WTM/RKA/IMD-CIS/16 /2013

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER

ORDER

Under sections 11 and 11B of Securities and Exchange Board of India Act, 1992 read with regulation 65 of SEBI (Collective Investment Schemes) Regulations, 1999 in the matter of Osian's- Connoisseurs of Art Private Limited.

Appearance:

For Noticee:	Mr. Zal Adhyarjuna, Advocate Shri Vyapak Desai, Advocate Ms. Payal Chatterjee, Advocate Shri Anujit Gangoli, Director
For Complainant:	Shri K. Mahadevan, Advocate
For SEBI:	Shri Santosh Kumar Shukla, Joint Legal Adviser Shri Mridul Rastogi, Asst. General Manager Shri Durgesh Kumar Thakur, Asst. Legal Adviser

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1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") noticed that Osian's-Connoisseurs of Art Private Limited (hereinafter referred to as "Noticee") was soliciting contribution in the nature of investments from the investors under the scheme of 'Art Fund' with an objective to invest in the art works. In order to understand the nature of activities of the Noticee and to examine whether they would fall within the ambit of the Securities and Exchange Board of India Act, 1992 (SEBI Act) and SEBI (Collective Investment Scheme) Regulations, 1999 ('CIS Regulations') SEBI undertook an inquiry and vide it's letter dated June 18, 2007 sought clarification from the Noticee. The Noticee submitted its reply to SEBI vide its letter dated July 3, 2007.

2. From the reply of the Noticee, it was noted that the Noticee is a company incorporated under the Companies Act, 1956 and has sponsored a fund by the name Osian Art Fund (hereinafter referred to as the 'Osian' or the 'Art Fund') as a private trust formed under the Indian Trust Act, 1882. Oseta Investments Trustee Company Private Limited (hereinafter referred to as the 'Oseta' or the 'Trustee') is the trustee and the Noticee acts as Asset Management Company (AMC) for the Osian. Osian had launched a 'Scheme – Contemporary -1' which involves pooling of investments from investors with the objective to generate income and capital growth from portfolio of investment and management in the art works. The investments /contributions

received from the investors are managed by the Noticee.

3. From the characteristics of the arrangement and scheme sponsored /floated by the Noticee as stated in its above reply, it was *prima facie* observed that the activities of the Noticee are in the nature of *'collective investment schemes'* as defined under section 11AA of the SEBI Act. Since the Noticee was undertaking such activities without obtaining certificate of registration as required under section 12(1B) read with section 11(2) (c) of the SEBI Act and regulation 3 of the CIS Regulations, SEBI issued a show cause notice (SCN) dated October 12, 2007. Oseta, vide its letter dated December 21, 2007, assumed the responsibility to respond to the SCN and filed the reply for itself and on behalf of the Noticee. An opportunity of hearing was granted to the Noticee on September 5, 2008 before the then Whole Time Member when Mr. Darius Khambata, Senior Advocate had appeared and made submissions on behalf of the Noticee. The Noticee had also submitted its written submissions vide its letter dated September 15, 2008.

4. In may be mentioned in this context that SEBI had also issued an "advisory on Art Funds" vide its Press Release No. PR No. 44/2008 dated February 13, 2008 and also issued message to the investors advising them that 'Art Funds" are *'collective investment schemes'* as defined under the SEBI Act. Investors were also advised with regard to their investment in Art Funds, funds/schemes launched by companies or any entity formed for the purpose. It was informed to them that launching / floating of the 'Art Funds' or schemes without obtaining a certificate of registration from the SEBI in terms of provisions of the CIS Regulations amounts to violation of the provisions of section 12 read with section 11 and 11AA of the SEBI Act and the CIS Regulations.

5. Another opportunity of hearing was granted to the noticee before me on April 17, 2012 when Shri Vyapak Desai, Advocate appeared and submitted that SEBI had, vide its letter dated January 31, 2011 advised Shri A. K. Muthuswamy (hereinafter referred to as 'the Complainant') that his complaint with regard to his investment of ₹ 25 lakhs in the scheme of the Noticee did not come within purview of SEBI. He further submitted that the Complainant had filed a writ petition before the Hon'ble High Court of Madras challenging the SEBI's letter dated January 31, 2011 which has been finally heard on April 16, 2012 when the Hon'ble High Court has dismissed the writ petition. He sought adjournment of the hearing in order to study the decision of the Hon'ble High Court before making final submissions, which was granted to him.

6. Vide order dated April 16, 2012, while dismissing the writ petition filed by the Complainant praying for direction to SEBI to dispose of his complaint dated January 18, 2011 read with his email dated February 18, 2011 in accordance with provisions of sections 11AA and 12(1B) of the SEBI Act read with the CIS Regulations and SEBIs advisory / message dated February 13,

2008, Hon'ble High Court of Madras observed that SEBI while exercising quasi judicial function cannot entertain the second complaint on same cause of action after rejecting it. The second complaint *'cannot be treated to be review, as there is no power of review with Board under the Act"*. Therefore, the Hon'ble High Court held that it could not issue direction to deal with the complaint which was not maintainable in law. However, the Hon'ble High Court gave liberty to the Complainant to challenge SEBIs letters dated January 31, 2011 by filing an appeal, if so permissible in law. Pursuant to the same, the Complainant filed an appeal before Hon'ble Securities Appellate Tribunal (SAT).

7. It may be mentioned that the proceedings commenced by the SCN against the Noticee were not in challenge either in the writ petition before the Hon'ble High Court of Madras or in the appeal before Hon'ble SAT. Hon'ble SAT while deciding the appeal filed by the Complainant, vide its order dated November 29, 2012, set aside SEBI's letter dated January 31, 2011 and directed SEBI to reexamine the matter after hearing both the parties. Consequently, another opportunity of personal hearing was granted to the Noticee on December 26, 2012 which was, on request of the Noticee, rescheduled to January 4, 2013. Mr. Zal Adhyarjuna, Advocate appeared on the scheduled date and made submissions on the lines of reply dated December 21, 2007 and September 15, 2008. Another opportunity of personal hearing was granted to the Noticee and the Complainant, both on March 14, 2013 before me when Mr. Vyapak Desai, Advocate of the Noticee appeared and made submissions on behalf of the Noticee. Mr. K. Mahadevan, Advocate of the Complainant argued on his behalf on the lines of his written submission dated March 14, 2013. As requested by him, the copies of replies of the Noticee were furnished to him and he was granted seven days time to file his rejoinder, if any, and to furnish a copy thereof to the Noticee. The Noticee was allowed to file its response to the rejoinder of the Complainant within one week thereafter. The Complainant vide letter dated March 18, 2013 submitted his rejoinder with a copy endorsed to the Noticee. SEBI also vide its letter dated March 28, 2013 forwarded a copy of the same to the Noticee. However, the Noticee has chosen to not to file his response to the rejoinder of the Complainant. I, therefore, infer that the Noticee does not have anything to add to its submissions already made in these proceedings.

