

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

ORDER

Under sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 and regulation 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999

In the matter of Show Cause Notice dated August 24, 2015 issued to the following:

S. No.	Name of noticee	CIN/DIN
1.	Pancard Clubs limited (PAN: AAACP9093R)	U91900MH1997PLC105363
2.	Sudhir Shankar Morvekar	00399938
3.	Shoba Ratnakar Barde	00177938
4.	Usha Arun Tari	00178078
5.	Manish Kalidas Gandhi	02606802
6.	Chandrasen Ganpatrao Bhise	02393535
7.	Ramachandran Ramakrishnan	03510460

Dates of personal hearing: February 02, 2016 and February 10, 2016

Appearance:

On both the aforesaid dates of personal hearing, **Pancard Clubs Limited** was represented by Mr. Pradeep Sancheti, Senior Advocate, Mr. Darshit Jain, Advocate, Mr. Jas Sanghvi, Advocate, Mr. Aansh Desai, Advocate, Ms. Shilpi Jain, Advocate, Mr. Manish Shah, Mr. Pravin Chavan, Mr. Tejas Kasar. Additionally, Mr. Kedar Talvelkar and Mr. Vishwanatan Rove were present on February 10, 2016.

On February 10, 2016, Mr. Sandeep Parekh, Advocate appeared for the **6 directors (noticees 2 to 7 of the SCN)** of the Company.

For **SEBI**: Dr. Anitha Anoop, General Manager, Mr. Ankit Bhansali, Assistant General manager and Mr. T. Vinay Rajneesh, Assistant General Manager.

1. Securities and Exchange Board of India (“SEBI”) vide an ex-parte interim order dated July 31, 2014, *prima facie* observed that the *schemes* launched and carried on by **Pancard Clubs Limited** (“the **Company**” or “**PCL**”) were Collective Investment Scheme (“CIS”) in terms of section 11AA of the Securities and Exchange Board of India Act, 1992 (“the SEBI Act”) and alleged that the Company had operated such CIS without registration from SEBI as mandated under section 12(1B) of the SEBI Act and regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (“CIS Regulations”). In order to protect the interest of investors and to ensure only legitimate investment activities are carried on by the Company, SEBI had issued various directions vide the interim order.

2. The interim order was challenged by the Company (in Appeal No. 254/2014 with Misc. Appln. No. 104/2014) and its 6 directors (in Appeal No. 255/2014 and Misc. Appln. No. 105/2014) before the Hon’ble Securities Appellate Tribunal (“Hon’ble SAT”). These appeals were disposed of by the Hon’ble SAT, vide a common Order dated September 17, 2014, whereby the interim order was set-aside with the following directions to SEBI and the appellants (i.e. Company and its directors):

“56. Accordingly, we set aside the impugned ex parte interim order dated July 31, 2014 and direct WTM of SEBI to pass appropriate order on merits after hearing the Appellant as expeditiously as possible, preferably within a period of eight weeks from the date of Appellant tendering all documents / particulars to SEBI. Till then, the Appellant shall not launch any new CIS schemes and both Appellants shall not sell or dispose of or create any third party rights in respect of the assets belonging to them in any manner whatsoever. As noted in the order of High Court of Gauhati, we also direct the Appellant to maintain separate account of amounts which the Appellant may receive in respect of existing schemes in the meanwhile.

57. Appellants in both appeals, who have taken more than a year to furnish requisite particulars called for by SEBI, shall cooperate with SEBI in the matter of tendering all particulars / documents called for by SEBI and in SEBI passing order on merits within the time stipulated herein.

.....”

3. Pursuant to the directions of the Hon’ble SAT and in compliance thereof, SEBI vide letter dated September 24, 2014, sought the following from the Company:

- a. Details of the scheme-wise and year-wise amount mobilised and the number of investors under the schemes for corresponding years since incorporation of PCL till date.
- b. Details of the scheme wise and year wise amount re-paid / redeemed to the investors (for not utilizing the room nights) till date along with the number of investors under the schemes, since inception. Details of scheme wise timeshare availed by the investors / applicants, since

- inception till date. In case the investors/applicants opted for surrender value instead of timeshare, the details of surrender value redeemed, since incorporation of PCL till date.
- c. List of all investors along with their address and contact numbers and their investments, since incorporation of PCL till date.
 - d. On noticing from the letter dated April 04, 2014 that there are other schemes (in addition to those mentioned in the interim order), SEBI sought details regarding all the plans such as brochures, application forms etc. pertaining to other schemes run by you since incorporation of PCL till date.
 - e. All the financial statement of PCL since incorporation of PCL till date.
 - f. Details of all the bank accounts of PCL including the closed ones since incorporation of PCL till date
 - g. Details of full inventory of the assets obtained from the money raised by PCL from public.
 - h. Details of assets of PCL along with date (year) of its operation. Information on the source of funds for acquiring/construction of the asset.
 - i. Details of Assets of group entities/subsidiaries of PCL.
 - j. Year wise details of the commission paid to agents in the following format since incorporation of PCL till date.

