii. In light of the all of the above findings I conclude that the allegations levelled against PCL in the said show cause notices that PCL has violated the provisions of Section 12(1B) of SEBI Act read with regulation 3 of SEBI (CIS) Regulations and regulation 4(2)(t) of SEBI (PFUTP) Regulations, thus stand established.

Issue b: Whether the Noticees 2 to 7 have violated the provisions of regulation 4(2)(t) of SEBI (PFUTP) Regulations?

xiv. The show cause notice dated June 10, 2016 is issued to the six directors, viz. Mr. Manish Kalidas Gandhi, Mr. Chandrasen Ganpatrao Bhise, Mr. Ramachandran Ramakrishnan, Ms. Shoba Ratnakar Barde, Late Mr. Sudhir Shankar Morvekar and Late Ms. Usha Arun Tari of PCL alleging that they are responsible for the conduct of the business of PCL at the relevant point of time and have allegedly violated Regulation 4(2)(t) of PFUTP Regulations.

xv. The following table (from the MCA website) presents the date when they were appointed in PCL:

DIN	Name	Begin date	End date
00177938	Shobha Ratnakar Barde	31/01/1997	-
00178078	Usha Arun Tari	01/01/1999	-
02606802	Manish Kalidas Gandhi	03/04/2009	-
03510460	Ramachandran Ramakrishnan	26/04/2011	-

Noticees 6 and 7:

xvi. During the adjudication proceedings, it was informed to me that the Noticees 6 and 7 viz Mr. Sudhir Shankar Moravekar and of Mrs. Usha Arun Tari against whom adjudication proceedings were initiated in the matter of PCL have expired. Copies of death certificate of the Noticees 6 and 7 are on record.

xvii. I note from the death certificates of Late Mr. Sudhir Shankar Moravekar and Late Mrs. Usha Arun Tari that they passed away on July 22, 2017 and September 11, 2018 respectively. In this regard, it is pertinent to refer the matter of Padmalaya Telefilms Ltd. (November 2, 2006), the Hon'ble Whole Time Member (WTM), SEBI inter-alia held that *"…Since the proceedings were initiated against the personal acts of omission of a person who is no more alive to face the penalty, the proceedings against him are liable to be abated"*. Further, in Girja Nandini And Others Vs. Bijendra Narain Choudhary (1967 AIR 1124), the Hon'ble Supreme Court, inter-alia observed that in case of personal action, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives, and in such cases, the maxim actio personalis moritur cum persona (personal action dies with the death of the person) would apply. The Hon'ble Securities Appellate Tribunal has also held in Chandravadan J Dalal Vs. SEBI that "The *appeal abates since the appellant during the pendency of the appeal died on 29th November, 2004. The appeal accordingly abates. The penalty imposed on the original appellant being personal in nature also abates*."

xviii. In view of the above case laws, the adjudication proceedings initiated against late Mr. Sudhir Shankar Moravekar and late Mrs. Usha Arun Tari are liable to be abated without going into the merits of the case. The said show cause notices in respect of late Mr. Sudhir Shankar Moravekar (Noticee 6) and late Mrs. Usha Arun Tari (Noticee 7) is accordingly disposed of without monetary penalty.

Noticees 2 to 5:

xix. It is also noted from the various replies of the Noticees that following Noticees given the dates regarding their appointment and resignation.

Noticee	Date of appointment	Resignation	Designation as informed by Noticee
Noticee 2 (Manish Kalidas Gandhi)	October 7, 2009	-	Independent and Non-executive Director
Noticee 3 (Chandrasen Ganpatrao Bhise)	October 7, 2009	December 22, 2016	Independent and Non-executive Director

Noticee 4 (Ramachandrandran Ramakrishnan)	April 26, 2011	-	Independent and Non-executive Director
Noticee 5 (Shobha Ratnakar Barde)	January 1997	-	Independent and Non-executive Director

xx. As regards, role of the said Noticees i.e. directors etc, I refer to the order of Hon'ble Securities Appellate Tribunal in Dr. Uppal Devinder Kumar vs SEBI decision dated 25.09.2019 (Appeal No. 220 of 2017) wherein referring to tribunal's decision dated 09.08.2019 in Sayanti Sen vs. SEBI; and the Hon'ble Supreme Court's decision in SEBI vs. Gaurav Varshney, (2016) 14 SCC 430, Tribunal has observed as under:-