8. The submissions of the Noticee are summarized as below:
   (a) The Osian is set up as a private trust, with the Oseta appointed as its Trustee. Therefore, the SCN should have been directed to the Oseta instead of the Noticee who is the Sponsor and AMC of the Fund. Since the law does not recognise a private trust as possessing characteristics of a separate juristic entity, Osian Art Fund is not a legal entity. In this structure, the legal title vests in the Trustee (Oseta) and the beneficial title with the beneficiaries (investors).
   (b) In the present context, the legal representative of the Osian Art Fund is the Trustee and not

the Noticee, which is only its sponsor and AMC. The Noticee, is strictly segregated from Osian Art Fund and this arrangement functions more in the nature of a mutual fund. Oseta is fully committed to complying with all applicable laws and regulations.

(c) A '*collective investment scheme'* under the CIS Regulations has necessarily to be a scheme or arrangement offered by a 'company' but in the present case the scheme has been floated by the Osian, which is structured as a private trust. Prior to the amendment in 2000, any person who floated a scheme which satisfied the requirements mentioned in regulation 2(2)(a) to (d) would have qualified as '*collective investment scheme'*. However, post amendment of 2000, it is evident from section 11AA of the SEBI Act and regulation 2(2) of the CIS Regulations that SEBI has consciously introduced the qualification that a '*collective investment scheme'* is one which is offered by any 'company' and the same must be given meaning accordingly. Hence, the scheme of trust cannot be construed as a '*collective investment scheme'* under the CIS Regulations.

(d) S. A. Dave Committee on Collective Investment Schemes, 1998 (Dave Committee Report) indicates that the introduction of CIS Regulations was necessitated to ensure legitimate investment activity in plantation and other agriculture based business. The CIS Regulations have been framed on the basis of the Dave Committee Report. A reading of the CIS Regulations would show that it is intended for regulating plantation activities and live stock activities wherein there is always underlying assets. They also aim at protecting the small investors who are fragmented rather than the sophisticated and high networth investors. By its very nature, the CIS Regulations were never intended to, and cannot, in its present form, cover specialized fund such as Art Funds.

(e) SEBI Act/CIS Regulations are not umbrella regulations to cover all sort of pooling of funds. As recommended by Dave Committee, the CIS Regulations deal with open ended schemes of plantation / agro companies. If SEBI desired to regulate other pooling of funds it could have amended the CIS Regulations or made separate regulations since CIS Regulations never contemplated Art Funds as asset class for its purpose. The advisory / message dated February 13, 2008 is merely an advisory and cannot operate as an order or amendment of the regulations.

(f) The CIS Regulations are aimed at schemes which involve the 'public' and do not apply to schemes which operate only on a private placement as in the present case. SEBI does not regulate private contracts/relationships. There was no invitation by the Fund to public inviting investment. The subscription to the scheme is undertaken on a private placement basis and circulated to a select group of investors through a Confidential Information Memorandum (CIM) which was privately circulated and not advertised / published in the public domain. Every CIM was given a number and there could not be more CIMs than the numbers. Thus, the intention was clearly to make private placement rather than inviting

public at large to make investment.

(g) It had in-principle complied with section 67(3) of the Companies Act, 1956 as the CIM was strictly circulated to specific investors and eligible to be accepted only by such investors. Only 656 investors have invested in the scheme of the Fund.

(h) The threshold of minimum subscription (₹10 Lakhs) is substantially higher than any '*collective investment scheme*' operating and mandated for registration with SEBI. Units offered by Osian are not available either directly or indirectly for subscription or purchase by persons other than those receiving the offer invitation. Unlike CIS, where unvaried investors invest, in Art Fund sophisticated and high net worth investors invest.

(i) Units issued with works of art as the underlying asset would not strictly fall within the scope of 'securities'.

(j) Regulation 2 (1) (y) read with regulation 24 of the CIS Regulations mandates that a scheme floated in accordance with the CIS Regulations must necessarily be rated by a Credit Rating Agency and appraised by an Appraising Agency and that, as of date, Credit Rating Agencies/Appraising Agencies have not been able to put in place a mechanism by which the Scheme floated by the Art Fund may be rated or appraised and this is essentially because of the uniqueness of the underlying art objects.

(k) Ninth schedule of the CIS Regulations provides accounting norms for different types of schemes regulated under the CIS Regulations including plantation schemes and livestock schemes. However, there is no reference to any schemes offered by art funds. The exclusion of schemes floated by art funds under ninth schedules corroborates its contention that art funds were never intended to fall within the scope of the CIS Regulations.

(l) Oseta is not related or associated with the securities market. It is governed by the general laws and is not unregulated. It has conducted its activities in absolute compliance with laws and regulations. It followed a transparent and detailed process of sourcing, selling and valuing art works. The monthly NAV information and Monthly Account Statements, disclosure reports and annual performance reports were made available to all investors, which made them totally accountable at all times. Though it is not required, the Noticee voluntarily follows most of the obligations cast on the '*collective investment schemes*' under chapter VI of CIS Regulations.