4. The Company vide letter dated September 30, 2014 informed that the data sought is very old and voluminous and it would take time to furnish the information asked by SEBI. As the Company did not provide the required information/documents as sought by SEBI, a reminder dated October 10, 2014 was issued calling upon the Company to provide the information by October 16, 2014. The Company provided information through its letters dated October 16, 2014, October 21, 2014, October 29, 2014, October 31, 2014, November 7, 2014, November 13, 2014, November 18, 2014, November 21, 2014 and November 25, 2014.

5. However, the Company did not provide complete information as sought by SEBI. Hence, SEBI was constrained to file an application before the Hon'ble SAT seeking further orders as the Company had failed to comply with the request made for information/documents. The Company and its directors (collectively referred to as "the noticees") also filed an application seeking further time for providing the documents. These applications were disposed off by the Hon'ble SAT on December 19, 2014, *inter alia* directing the noticees to provide the information sought by SEBI expeditiously and in any event within

six months from December 19, 2014. SEBI was directed to pass orders within 3 months on receipt of information.

6. The Company provided further information vide letters dated December 01, 2014, December 08, 2014, February 27, 2015, March 04, 2015, March 31, 2015, April 27, 2015, May 05, 2015, May 12, 2015, May 21, 2015, June 02, 2015, June 17, 2015 and June 19, 2015. The Company had previously submitted information vide letters dated October 01, 2013, October 31, 2013, December 03, 2013, April 02, 2014 and April 14, 2014. The details and information contained in such letters were examined and such inquiry culminated in the issuance of a Show Cause Notice dated August 24, 2015 (“SCN”) to the Company and its six directors, Sudhir Shankar Morvekar, Shoba Ratnakar Barde, Usha Arun Tari, Manish Kalidas Gandhi, Chandrasen Ganpatrao Bhise, Ramachandran Ramakrishnan, alleging that the noticees had violated section 12(1B) of the SEBI Act read with regulations 3 and 65 of the CIS Regulations. The Company was alleged to have contravened regulation 3 of the CIS Regulations for failing to apply for registration with SEBI. The noticees were advised to show cause as to why the schemes of the Company should not be declared as CIS and if such schemes are found to be CIS then why appropriate action including directions under sections 11, 11(4) and 11B of the SEBI Act read with regulation 65 of the CIS Regulations should not be issued against them for the violations. The noticees were advised to send their replies within a period of 10 days from the date of receipt of the SCN. The noticees were also granted an opportunity of personal hearing on September 07, 2015.

7. The noticees had sought more time to file reply to the SCN. As SEBI was directed to pass the Order within a period of 3 months, SEBI filed a miscellaneous application before the Hon’ble SAT seeking time. The Company also filed another miscellaneous application seeking time upto December 31, 2015 to file the reply and 3 months thereafter for passing the order. The Hon’ble SAT, vide Order dated October 16, 2015, after accepting the statements made by SEBI and the noticees, directed the noticees to file their replies to the SCN on or before December 31, 2015 and SEBI to pass final order on or before February 29, 2016 after affording opportunity of personal hearing to the noticees. The Hon’ble SAT, vide Order dated December 14, 2015 (in Misc. Appln. No. 332/2015 in Appeal no. 254/2014) permitted the Company to sell off/dispose/create charge in respect of assets (specified in Exhibit 4 of the Misc. Appln.) subject to complying with the following conditions:

- (a) The applicant should provide details of the customers to whom payment has to be made, the amount collected from such investors and the maturity amount being paid to these customers.
- (b) The applicant should obtain a valuation report of the assets specified in Exhibit 4 of the application from a government approved valuer.
- (c) The valuation given by the valuer should be kept as a reserve price for sale of a property and all the above said properties shall be disposed in a transparent manner such a public auction.
- (d) The applicant has to ensure that all the investors are being repaid the complete amount due to them.
- (e) The applicant should submit quarterly report regarding the repayment made and also submit auditor's certification regarding the payments made on quarterly basis.
- (f) Any relief given by the Hon'ble SAT should not affect the adjudication as well as the 11B proceedings initiated against the applicant.