13. In Sayanti Sen vs. SEBI (Appeal No. 163 of 2018 decided on 09.08.2019) the Tribunal held:

"12. The usual pattern in economic legislations is that when an offence is committed by a company, the liability is not imposed on all the officers of the company en bloc. Those who are guilty are generally sorted out from those who are not guilty. The Companies Act, however, makes a slight departure from this conventional pattern. It gives an opportunity to the board of directors to distribute the work as between the members of the board or to appoint a managerial person like managing director or whole time director or manager. If nothing of this sort is done, only then the whole board is liable to be prosecuted. 13. As per Section 5 of the Companies Act it becomes clear that a managing director, whole time director, manager, secretary and any person who has been authorized by the board or by any director are now officers in default. Section 5(g) of the Companies Act makes it apparently clear that if there is a managing director appointed in a company, he would be an officer in default. Further, in the absence of any managing director, if the board has specified any particular director or manager or any other person as an officer in default in which caseonly that specified director or manager etc. as the case may be would be an officer in default.

14. Section 5(g) of the Companies Act further provides that apart from the directors any officer can also be penalized if his role can be attributed to be an officer in default. If any officer has played some role in bringing about the default or he might have performed the duties assigned to him then he could be penalized as an officer in default. Section 5(g) of the Companies Act thus makes it clear that in the absence of any managing director or any specific order of a board, then by a deeming fiction, all the directors of the company would be officers in default."

14. Thus, if a company is liable to refund the monies received from the investors and if the company fails to pay the amount then the amount can be recovered jointly and severally from every Director of the Company who is an officer in default. Therefore, when the company is the offender, the vicarious liability of the acts of the Directors cannot be computed automatically. The contention that being a Director of the Company the appellant cannot disown his responsibility for the acts of the Company is misconceived. It is not possible to lay down any hard and fast rule as to when a Director would be vicariously responsible for the acts as a Director in charge of day-to-day affairs of the Company. However a finding has to be arrived at that the appellant was responsible for the day-to- day affairs of the Company and was involved in the collection of the monies and in the implementation of the schemes. In our view, it is not necessary that every director is required to be penalized merely because he is a director on the ground that he was deemed to responsible for the affairs of the company. If the director can explain that he had no role to play in the alleged default or that he was not

responsible for the affairs of the company in which case penalty could not be fastened upon him on the mere ground that he was a director….
15. In SEBI vs. Gaurav Varshney, (2016) 14 SCC 430 the Supreme Court held that a company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, officers of a company who are responsible for acts done in the name of the company are sought to be made personally liable for acts which result in criminal action being taken against the company. It makes every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company liable for the offence. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status."

In light of these case laws it is imperative upon me to analyse the role of each of the Noticees as to whether they were officers in default, responsible for the violations as alleged in the SCNs.

xxi. Various contentions made by the Noticees 2 to 5 are looked into through the prism of 'officer in dafault'. Noticees 2 to 5 have submitted that no harsh steps should be taken against them as they undertook the Company's business activities under an honest assumption that registration was not necessary and that until recently SEBI too was of the view that the Company's business did not fall under CIS. Replies of the Noticees 2 to 5, have submissions similar to that of the Noticee 1. Noticees 2 to 5 have also individually submitted that they were non-executive independent directors and did not take part in day to day business, further, Noticee 6 was taking most decisions for Noticee 1. Noitcees 2 to 5 have also replied that Noticee 6 had 99.78% of the total shareholding of the Noticee 1. Said Noticees have also submitted that as per section 27 of the SEBI Act," *…provided that nothing contained in the sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was permitted without his knowledge or that he had exercised all due diligence to prevent the commission of such offence"*, and that Noticee 1 had sought guidance from SEBI regarding the schemes being CIS, shows that due diligence exercised by Noticees 2 to 5. Noticees 2 to 5 have informed that recovery proceedings have been initiated by SEBI against them for another quasi judicial proceeding and their bank accounts, demat accounts etc have been attached. Noticee 3 has submitted that owing to many health issues he has, the SCN against him be dropped. Noticee 5 submitted that she is a housewife and was appointed as director for the sole reason that she is the sister of Noticee 6.

xxii. It is specifically noted from all the replies of the Noticees that the Noticees have failed to give evidentiary proof regarding their not being 'officer in default' in light of the various documents on record which shows names of Noticees 2 to 7 and signatures of some of the Noticees as signatories.

xxiii. PCL has launched and carried on the above said CIS from 2002 through the EP. Therefore, the above directors, comprising the board of directors of PCL are responsible for the conduct of the business and affairs of the company and also in launching and carrying on the unregistered CIS schemes. The Noticees 2 to 5 had submitted that they were independent non executive directors but failed to submit any evidentiary proof that they did not attend the Board meetings during which the said schemes were launched. They further failed to prove of any actions taken by them to prevent PCL from launching any such CIS. In terms of section 291 of the Companies Act, 1956, the board of directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the board of directors shall be responsible for the conduct of the business of a company and liable for any non-compliance of law and such liability shall devolve on individual directors. Accordingly, a director who is part of a company's board shall be responsible and liable for all acts carried out by a company unless exemptions are provided. The present case involves a Company that has mobilized public funds from gullible investors through its unregistered collective investment schemes. In this regard, the following observations made by the Hon'ble High Court of Madras in Madhavan Nambiar vs Registrar of Companies (2002 108 Comp Cas 1 Mad) are important to note:

> 13. .... A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.
>
> 14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or

omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956".

xxiv. As stated above, the schemes being unregistered CIS and ignorance of law is no excuse and there is no estoppel against law, and therefore, I conclude that the Noticees 2 to 5 who were the directors at the relevant time are equally responsible for carrying out CIS without obtaining registration from SEBI and therefore violated of Regulation 4(2)(t) of PFUTP Regulations as they illegally mobilized the funds by sponsoring or carrying the said CIS. Regulation 4(2)(t) of PFUTP Regulations, prohibits any person from dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any collective investment scheme by any person. I note that Noticees 2 to 5 who were the directors of PCL at the relevant time are equally responsible for carrying out CIS without obtaining registration from SEBI and therefore violated of Regulation 4(2)(t) of PFUTP Regulations as they illegally mobilized the funds by sponsoring or carrying the said CIS.

xxv. In light of all of the above, I conclude that the charges levelled against Noticee 2 to 5 by OD and conveyed through the SCNs are thereby established,

Issue c: Do the violations, if any, on the part of the Noticees attract any monetary penalty under section 15HA of SEBI Act?

9) Therefore, after taking into account the aforesaid entire facts / circumstance of the case, and other material available on record, I am of the view that the activities carried out by PCL and its directors during examination period was CIS and the said activities of CIS were carried out without obtaining registration from SEBI and the same attracts the imposition of monetary penalty. The Noticees 1 and 2 to 5 are liable for a monetary penalty under Section 15HA of SEBI Act, 1992 which is reproduced below:

Penalties and Adjudication

15HA - Penalty for fraudulent and unfair trade practices.- *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Issue d - if yes to c, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in section 15J of the SEBI Act read with rule 5(2) of the Adjudication Rules?

10) While determining the quantum of penalty under section 15J of SEBI Act, 1992, it is important to consider the factors stipulated in section 15J of SEBI Act, 1992 read with Rule 5 (2) of the Adjudication Rules, which reads as under:-

> ***SEBI Act, 1992***
>
> *15J "Factors to be taken into account by the adjudicating officer-*
> *While adjudging quantum of penalty under section 15- I, the adjudicating officer shall have due regard to the following factors, namely:-*
>
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
>
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
>
> *(c) the repetitive nature of the default."*

11) I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticees no 1 to 5 and the loss, if any, suffered by the investors due to such failure on the part of the Noticees no 1 to 5. There is no evidence on record to show that the failure by Noticees 1 to 5 is repetitive in nature.

12) I note from information in public domain that the Noticees raised over Rs. 7000 Crore through unregistered CIS and I also note that recovery proceedings have been initiated against the Noticees 1 to 5. Therefore, taking into consideration the facts / circumstances of the case, I am of the view that the Noticees 1 to 5 are jointly and severally liable for a monetary penalty of Rs. 20,00,00,000/- (Rupees Twenty Crore only), for carrying out the CIS without obtaining registration from SEBI, and charges against Noticees 6 & 7 are dropped without imposing any monetary penalty.

ORDER

13) In exercise of the powers conferred under section 15-I of the SEBI Act, 1992 and Rule 5 of the Adjudication Rules, I hereby imposed a penalty of Rs. 20,00,00,000/- (Rupees Twenty Crore only) on the Noticees 1 to 5 under section 15HA of the SEBI Act. The said Noticees are liable to pay the penalty jointly and severally. I am of the view that the said penalty is commensurate with the violations committed by the Noticees 1 to 5.

14) The Noticees 1 to 5 shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:

a. By using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

b. By way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai

15) Details of Demand Draft made as given in format below shall be sent to "The Division Chief, EFD-DRA-III, Securities and Exchange Board of India, SEBI Bhavan-II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in

a. Case Name
b. Name of the 'Payer/Noticee'
c. Date of Payment
d. Amount Paid
e. Transaction No.
f. Bank Details in which payment is made
g. Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)

16) In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

17) Copies of this Adjudication Order are being sent to the Noticees and also to SEBI in terms of rule 6 of the Adjudication Rules.

Date: July 31, 2020 **SANGEETA RATHOD**

Place: Mumbai **ADJUDICATING OFFICER**