(m) The Noticee/Oseta has never concealed the fact that the Art Fund is presently an unregistered and unregulated entity and that it is possible that in future, it may have to register with SEBI or any other regulatory authority as required by any laws that may be applicable and the same is expressly disclosed in the CIM circulated to its Unit holders on confidential basis. In the CIM it has been very categorically disclosed as a risk factor and otherwise that neither the Trust nor the Fund nor the scheme has been registered with the SEBI or any other Governmental or unregistered entity. The CIM does not constitute an

offer or solicitation to anyone. It has been further disclosed that the units offered by the CIM have not been approved or recommended by SEBI or any other authority. The risk factors disclosed in the CIM also include the disclosures that the units of the scheme shall not be listed on any stock exchange.

(n) After its reply to the SCN there was confusion with regard to jurisdiction as no action was taken by SEBI on the SCN. SEBI has taken a right stand vide its letter dated January 31, 2011 while replying to the Complainant. The Complainant is not party to the SCN and no relief can be given to him. The movement the matter in issue of the SCN is decided that the Noticee is not operating a '*collective investment scheme*' the complaint fails.

(o) The Complainant had subscribed and invested in the Fund on the basis of the CIM as a private contract. The Complainant, having invested on the basis of the CIM that disclosed all risks, cannot ask for refund as claimed by him. Complainant knew upfront that he was investing in risk assets and there was no guarantee of return. Even if the Noticee is held to be '*collective investment schemes*' the only direction could be the direction to register and pay penalty. The Fund is already closed. SEBI cannot direct repayment or refund as CIM has disclosed risks and the terms of CIM cannot be changed by SEBI order.

(p) All monies have been invested in art works and the stocks are lying. The investors have been repaid by the Noticee and it is making attempt to sell the stocks and the repayment shall be made to the investors from the proceeds thereof.

9. The submissions of the Complainant vide its letter dated March 14 and 18, 2013 are summarised as below:

i) That he is an investor, investing in the share market, mutual funds and other schemes for the past several years. He has invested ₹25,00,000/- on July 3, 2006 in the Scheme namely "Contemporary I" on the basis of representation of the Noticee and considered advice of Noticee's Marketing Agent, i.e., ABN Amro Bank (now Royal Bank of Scotland).

ii) That the maturity of the Scheme was in July 2009, which was extended further by 6 months to January 2010 and Noticee failed to return the maturity value of ₹29,27,000/- in terms NAV communicated on May 9, 2009, i.e., ₹117.10 per unit. When he complained against the Noticee, part payment of ₹10,00,000/- was remitted by the Noticee against amount payable to him.

iii) That he learnt from SEBI's advisory dated February 13, 2008 that Art Funds are '*collective investment schemes*' under section 11AA (2) of SEBI Act, 1992 and therefore, launching, floating of Art Funds or Schemes without obtaining certificate of registration from SEBI, invite appropriate action, both civil and criminal.

iv) That by an inappropriate interpretation of law, the Noticee wanted to raise funds from the investors without getting regulated or governed by any law and the Noticee is required to and obliged to respect and follow provisions of law applicable to it and its operations.

v) That the Noticee is operating collective investment schemes and is operating illegally without obtaining certificate of registration from SEBI in term of the provisions of the SEBI Act and the CIS Regulations and therefore, SEBI has jurisdiction over the Noticee.

vi) That the Noticee raised an amount of ₹102.40 crore from 656 investors thus, it is not a private placement as stated in recent decision of Hon'ble Supreme Court of India dated August 31, 2012 in matter of *Sahara India Real Estate Corporations Limited & Ors. Versus SEBI & Anr.* in Civil Appeal No. 9813 and 9833 of 2011.

vii) The CIM was circulated through its marketing agent ABN Amro Bank. Even if it was meant for a select group of persons it involved public participation and was clearly offered to public.

viii) That Mr. Neville Tuli together with his close relative Mr. Swaraj Tuli owned more than 52% shares of Noticee who is Sponsor as well as AMC. Shri Swaraj Tuli owned 99% of shares of trustee, viz. Oseta; and Mr. Neville Tuli is Chief Advisor of the Osian's Art Fund.

ix) That SEBI did not examine and explore to initiate separate and additional proceedings against the Noticee under SEBI (Mutual Funds) Regulations, 1996 and SEBI (Alternate Investments Funds) Regulations, 2012 when the Noticee itself admitted that it is structured more like a mutual fund.

x) That the Noticee be directed to return the remaining maturity value with 18% interest from the date of default of full settlement and actions be initiated including reference to Reserve Bank of India against ABN Amro Bank who was also the party to misrepresentations that led to his investment in the scheme.

10. I have considered the SCN, the submissions of the Noticee, submissions of the Complainant and other material available on record. From the material available on record, I *inter alia* note that:-

(a) The Osian is sponsored by the Noticee as private trust under the Indian Trust Act, 1882. Oseta is the trustee for the Fund and the Noticee acts as Asset Management Company (AMC) for the Fund.

(b) The Art Fund had launched 'Scheme – Contemporary -1' with the objective to generate significant medium and long term income and capital growth from portfolio of investment and management in the contemporary fine arts.

(c) The Noticee had circulated an information memorandum inviting subscription/investments in its 'Scheme – Contemporary -1' from the investors. The Art Fund has issued unit certificate to the investors.

(d) The investment/contribution of investors is used for buying and marketing art works for the benefit of investors.

(e) Chief Advisor (Mr. Neville Tuli) is admittedly responsible in advising the AMC and Oseta for formulation of investment policies and strategies for the Art Fund and in relation to the investment and management of the corpus of the Art Fund.

(f) As per the Scheme the investor can invest minimum ₹ 10,00,000 and in multiple of ₹ 5,00,000 thereafter. Total 656 investors had subscribed the 'Scheme – Contemporary -1' of the Fund for ₹ 102.4 crores.

(g) The 'Scheme-Contemporary – 1' had a term of 36 months unless determined otherwise.

11. I note that the issue for determination in these proceedings is whether the arrangement and scheme of the Noticee are in the natures of *'collective investment scheme'*, and if yes, then whether action as contemplated in the SCN should be taken against the Noticee for carrying on the activities of *'collective investment scheme'* without obtaining certificate of registration under the SEBI Act and CIS Regulations and whether the relief requested by the Complainant can be granted.