8. Thereafter, the Company filed its reply dated December 30, 2015 to the SCN. The Company *inter alia* made the following submissions:

A. Background of the Company:

- (a) PCL is an unlisted public company incorporated on 24th January 1997 and is a group company of the Panoramic Group of companies which is engaged in the business of owning, developing and operating hotels, clubs and resorts across India for the last 18 years as well as offering different holiday options for the last 13 years.
- (b) The Panoramic group of companies ("**the group**") are engaged in various business activities and, *inter alia*, in the business of running clubs, hotels and resorts since the year 1997. Panoramic group offers a variety of options to its customers.
 - The group has club/hotel/resort properties (owned by the Panoramic group and/or associate companies/clubs) details whereof are given in the list annexed.
 - The group has an international membership of Resort Condominium International (RCI).

- PCL is also a member of All India Resort Development Association, an independent, self-regulatory and non-profit body dedicated to the timeshare and vacation ownership industry. PCL has complied with the guidelines, norms and minimum standards prescribed by the AIRDA, and offered fair value on holiday packages to the customers.
- Consequently PCL and its customers have access to more than 6,500 hotels and resorts of RCI worldwide.
- PCL and its group have properties across India at places such as Goa, Thane, Shirdi, Malwan, Panvel, Mahabaleshwar, Pune, Pench, Kanha, Sunderban, Tadoba, Todgarh, Udairpur, Gir, Mandarmoni, Kaziranga, Chail, Gurgaon, Corbett, Bhimtal, Bageshwar, New Teheri, Hyderabad, Kolam, Mysore, Kodaikannal, Ootty, Alleppy. Pan Card and it's group companies also have properties at USA, North Carolena, Ohio, New York, Las Vegas, Orlando, Singapore, Dubai, Phuket, Pattaya and Bangkok.
- Thus the properties are situated at varied locations like tourist places, religious places as also business destinations to provide maximum choice to customers.
- PCL has proper infrastructure at its registered office to cater to room night bookings for its customers for its all affiliated / contracted destinations.
- PCL also has two clubs one each in Pune and Thane.
- Moreover, PCL is in the process of developing 12 other projects in various parts of the Country.
- PCL also proposes to enter into bilateral affiliations with renowned hotels.
- The list of clubs / hotels / resorts with which PCL has affiliations and is accessible to the customers, is also displayed and regularly updated on website i.e. www.pclinfo.in. The details of new affiliates are updated regularly.

- PCL's customers can utilize their Room Nights to avail of accommodation and leisure facilities at any hospitality property, including their stay at non-PCL hospitality properties and enjoy member-level access. The customer's rights of availing such services are almost entirely unfettered and on prior intimation to PCL; the relevant number of Room Nights is offset in accordance with the charges applicable by such other clubs / hotels / resorts. Since holiday is a growing business, PCL has taken the customer friendly step of allowing Room Nights to be utilised at any non – PCL property. PCL also allows its customers the flexibility of using the Room Nights for day picnics, restaurants, adventure trips, conferences, short excursions, banquets, tour packages including travel ticketing, etc. as per the customer's needs and requirements. This permits the utilisation of holiday options not only against Room Nights, but also for various other alternatives, thereby safeguarding the multiple avenues for consumption of Room Nights.
- (c) The concept of time share business models and vacation ownership is popular worldwide and contributes largely to the Hospitality Industry. In India, the lifestyle of the domestic travellers has changed over the years, which supports the time share model. Thus, in our country, timeshare model is a front runner in tourism industry which is a major contributor to Indian GDP, catalyst for the economic activity and employment generation.
- (d) There were few existing time share companies providing time share options on the lines of ones, which were very popular abroad such as Club Mahindra Holidays, Sterling Holidays, etc. The existing holiday time share options imposed various restrictions on the mode and manner in which the customers could utilise the facilities. The Company ensured that it had none of the restrictions of the other of the holiday time share options. Thus, the Company sought to omit the disadvantages of other holiday time share options and offered maximum advantage to the customer. Therefore, the Company introduced a different concept, which was easy to understand, operate and one that offers flexibility to the customers.
- (e) The Company wanted to ensure that it complied with all the rules, regulations & provisions of law. By way of abundant caution, the company wrote letters to various authorities informing them

about the holiday options and seeking their opinion about the same. PCL wrote a letter dated 22nd December 1999 to the Reserve Bank of India inquiring whether its holiday options and activities are compliant with the regulations of Reserve Bank of India. Reserve Bank of India wrote letter dated 10th July, 2000 clarifying that time share company was not covered under the Regulatory Jurisdiction of Reserve Bank of India and that the Security Deposit was an advance received by such companies against the facility / Services provided / proposed to be provided cannot be treated as public deposit under the Reserve Bank of India Act.