12. In order to deal with the issues and for a proper appreciation of this matter, I deem it necessary to refer to the background behind the necessity to have a policy and regulation of *'collective investment schemes'*. It is trite to say that SEBI has statutory duty to protect the interests of investors in securities market and to protect the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. Section 11 of the SEBI Act has empowered it to take such *'measures'* as it thinks fit for carrying out those objectives and duties. In terms of section 11(2)(c) of the SEBI Act, the *'measures'* referred to in section 11(1) may provide for registering and regulating the working of *'collective investment schemes'*. Section 12(1B) mandates that *'no person'* shall sponsor or cause to be sponsoring any *'collective investment schemes'* unless he obtains certificate of registration from the Board in accordance with the regulations.

13. Though the provisions existed in the SEBI Act since 1995 there was no regulatory framework for regulation of the *'collective investment schemes'* and the expression remained undefined till SEBI framed the CIS Regulations in 1999. During the late 1990s the Government of India noticed that certain entities were soliciting investments and issuing instruments such as agro bonds, plantation bonds, etc. by offering very high rates of return, which were inconsistent with the normal rate of returns in such schemes. Such entities mobilized huge amounts from the public and then mis-utilized (misappropriated) these funds, for the purposes not disclosed at the time of soliciting these investments from public, thereby not only causing loss to the investors who lost their savings to such unscrupulous entities, but also eroding the confidence of the general public. Considering the high element of risk associated with such schemes, the Central

Government felt that it was necessary to set up appropriate Regulatory framework to regulate such entities. Hence, in order to protect the interest of the investors and to ensure that only legitimate investment activities are carried on, vide press release dated November 18, 1997, the Central Government communicated its decision that schemes through which instruments such as agro bonds, plantation bonds, etc., are issued by different entities would be treated as 'Schemes' under the provisions of the SEBI Act and directed SEBI to formulate Regulations for the purpose of regulating these '*collective investment schemes'*. It is in this back ground SEBI framed the CIS Regulations. Regulation 2(2) of the CIS Regulations (prior to its amendment on February 14, 2000) provided that in order to determine whether any scheme is a *collective investment scheme,* the following conditions should be satisfied:-

'(a) the purpose of which is to enable the investors to participate in the scheme or arrangements by way of subscriptions and to receive profits or income or produce arising from the management of such property or the investments made thereof; and

(b) in which the subscriptions of the investors by whatever name called, are pooled, and are utilized for the purposes of the schemes or the arrangements; and

(c) in which the property or such subscriptions are managed on behalf of the investors, who do not have day to day control over the management or operation of the scheme, whether or not such properties or subscriptions and the investments made thereof are evidenced by identifiable or otherwise;'

14. Regulation 3 of the CIS Regulations mandated that "*no person other than a Collective Investment Management Company which has obtained a certificate under these regulations shall carry on or sponsor or launch a collective investment scheme."* In view of these provisions, I find that though the menace relating to plantation/ agro bonds triggered immediate response to lay down regulatory framework for '*collective investment schemes',* SEBI Act and CIS Regulations were not limited in their application to a 'company' nor were they limited with respect to schemes sponsored or caused to be sponsored by plantation/ agro companies, even prior to the amendment of 2000.

15. SEBI Act was amended to explicitly define *'collective investment scheme'* by inserting section 11AA therein with effect from February 22, 2000 by the Securities laws (Amendment) Act, 1999. The definition was provided as a clarificatory provision particularly for the reason that, by the said Amendment Act, the units of '*collective investment schemes*' were also included in the definition of the term 'securities' under section 2(h) of the Securities Contracts (Regulation) Act, 1956 (SCRA). The CIS Regulations also adopted the definition of *collective investment scheme* by reference to section 11AA of the SEBI Act. Section 11AA of the SEBI Act reads as under:

Collective Investment Scheme

"(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) shall be a collective

investment scheme.

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

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

(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;

(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

(iv) the investors do not have day to day control over the management and operation of the scheme or arrangement."

16. With regard to the applicability of SEBIs jurisdiction, the Noticee's contentions are four fold. First, with regard to structure i.e. section 11AA and CIS Regulations apply only to a scheme launched or sponsored by a company; Second, with regard to the asset class i.e. they apply only to plantation / agro companies; Third, with regard to the nature of offerings i.e. they apply only in case of solicitation / mobilisation investments from public and not in case of such investments through private placement; and Fourth, the units offered by the Art Fund are not 'securities'.

17. With regard to first contention of the Noticee, I note that as referred in preceding paragraphs, in terms of section 12(1B) of the SEBI Act, no "person" shall sponsor or cause to be sponsored or cause to be carried on a *'collective investment scheme'* unless he obtains a certificate of registration from the Board in accordance with the regulations. Regulation 3 of the CIS Regulations stipulates that 'no person' other than a Collective Investment Management Company which has obtained a certificate under the said regulations shall carry on or sponsor or launch a *'collective investment scheme'*. I note that section 12(1B) and regulation 3 both start with negative words "*No person……"* which clearly indicate that their provisions are mandatory. They have clothed their command in negative form which insists on compliance with their provisions as they are enacted. In this regard, the following observations of Hon'ble Supreme Court in the matter of *Mannalal Khetan and Ors.Vs. Kedar Nath Khetan and Ors AIR1977 SC 536* are relevant to mention:-

"…The mandatory character is strengthened by the negative form of the language. The prohibition against transfer without complying with the provisions of the Act is emphasised by the negative language. Negative language is worded to emphasise the insistence of compliance with the provisions of the Act. (See State of Bihar v. Mahawjadhiraja Sir Kahemshwar Singh of Darbbhanga and Ors. (1) MANU/SC/0019/1952 : [1952]1SCR889 K. Pentiah and Ors. v. Mtiddala Veeramatlappa avd Ors. (2) MANU/SC/0263/1960 : [1961]2SCR295 and unreported decision dated 18 April, 1976 in Criminal Appeal No. 279 of 11975 etc. Additional District Magistrate, Jabalpu v. Shivakant Shukla (3). Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statutory

provision imperative.