- (f) PCL wrote letter dated 27th February, 2001 to SEBI enclosing application forms of various Plans, Memorandum of Associations and Articles of Associations, detailed note on facilities of all under the holiday options of the companies and seeking clarification from SEBI whether the proposed plans fall under the provisions of collective investment scheme or any other regulations of SEBI.
- (g) PCL wrote another letter dated 20th June, 2002 to SEBI giving detailed write-up of the company, concept of holiday options of varying tenures, terms and conditions of holiday plans. PCL enclosed Corporate Brochure of the company and tariff card of various hotels/resorts/clubs.
- (h) In response to a Complaint by Mr. Sanjay Dina Patil (then Member of Parliament), SEBI had written a letter dated 21st October 2013 stating that on examining PCL's matter in 2010-11, SEBI concluded that company's activities did not attract CIS Regulations.

B. Contentions:

- a. PCL does not deal in 'securities' as defined in Section 2(h) of the Securities Contract (Regulation) Act, 1956. PCL is carrying on the business of time share holiday. The business of PCL cannot be regulated by SEBI as PCL does not operate or manage a 'collective investment scheme' or deal in 'securities'. It would not be within the jurisdiction of SEBI 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. No 'units' or 'securities' are issued by company to any of the customers. PCL's customers, in a sense, purchase a pure play holiday option, which allows them to avail of the multiple facilities for leisure and entertainment at any of the group properties or set of the payment

made to PCL against their stay at any non-PCL or non-affiliated properties. As no units or securities are involved in the business of PCL, it is outside the purview of SEBI.

- b. PCL, inter alia, provides insurance to all its customers. The insurance coverage offered to customers ranged from accidental death insurance coverage, health insurance and life insurance. PCL's holiday options were bundled with insurance free of cost and as a goodwill gesture to its customers, the primary reasons for insurance coverage for PCL's customers was their general welfare, reduction of financial burden and addressing the general problem of underinsuring against hazards, which in turn may cause financial hardship in the event of an insured event. Whenever a contract provides a component of insurance, such investment would be excluded from the purview of collective investment scheme as provided in Explanation to Section 12 (1B) of the SEBI Act.

- c. PCL's activities do not fall under any of the conditions / criterion laid down in Section 11AA (2) of the SEBI Act. For any activity to be classified as a Collective Investment Scheme, it is mandatory to satisfy all the conditions set out in Section 11 AA (2) of the SEBI Act.

- d. The business model of PCL is based on providing a service to the customer, whereby on advance purchase of Room Nights, at the Offer Price of the PCL, the customer can avail of the Room Nights purchased by him in the future at any of the properties of the PCL or its affiliates at a rate already paid by the customer which would be lower than the prevalent market rate of the room at that time. The right of usage of Room Nights is conferred upon the customer in exchange for monetary consideration, i.e. as a promise of performance of a service pursuant to the terms and conditions of the agreement. None of the plans approved by PCL involve any sharing of profit with the customer nor do they incentivize the customer in the event that the customer chooses to gift / sell their Room Nights. Thus merely because moneys are received from various people by the PCL for purchase of Room Nights, does not, amount to a "pooling of funds" as each customer has a separate contract and amount paid by each customer is the consideration for the facility avail by Room Nights. Moreover, it is settled that a contract should be read as a whole and any particular portion cannot be taken in isolation.

- e. The Company also sought written opinions from Judges, Senior Advocate, eminent jurists and renowned law firms, to confirm that its activities comply with various rules and regulations. The following were the opinions received:

“Based on the facts and circumstances peculiar to the Pancard Clubs schemes we are of the opinion that the same may not fall strictly within the purview of Collective Investment Scheme as presently defined”.

“Taking into consideration all the facts and circumstances of the new scheme proposed by the Queriest , I’m of the opinion that such a scheme does not amount to ‘pooling of funds’ for a scheme of arrangement under the corpus exceeding 100 crore rupees nor does it amount to a collective investment scheme within the meaning of the proviso to section 11 AA of the SEBI Act.”