17. In Raza Buland Sugar Co. Ltd. v. Municipal Board (4) Rampur. (1965) 1 Section C.R. 970 this Court referred to various tests for finding out when a provision is mandatory or directory. The purpose for which the provision has been made, its nature, the intention of the legislature in making the provision, the general inconvenience or injustice which may result to the person from reading the provision one way or the other, the relation of the particular provision to other provisions dealing with the same subject and the language of the provision are all to be considered. Prohibition and negative words can rarely be directory. It has been aptly stated that there is one way to obey the command and that is completely to refrain from doing the forbidden act. Therefore, negative, prohibitory and exclusive words are indicative of the legislative intent when the statute is mandatory. (See Maxwell on Interpretation of Statutes 11th Ed. p. 362 seq; Crawford Statutory Construction, Interpretation of Laws p. 523 and Seth Bikharaj Jaipuria v. Union of India (5) MANU/SC/0045/1961 : [1962]2SCR880."

18. In view of the above, it is very clear that provisions of section 12(1B) and regulation 3 are mandatory and both contain substantive provisions of law. On careful examination of these provisions it is clear that they intend to cover the whole gamut of entities or persons, natural, juristic or otherwise, who sponsor or cause to sponsor a *collective investment scheme* so as to bring them into the regulatory framework of SEBI Act and CIS Regulations through registration. Therefore, no person other than a Collective Investment Management Company that has obtained certificate of registration from the Board can sponsor or cause to sponsor a *collective investment scheme*. The expression 'Collective Investment Management Company' is defined in regulation 2(h) of the CIS Regulations as under:

"2(h)"Collective Investment Management Company" means a company incorporated under the Companies Act, 1956 (1 of 1956) and registered with the Board under these regulations, whose object is to organise, operate and manage a collective investment scheme;"

19. In view of above provisions, a person can launch or sponsor or cause to sponsor a collective investment scheme only if it is registered as a Collective Investment Management Company in accordance with the CIS Regulations. Any other structure for sponsoring or causing to sponsor a *collective investment scheme* is, thus, not permissible as per law. Accordingly, a person cannot sponsor or cause to sponsor a *collective investment* through a private trust.

20. From the information furnished by the Noticee itself or through Oseta and SEBI's letter dated June 18, 2007, I note that the characteristics of the scheme of 'art funds' sponsored by the Noticee are as under:

    (a) the investment/contribution made by the investors was pooled and utilised solely for the purpose of the scheme i.e. investment in art work;

(b) the investment/contribution are made by the investors in the scheme with a view to received medium and long term income and capital growth from portfolio of investment in art works;

(c) the investments/contributions and art work (the property) forming part of the scheme are managed by the Noticee on behalf of the investors and they do not have any say in the management and operation of the scheme. After investing in the property, Noticee either keeps the same or lends it to others for a consideration or dispose of the same depending upon the market price of the property i.e. the art works. Noticee also acts both as a sponsor and asset management company in respect of the scheme;

(d) the investors have no day to day control over the management of the art work and the operation of the scheme. Investors do not participate in the acquisition and management of the art works. It is practically impossible for these investors to have a day to day control over the scheme or Fund art work.

21. I note that the above facts are not disputed by the Noticee and I find that the scheme, in this case, satisfies all four conditions of section 11AA (2) of the SEBI Act.

22. It is admitted position that the Art Fund (Osian) is sponsored/settled by the Noticee as an arrangement of private trust. The arrangement is conceived with the objective to pool investments from the investors in the private trust and utilise it for investment and management in the contemporary fine arts. CIM with regard to invitation of investments from investors is authorised and issued by the Noticee. The Noticee is the AMC of the Art Fund. I note that Mrs. Swaraj Tuli, mother of Mr. Neville Tuli (Founder and Chairman of Noticee) has 99% holding in Oseta and together they hold 48.41% shares of the Noticee. It is relevant to note here that the next biggest share holder holds only 6.08% shares in the Noticee. Mr. Neville Tuli is admittedly Chief Advisor of the Art Fund and also responsible in advising the Noticee i.e. AMC and the Oseta for the formulation of investment policies and strategies for the Art Fund and in relation to the investment and management of the corpus of the Art Fund. I, therefore find that all these entities viz, Noticee, Oseta are closely connected to each other and Mr. Neville Tuli alongwith his mother Mrs. Swaraj Tuli is having control over them. The Art Fund is sponsored by the Noticee as an arrangement to launch its scheme which involves investment contracts in the nature of *collective investment scheme*, while *de facto* management and control of the scheme is with the Noticee. The Noticee himself has argued that 'Art Fund', being a private trust, is not a legal/juristic entity. In these facts and circumstances of this case, I find that it is the Noticee who has sponsored, caused to sponsor and carry on the activities under its scheme and arrangement through instrumentalities like private trust where trustee is the closely related entity i.e., Oseta. I,

therefore, find that the Noticee has sponsored and caused to sponsor/caused to carry on a *collective investment scheme* through arrangement of a private trust without obtaining the certificate of registration from the Board in accordance with the CIS Regulations.

23. As per law lexicon 'scheme' means '*A plan; a purpose; a specific organisation for some end; a combination of things by design'* (Edn, 1996, P Ramanatha Aiyar). As per Black's law dictionary *'scheme'* means '*1. A systematic plan; a connected or orderly arrangement, esp. of related concepts <legislative scheme>. 2. An artful plot or plan, usu. to deceive others, <a scheme to defraud creditors>'*. Therefore, the expression 'scheme *or arrangement'* in section 11AA (2), in my view covers the entire spectrum of activities of the Noticee. The Noticee which is a company, engaged in the scheme as AMC but not registered by Board cannot sponsor or cause to sponsor a *collective investment scheme,* directly or indirectly, much less a mutual fund scheme as sought to be contended by it. Even if its claim that its activities are in the nature of mutual fund is accepted, the Noticee has contravened the provisions of SEBI Act and Regulations by sponsoring its scheme through arrangement of Art Fund, a private trust. In this case, in view of the above analysis, I find that the Noticee has sponsored and caused to sponsor a '*collective investment scheme'* through a private trust (Osian) where trustee is the closely related entity i.e., Oseta, without obtaining registration from the Board in accordance with CIS Regulations and thus, it attracts prohibition under section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations. I further find that what the Noticee is prohibited from doing directly without obtaining registration, it did indirectly through an arrangement of a private trust which admittedly does not have any legal status too and which is completely controlled through the Trustee which is very closely related to it. The facts and circumstances in this case clearly show that the Noticee has gone for this arrangement only to create a façade of trust so as to circumvent the provisions of the SEBI Act and CIS Regulations. In substance all the activities are being controlled by the Noticee only. Therefore, in my view, there is no infirmity in these proceedings for the reason that the SCN has been issued to the Noticee and not the trustee (Oseta) of the Art Fund.