“From the aforesaid facts, it can be seen that the business model of the queriest is based on providing a service to the customer, where under on advance purchase of room nights, at the offer price of the queriest , the customer can avail of the room nights purchased by him in the future at any of the properties of the queriest or its affiliates at a rate already paid by the customer which would be lower than the prevalent market rate of the room at that time. Thus, the service provided by the queriest is in the nature of an advance booking facility, for which the customer pays a discounted rate as can be seen from the facts about. The right of usage of room nights is conferred upon the customer in exchange for monetary consideration and not as a return on its consideration amount, but as a promise of performance of a service person to the terms and conditions of the agreement. None of the plans proposed by the queriest involve any sharing of profits with the customer nor do they incentivise the customer in the event that the customer chooses to gift/sell their room nights. Thus merely because moneys received from various people by the quietest for purchase of room night does not in my opinion, amount to a ‘pooling of funds’as each customers consideration is utilised for the payment of their respectively availed room nights.”

- f. In the aforesaid circumstances, PCL started selling various holiday options from the year 2002 and continued to sell holiday options till date under the bona fide belief that the same are in compliance with all the relevant rules and regulations and were not under any regulatory regime of SEBI.
- g. The Company also submitted “SEBI had forwarded a letter dated 21st October 2013 to the then Member of Parliament Mr. Sanjay Dina Patil (in response to Complaint dated 2nd July 2013) stating

that “SEBI had examined the matter of PCL during 2010-11 wherein it was found that the activities of the company do not attract SEBI (Collective investment Schemes) Regulations, 1999.”. Nature of PCL’s business has not undergone any change since the time period from 2002 till 2014. Therefore, it is unreasonable to consider the same activities illegal which were treated as being lawful till 2013.”

- h. The Company has also contended that what in effect the Company is doing by receiving in advance a sum of money from the customer in exchange for which it agrees to provide a service in the future, is to create a chose in action as defined in equity or an actionable claim as defined under the provisions of Section 3 of the Transfer of Property Act, 1882 (“Transfer of Property Act”). The term chose in action has been defined in Black’s Law Dictionary, 9th Edition on page 275 as under:

“chose in action” is a known legal expression used to describe all personal rights of property which can only be claimed or enforced by action, and not by taking physical possession.”

Section 3 of the Transfer of Property Act defines as actionable claim as follows:

Section 3 – ‘actionable claim’ means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent; (Emphasis supplied)

The Company has submitted that an actionable claim is regarded as a species of property and is assignable in the manner laid down by Section 130 of the Transfer of Property Act. The fact therefore, that the customer has been conferred with a right to gift/sell his allocated Room Nights under the Scheme offered by the PCL, is fully in compliance with the right to transfer actionable claims as permitted/ recognized by the provisions of the Transfer of Property Act. The Company submitted that as the scheme offered by it in effect only creates several choses in action or actionable claims in favour of the customer, merely because the same is offered to a large number of people does not make it a ‘pooling of funds’. The Company further submitted that PCL has received the moneys from customers towards payment of Room Nights purchased by the customers and hence, there is a contract between the PCL and individual customers, under which upon payment of the monies, the PCL render the service stipulated in the said contract to the

purchaser/customer. Hence, the ingredients specified in the un-amended Section 11AA of the SEBI Act are not satisfied by the scheme offered by the PCL

C. Submissions regarding the schemes:

The Company made the following submissions regarding manner adopted by it in respect of its schemes/plans:

“The business plan adopted by PCL for the above purpose, is as follows:

- a. Customers are explained the particulars of the various holiday options offered by PCL in detail.*
- b. PCL provides customers with application forms that contain the specific terms and conditions of the particular holiday options.*
- c. The customers are required to submit a duly filled up Application form to PCL giving various particulars. The customers also need to follow Know-Your-Customer norms at the time of purchasing Room Nights and/ or other facilities and services provided by PCL. The customers are required to furnish identification documents like their PAN Card, Aadhar Card, Bank Account Statement, etc. for this purpose. A Sample Copy of the Application Forms for various holiday options containing the specific Terms and Conditions was annexed.*
- d. After scrutinising the Application forms, the Company accepts the Applications and explains the particulars of the holiday options to the customers.*
- e. Majority of the payments are received by Cheque(s) / Demand Draft. PCL accepts cash payments only in case of small amounts.*
 - As per Clause 5 of the Terms and Conditions of Sunrise holiday option, “All the Cheque(s) / Demand Draft(s) towards the room nights booking and administration charges are to be drawn in favour of ‘PANCARD CLUBS LITD.’ payable at Mumbai / or places where the Regional Offices of the Company is situated. ...”*
 - As per Clause 6 of the Terms and Conditions of Sunrise holiday option, “The Company shall issue a valid receipt for the cash payment in lieu of the temporary acknowledgment issued by the marketing person. ...” In case of receipt of cash, the same is immediately deposited in the Bank account of the Company.*
 - PCL maintains independent accounts of payment of money and usage of promised room nights for each customer.*