24. Section 11AA being a definition should not be read in isolation rather should be read alongwith other sections like section 11(2)(c) and section 12(1B) of the SEBI Act and be applied in furtherance of the objects of the SEBI Act and CIS Regulations that have been framed to carry out the purposes of the SEBI Act. In this regard, I note that Hon'ble Supreme Court in *Bhavnagar University v Palitana Sugar Mills Pvt. Ltd. (2003) 2 SCC 111*, has held that: "*It is the basic principle of construction of statute that the same should be read as a whole, then chapter by chapter, section by section and words by words. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise. An effort must be made to give effect to all parts of statute and unless absolutely necessary, no part thereof shall be rendered surplusage or redundant."* Hon'ble

Supreme Court has further held in Reserve Bank of India etc. v. Peerless General Finance and Investment Co. Ltd. & Ors.[1987] 1 SCC 424, that *"No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place".* Therefore, I am of the view that section 11AA (2) of the Act cannot be read in isolation rather it should be read harmoniously with provisions of section 11(2)(c) and section 12(1B) of the SEBI Act. Once such a reading is given, the Noticee's activity squarely falls within the prohibition of section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations.

25. In my view, provisions of section 11AA of the SEBI Act are clarificatory and directory in nature. They provide for the definition of *collective investment scheme* and cannot dilute the substantive provision of section 11(2)(c) and 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations. SEBI Act is welfare legislation and while interpreting its provisions its larger objective should be kept in mind. In this regard, I note that the Hon'ble Supreme Court in *SEBI vs Ajay Agarwal*, AIR 2010 SC 3466, has laid down the principle to be adopted while interpreting the SEBI Act as follows: "*It is a well known canon of construction that when Court is called upon to interpret provisions of a social welfare legislation the paramount duty of the Court is to adopt such an interpretation as to further the purposes of law and if possible eschew the one which frustrates it."*

26. Therefore, section 11AA should be applied keeping in mind the intent and purpose of its provisions. In this regard, I note that Hon'ble Supreme Court in *P.G.F Limited & Ors. vs UOI & Anr. MANU/SC/0247/2013*, (hereinafter referred to as the *'PGFL Case'*) has clarified the purpose of section 11AA as follows:*"…..the Parliament thought it fit to introduce Section 11AA in the Act in order to ensure that any such scheme put to public notice is not intended to defraud such gullible investors and also to monitor the operation of such schemes and arrangements based on the regulations framed under Section 11AA of the Act."* In this *PGFL's case* Hon'ble Supreme Court further held that: "*Inasmuch as the said Section 11AA seeks to cover, in general, any scheme or arrangement providing for certain consequences specified therein vis-a-vis the investors and the promoters,……."*

27. I note that sub- section (1) of section 11AA defines *'collective investment scheme'* as follows:-*'any scheme or arrangement which satisfies conditions of sub-section (2) shall be a collective investment scheme*. On careful reading of its provisions, it can be seen that the opening sentence of sub-section (2) that refers to word "company" does not stipulate any condition to treat a scheme or arrangement as a *collective investment scheme*. The conditions contemplated in section 11AA(1) are provided in clauses (i) to (iv) of sub-section (2). Therefore, in my view, the provisions of sub- section 11AA(2) have to be interpreted in furtherance of intent and object of the SEBI Act including section 11AA thereof. I find that the whole purpose of SEBI Act, particularly the provisions of sections 11(2)(c), 11AA and 12(1B) thereof, would be defeated if section 11AA is interpreted literally as

sought to be done by the Noticee as any person would float/ sponsor or cause to sponsor '*collective investment schemes*', directly or indirectly through an entity that is not a company so as to keep itself out of the purview of the regulatory mechanism. In view of the above, the provisions of sections 11(2)(c),11AA and 12(1(B) have to be read harmoniously and opening sentence of section 11AA (2) should be read down so as to give a purposeful meaning to the definition. I note that reading down of statute is permissible, since it is well settled that all efforts should be made to sustain the purposeful meaning of the provision. In my view, the intent of these provisions as stated above, are to cover all schemes and arrangements that satisfy conditions provided in section 11AA(2) (i) to (iv), except those specifically excluded in sub-section (3) of section 11AA. It is clear that the emphasis here is on the scheme and consequences and not on the legal status and structure of the person who sponsored or offered the scheme or arrangement. In this regard, I note that Hon'ble Supreme Court in the *PGFL case* held as under:

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

28. I, therefore, find that the prohibition under section 12(1B) of the SEBI Act, is against every person, be it an individual, trust, association of persons, partnership, limited liability partnership, company, etc., except those entities who are specifically exempted under sub-section (3) of section 11AA of the SEBI Act. It is an established principle that what cannot be done directly cannot be done indirectly. I, therefore, do not find merit in the contention of the Noticee that its scheme is not a *collective investment scheme* since it has been floated by the Art Fund, which is structured as a private trust.

29. I have already concluded hereinabove that in this case, the '*collective investment scheme*' was sponsored and caused to be sponsored/ caused to be carried on by the Noticee through Osian.

Hence, even if Noticee's argument is accepted, its scheme is squarely covered within provisions of section 11AA of the SEBI Act.

30. With regard to the Second contention of the Noticee, I note that the expression '*collective investment scheme'* is defined in the SEBI Act from the perspective of the scheme or arrangement and not from the perspective of the asset class. None of the above mentioned provisions indicate that scope thereof SEBI Act and CIS Regulations is limited to the plantation/agro companies. Even the investment restrictions/obligations imposed by the CIS Regulations do not prescribe the asset classes wherein the entities offering the scheme or arrangement should invest as is the case with the mutual funds. Thus, the SEBI Act and CIS Regulations have a far wider applicability than what was discussed in Dave Committee Report. On careful examination of the provisions of SEBI Act and CIS Regulations, I find that after amendment of 2000, the position with regard to the scope of SEBI's jurisdiction has not changed and, SEBI Act and CIS Regulations apply to all '*collective investment schemes'* that satisfy the four conditions of section 11AA (2), irrespective of the asset class which attracts investors to make investments at the instance of another person. I further note that Hon'ble Supreme Court of India in the *PGFL Case*, while analysing the scope of sub-section (2) of section 11AA, held that:-

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

31. In the light of the above, I find that the SEBI Act and CIS Regulations are also applicable to '*collective investment schemes'* that engage in inviting investment/contribution from investors for investing any asset/property including art works. I, therefore, reject the contention of the Noticee that SEBI Act and CIS Regulations are intended only for regulating companies that sponsor schemes involving plantation/agro / livestock activities. I, further, find that the SEBI's advisory / message dated February 13, 2008 to investors was within the ambit of existing provisions of the SEBI Act and CIS Regulations.

32. With regard to third contention of the Noticee, I note that the Noticee has argued that the subscription to its scheme is undertaken as private contract with specific sophisticated investors on a private placement basis, hence it is not a '*collective investment scheme'*. The Noticee has contended that the CIS Regulations are aimed at schemes which involve the 'public' and do not

apply to schemes which operate only on a private placement. In this regard, the Noticee has also contended that it had, in-principle, complied with the provisions of section 67 of the Companies Act .

33. I note that, in this case, total 656 investors had invested/contributed their monies in the scheme of the Noticee pursuant to its CIM and total ₹ 102.4 crores have been collected by the Noticee pursuant to its scheme. I further note that in addition to the above mentioned two complaints from the Complainant, during the year 2011, SEBI had also received three more complaints from investors belonging to different parts of the country and even abroad i.e. from Mumbai, Lucknow, Chennai and USA. On April 29, 2011 three complaints along with the complaint dated February 18, 2011 of the Complainant was forwarded to the Noticee by SEBI. Even after that, SEBI has been receiving further complaints during the year 2012, with regard to the scheme of the company from the investors in different parts of the country i.e. from New Delhi, Kolkata and Valsad (Gujarat). All those complainants have not been approached to invest in the scheme so as to make the offer/scheme a domestic concern. I, further, note from the complaints that the investors were approached by marketing agents soliciting investments from them. In the facts and circumstances of this case, it is clear that the offer in the scheme of the Noticee was open to all investors who were eligible as per its terms and whosoever from public was eligible could invest in the scheme. In view of these observations, I find that the offer in question was to public and cannot be regarded as private placement merely because only sophisticated investors could subscribe to it.

34. Now coming to the argument of the Noticee with regard to compliance of section 67(3) of the Companies Act, I note that Hon'ble Supreme Court in matter of *Sahara India Real Estate Corporations Limited & Ors. Versus SEBI & Anr.* (Civil Appeal No. 98833 of 2011) has, vide its judgment dated August 31, 2012 held that an offer to fifty or more persons becomes public issue by virtue of first proviso to section 67(3) of the Companies Act. The Hon'ble Supreme Court also held that *'following situations, it is generally regarded, as not an offer made to public:-*

    - *Offer of securities made to less than 50 persons;*
    - *Offer made only to the existing shareholders of the company (Right Issue);*
    - *Offer made to a particular addressee and be accepted only persons to whom it is addressed;*
    - *Offer or invitation being made and it is the domestic concern of those making and receiving the offer.'*

35. In this case, the scheme was offered to more than 49 persons and it does not fall in any of the above categories and hence, in my view it was not a private placement in terms of provisions of section 67 too. I find that merely by writing expressions such as "private and confidential", "not

for circulation or distribution" and "for the addressee only" on the face of the CIM and issuing the same so as to reach the any persons from public or a section of public will not take out the offer in this case out of the category of the offer to public.

36. I, therefore, find that the scheme or arrangement caused to be sponsored by the Noticee was an 'investment contract' involving a general offer to the all eligible investors from public and whosoever from the category of such investors received the offer could invest his money in response to the offer. In my view such investment contracts, are *'collective investment schemes'*. I further note that the prohibitions under provisions of section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulation do not make any distinction with regard to *'collective investment schemes'* for different class of investors and it cannot be anybodies case that law protects only the small investors and affluent investors are left on the peril of unscrupulous business men. I, therefore, do not agree with the contention of the Noticee that because, in its scheme, sophisticated and high net worth investors invested, its scheme is not a '*collective investment scheme'*.

37. The fourth contention of the Noticee is that it's scheme did not fall under the category of 'securities'. In this regard I note that section 2(h) of the SCRA defines 'securities' to include *'units or any other instrument issued by any collective investment scheme to the investors in such schemes.* Regulation 2(z)(dd) defines the word 'unit' to include *'any instrument issued under a scheme, by whatever name called, denoting the value of the subscription of unit holder;"*. I note that the definitions of 'securities' as well as the 'unit' are very wide and include any instrument, by *'whatever name called'*. Thus, in my view 'instrument', would include a written legal document that defines rights, duties, entitlements or liabilities and even a Certificate, Receipt, Registration Letter or a Unit Certificate or any such similar document would fulfill the criteria of "by whatever name called" in the definition of the term 'unit' under regulation 2(z)(dd). I, therefore, find that the unit certificate issued to the investors in the *collective investment scheme* of the Noticee is covered within the definition of 'unit' under regulation 2(z)(dd) and is thus the unit issued by the *collective investment scheme* to its investors. Therefore, the unit certificate issued in the instant case is covered within the definition of the term 'securities' in section 2(h) of the SCRA. In this regard, I further note that in the *PGFL* case, the Hon'ble Supreme Court has not accepted the similar argument of PGFL. I, further, note that Hon'ble Supreme Court in that case has emphasized that essential elements for determining the nature of a scheme or arrangement under section 11AA are the investment and 'rights and entitlement' of the investors, rather than the unit or instrument or document involved in the scheme. In this regard, I note that the Hon'ble Supreme Court in the PGFL case held as under:

> *"It has to be borne in mind that by seeking to cover any scheme or arrangement by way of collective investment scheme either in the field of agricultural or any other commercial activity, the purport is only to ensure that the*

scheme providing for investment in the form of rupee, anna or paise gets registered with the authority concerned and the provision would further seek to regulate such schemes in order to ensure that any such investment based on any promise under the scheme or arrangement is truly operated upon in a lawful manner and that by operating such scheme or arrangement the person who makes the investment is able to really reap the benefit and that he is not defrauded."