- *The amount received from a customer is shown as 'advance against sale of room nights' by the Company as the Company is selling the holiday option by taking advance payment and the customer is purchasing the same. The sale of holiday plan by the Company is recorded as 'advance against sale of room nights' in the books of account of the Company.*
- f. *Subsequently, the Company enters into separate Agreement with each customer wherein a holiday option is sold to each customer. PCL issues a document giving details of the holiday option purchased by the customer. Upon entering into such agreements of varying tenures and amount with PCL, on a principal-to-principal basis, the customers have a right to utilise facilities at any of PCL or its affiliated properties, in accordance with the terms and condition of the holiday option which they choose.*
- g. *In addition to the above, PCL provides insurance to its customers. As per Clause 11 of the Terms and Conditions of Sunrise holiday option,*

“11) TERMS OF INSURANCE BENEFITS:

Applicant's are offered free Insurance benefits from IRDA approved Insurance Company (herein after referred as Insurance Company). The premium towards the same paid by the company. Insurance benefits are subject to terms, conditions and exception of respective Insurance Company and its circulars, notifications and announcements from time to time. The details whereof can be obtained from the Insurance Company. Insurance benefit shall commence from the end of 90 days from the start date as mentioned in the certificate subject to availability of date of birth and / or age proof and submission of the medi+claim proposal / declaration form as applicable. Some of the Details are given here under:

(i) Accidental Death Insurance Benefit: shall be extended to the applicant for the term of Pancard Clubs - Sunrise Holiday, subject to the application being in force. Accidental Death Insurance Benefit shall be offered for a maximum of Sum Insured of Rs. 1 LAC. Applicable conditions are as under.

(a) Admissible Age: Minimum 5 years and Maximum 60 years. Minor Applicant (Aged 5 to 18 years) shall be offered accidental death insurance benefit as per the terms subject to maximum accidental death benefit of Rs. 50,000/- only. Applicant in the age group of 61years to 70 years shall be extended the accidental insurance benefit on making payment of Rs. 100/- towards Age Relaxation Fees.

(ii) LIFE INSURANCE BENEFIT: Applicant opting for Pancard Clubs - Sunrise Holiday shall be offered Life insurance benefit of Term Assurance i.e. for death only, from the Insurance Company for Rs.25,000/-, subject to the application being in force. Applicable conditions are as under:

(a) *Admissible Age: Minimum 18 years and maximum 59 years. Age Relaxation is not allowed for life insurance benefit. The benefit of the life insurance is admissible till the expiry of the tenure or the applicant attains the age of 60 years or whichever is earlier.*

(iii) *Claims for Accidental Death should be submitted to the company within (30) days of the death of the applicant. Delay in intimation / submission of claims may lead to non - acceptance / rejection of claims. All such claims shall be settled through Insurance Company. Time limits mentioned above are subject to change and are as per discretion of Insurance Company. Please read the terms & conditions of Insurance company properly.*

(iv) *The company shall act as a facilitator for taking the insurance policies from the Insurance Company and shall assist the applicant in forwarding their claims with it.*

(v) *Insurance benefit shall be given as per term and conditions of the Pancard Clubs - Sunrise Holiday option. ...”*

- *Thus, PCL provides insurance coverage to all its holiday option customers from IRDA approved companies. PCL has tied up with such IRDA approved companies for Accidental Death, Medi-claim insurance and/ or Life insurance.*
- *Depending on the holiday option availed; the customers are entitled to one or several insurance options / benefits.*

*PCL has taken the “**Sunrise Holiday**” as an illustrative example throughout this reply.*

10. *The entitlements received by the customers on entering into an agreement with PCL are categorised as ‘room nights’, the number of which depends upon the holiday option chosen. These room nights may be availed at any time during the year, by giving advance notice of the same to PCL. Room nights have been defined in the respective customer agreements to mean:*

Room Night: Shall mean a standard non air-conditioned room accommodation provided for a couple and one child below 5 years age, at any of the existing/contracted/affiliated, clubs/hotels/resorts of the company or its group company or its affiliates, upto a grading of two star category for such clubs/hotels/resorts. A room night is the time interval between the check in time of any calendar date and the check out time of the subsequent calendar date as prevalent in the hotel industry. The check in & check out time may vary from one hotel/club/resort to the other.”

11. *The customer may select the holiday option depending upon the requirement and preferred frequency of payment. The advance payment for hospitality services entitles PCL’s customers to stay at the various*

properties and/ or avail various other facilities depending on the tenure and nature of the holiday option chosen. PCL offers various modes and manner in which the holiday options can be utilised by the customers. Clause 8 of the Sunrise holiday option provides the manner in which the customers can utilise the services and facilities offered by PCL –

“ 8) **PRIVILEGES OF THE APPLICANT:**

(I) *On acceptance of the application of the applicant under the Pancard Clubs - Sunrise Holiday by the company, applicant is entitled to the following privileges and these can be exercised in the following manner:*

(a) *Applicant shall be entitled to utilise Room Nights subject to the terms and conditions of Pancard Clubs - Sunrise Holiday.*

(b) *Applicant can commence the utilisation of their room nights entitlement after 60 days from the date of acceptance of his application by the company.*

...

(e) *Upon expiration of each month, applicant may act in the following manner (i) Surrender the unused entitlement and opt for surrender value (ii) Buy or utilize the various products and services of the company and its group companies.*

...

(g) *Applicant can avail their room nights entitlement throughout the year and at any of the existing, contracted / affiliated clubs/ hotels/ resorts of the company. ...*

(h) *Applicant can avail room nights at any of the existing/ contracted / affiliated clubs / hotels / resorts, having a grading/ category of upto two star, owned / managed by the company or its group company or its affiliates. At destinations where clubs / hotels / resorts is having a grading higher than two star category, the applicant shall be provided a discount of 20% on the tariff rate of such clubs / hotels / resorts prevalent at the time of intimation of usage of room nights to the company. In such cases, the applicant shall have to submit a higher number of room nights equivalent to the 80% discounted value of the tariff rate of those clubs / hotels / resorts. Figures in fractions shall be considered as one room night. ...*

(i) *Applicant can avail their room night's entitlement by giving a request in such manner and or in such form(s) as may be prescribed by the company. Applicant shall apply to the company at least thirty (30) days in advance to the company, of the date/ s of their intended utilization of room nights giving the details of the destination/ s, dates of check-in and check-out in order to enable the company to issue a Confirmation Voucher for his scheduled stay. Confirmation Vouchers shall be issued on a first-come-first-served basis and are subject to eligibility of the applicant and availability of room / accommodation at his intended destination. ...*

(j) *Applicant can gift their entitlement of room nights to their near and dear ones (i.e. friends or relatives) or may also opt to sell it to anyone. In this event, third party such friends/ relatives and*

*third party together be hereinafter referred to as “Guest/s”. In case the applicant elects this option, he/she shall inform the company in writing about his / her intended plan. Upon receipt of such intended plan, the company shall issue a Guest Confirmation Voucher.
...”*

12. PCL provides complete autonomy to its customers regarding the mode and manner in which they wish to utilise the holiday options. Clause 10 of the Sunrise holiday option reads as follows –

“10 Upon expiration of the tenure under the Pancard Clubs - Sunrise Holiday, applicant may surrender their unutilised room nights in the following manner:

(a) The applicant may surrender their unused entitlement of room nights to the company and 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 on the expiry of the tenure under Pancard Clubs- Sunrise Holiday.

(b) The Applicant may opt to exchange / barter or utilise the products and services of the company and its group companies in lieu of surrender value of unutilised room nights of equivalent value. The products and services inter alia include domestic & international tour packages, room nights of hotels banquets, conferences, meetings & seminar of the company and its group companies hotel / resort / clubs properties, subject its availability, Software Development etc. The terms and conditions for the exchange / barter / utilisation shall be framed by the company from time to time. Company's decision in this regard shall be final & binding. Government taxes, levies and other charges on purchase of the products / services shall be borne by the applicant.

(c) Applicant may opt to convert their unused room nights to the extent of the surrender value entitlement into life membership of various clubs of the company / group as per list available with the Company by adjusting the differential amount, if any, between the amount due as surrender value under the Pancard Clubs - Sunrise Holiday and the life membership fee of various clubs of the company / group, if any, subject to the Company's prevailing terms and conditions applicable to such conversion. Government taxes, levies and other charges on purchase of the products / services shall be borne by the applicant.