38. The requirements relating to rating and appraisal under regulation 24 of the CIS Regulations are applicable with respect to schemes launched by the registered Collective Investment Management Companies. The rating and appraisal, in my view, are not the relevant factors to hold a scheme as *collective investment scheme.* Once such schemes are registered with SEBI under the CIS Regulations, all other consequential provisions including regulation 24 shall apply with regard to the schemes launched by it. I, further, find that absence of rating and appraisal mechanism with credit rating agencies/ appraising agencies with regard to art funds at this stage cannot be reasons to hold the art funds, which are '*collective investment schemes',* otherwise.

39. The Noticee has further argued that the Ninth Schedule of the CIS Regulations provides for accounting norms only with respect to specified schemes such as plantation schemes and livestock schemes and since they do not provide for accounting norms for schemes of art funds, its Art Fund does not fall within the preview of the CIS Regulations. In this regard, I note that under regulation 44 the obligation in this regard is cast on every scheme irrespective of its asset class. I, therefore, find that though the accounting norms in Ninth Schedule are limited to plantation and livestock schemes, it cannot be said that the schemes of art funds are not '*collective investment schemes'* for this reason. I am of the view that it is not possible to conceive accounting norms for the schemes of all asset classes exhaustively while framing regulations. Specific accounting norms may be formulated for the schemes involving other asset classes, as and when such schemes evolve. I, therefore, do not agree with the contention of the Noticee in this regard.

40. I further find that the Noticee's claim that it had made disclosure of all risk factors in its CIM, observes good practices and voluntarily follows most of the obligations cast on the CIMC under CIS Regulations, cannot absolve it from the mandatory obligation to comply with the provisions of sections 12(1B) read with section 11AA of the SEBI Act and regulation 3 of the CIS Regulations.

41. I further note that the Noticee disclosed in its CIM *inter alia* that the Art Fund is not regulated by any regulatory authority and its units will not be listed on any stock exchange, etc. In this regard, I note that such disclosures are contrary to the provisions of the SEBI Act and CIS Regulation which mandate registration as Collective Investment Management Company, approval of SEBI

for launch of *collective investment scheme* and getting the units listed. In my view, the Noticee has apparently taken upon itself to tread a path different from the mandate of law.

42. In view of the above, I find that the Noticee has sponsored and caused to sponsor / caused to carry on a *collective investment scheme* without obtaining certificate under the CIS Regulations, in contravention of regulation 3 of the CIS Regulations and section 12(1B) read with section 11 and 11AA of the SEBI Act. Therefore, the consequences of such contraventions as contemplated in the SCN should follow. I, therefore, do not agree with arguments of the Noticee in that regard.

43. I now proceed to deal with the submissions of the Complainant. I note that in the scheme in question the minimum investment was ₹10,00,000/- (₹100 per unit with the minimum investment of 10,000 units) and in multiple of ₹5,00,000/- thereafter. The scheme was a close ended scheme and initial offering period was June 9, 2006 to July 10, 2009. The lock-in period of the scheme was 36 months unless determined otherwise by the trustee. I further note that the maturity of the scheme was extended by 6 months from July 2009 to January 2010. According to the Complainant, the Noticee has not repaid him the maturity value in terms of NAV communicated on May 09, 2009 i.e. ₹117.10 per unit and he has been paid ₹ 10 lakh by the Noticee. The claim of the Complainant is that he should be paid remaining maturity value with 18% interest from the date of default and action be initiated against ABN Amro Bank the marketing agent in the scheme including by making reference to Reserve Bank of India.

44. In my view, the directions under section 11 and 11B of the SEBI Act in this case are in the interest of all investors in the scheme of the Noticee and no separate direction specific to a particular investor needs to be issued in the facts and circumstances of this case.

45. In this case, since Osian's-Connoisseurs of Art Private Limited has contravened provisions of section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations, I, hereby, in exercise of powers conferred upon me by virtue of provisions of section 19 of the Securities and Exchange Board of India Act, 1992 issue following directions under section 11 and 11B of the said Act read with regulations 65 and 73 of Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 :

(a) Osian's-Connoisseurs of Art Private Limited is directed to wind up its existing '*collective investment scheme*' and refund the monies, collected by it under its scheme but remaining unpaid, to all the investors. In addition, it shall also pay the amount of profits/income earned, if any, that is due to the investors as per the terms of its offer or pay interest at the rate of 10% per annum from the date of investment till the date of refund, whichever is higher;

(b) Osian's-Connoisseurs of Art Private Limited is further directed to comply with directions in clause (a) above within a period of three months from the date of this order and submit a winding up and repayment report to SEBI in accordance with the CIS regulations failing which the following actions shall follow:

i. SEBI would initiate prosecution proceedings under section 24 and adjudication proceedings under Chapter VI of the SEBI Act, against Osian's-Connoisseurs of Art Private Limited and its promoters;
ii. A reference would be made to the State Government/ local police to register a civil/ criminal case against Osian's-Connoisseurs of Art Private Limited and its promoters, directors and its managers/ persons in charge of the business of its scheme(s) for possible offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and
iii. A reference would be made to the Ministry of Corporate Affairs, to initiate the process of winding up of Osian's-Connoisseurs of Art Private Limited;

(c) Osian's-Connoisseurs of Art Private Limited is directed not to access the capital market and is further restrained and prohibited from buying, selling or otherwise dealing in the securities market till its collective investment scheme/s is/are wound up and all the monies mobilised through them are refunded to the investors.

46. The show cause notice dated October 12, 2007 and the complaint of the Complainant dated January 18, 2011 and February 18, 2011 are accordingly disposed of.

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

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date: April 15th, 2013
Place: Mumbai