(d) The company in its discretion may give an option to its applicant to convert their unutilised room nights, to the extent of the surrender value, into shares, debentures or such securities of its group companies, as may be permitted by the regulations governing the issue of such shares, debentures or such securities. ...”

13. *Additionally, the customers are also given discount cards, which can be used at the groups’ properties. .*

14. *Thus, unlike other holiday options available in the market where the customers lose their money if they do not exercise their right of using the room nights partly or fully during the tenure for which the holiday options were taken, PCL's holiday option is flexible whereby if for any reason a customer is unable to use room nights purchased for whatever reason during the season, the customer has an option to seek surrender value. The choice to use room nights or to opt for surrender value as explained above is entirely at the discretion of customers. This beneficial flexible option is a novel idea in time share business which is pioneered by PCL. Additionally, as stated in the preceding paragraph, PCL's customers can give their entitlement of room nights to their near and dear ones or may also opt to sell them, in accordance with the procedure set out in the Terms and conditions with its customers, to anyone after prior intimation to PCL in writing".*

The Company further submitted that it had been successfully implementing the above holiday options since inception from 2002 till date and consistently fulfilling the commitments made to its customers. PCL submitted that it marketed the various options through its marketing personnel, listed the various options and properties on its website and also issued advertisements in newspapers from time to time. The above marketing / advertisement were done, *inter alia*, to spread awareness about the various properties at which the holiday options can be utilised.

D. Further submissions:

1. The Company also submitted that keeping in view the changed scenario and the proclivity of the regulators towards the holiday options and by way of abundant caution, it has discontinued selling all the holiday options with surrender value with effect from 1st April 2014. Since, 1st April 2014, all the holiday option with surrender value option (sold between 1st April 2014 to 31st July 2015) have been switched to non-refundable category. Further, from August 2015, the Company had altogether stopped selling holiday option with surrender value option. The Company has contended that the holiday options sold since 1st April 2014 do not fall within the scope and purpose of the definition of Collective Investment Scheme as such plans without surrender value are similar to the holiday options sold by companies like Mahindra Holidays, Sterling Holidays, etc.
2. The Company also stated that by way of abundant caution, it has sought legal opinion from legal luminaries who had confirmed that the present holiday plans of the Company do not fall within the scope and purport of collective investment scheme.

3. Regarding the allegation in the SCN that only 0.49% of room nights were actually utilized and the remaining room nights were surrendered and surrender value was paid to the customers, the Company submitted that the said figure was incorrect and mentioned that 3-4% of room nights have been utilized. The Company while admitting that the utilization numbers are much lower, it contended that the same would not imply that the customer purchases its services with a view not to use and receive refund.
4. Regarding the rate of interest, mentioned in the SCN, as being offered on the contributions through the payment of surrender value, the Company submitted that the correct range is from 5.37% to 14.87%. The Company contended that the said rates are much less as compared to the market rate and therefore cannot suggest that the customer purchased the holiday plan for the purpose of investment and receiving profit.
5. Regarding payment of commission, the Company submitted that the statement in the SCN that the commission paid by Company is in the range of 28% of the amount collected is not factually correct. The Company submitted that *“In the books of accounts, commission paid for advance sale of room nights / Holiday options has been amortized and spread over the respective tenures of the holiday membership options. Hence, gross effective commission rate per annum is not exceeding 5%”*. The Company contended that payment of commission is a prevalent practice in the Indian market and that commission in excess of 30% is paid in various businesses. The Company also submitted that payment of commission exceeding 5% cannot itself bring the holiday plan within the purview of CIS.
6. Regarding the corpus being in excess of Rs.100 crore and the schemes being deemed CIS, the Company submitted *“in order to be covered within the said rule, it is important that there should be ‘pooling of funds under any scheme or arrangement.’ In the instant case, both the pre-requisites, namely ‘pooling of funds’ and ‘scheme or arrangement’ are not fulfilled. Hence, the said Proviso does not apply in the instant case and the activities of PCL cannot be deemed to be a Collective Investment Scheme”*.
7. The Company also submitted the following:
 39. *“The Hon’ble Supreme Court (in PGF Limited case) has held that the purport of the enactment is that no one should collect and deal with money of other individual under the guise of providing fantastic return or profit or any other benefit does not indulge in such transaction with the motive of defrauding innocent investor. Pertinently, the surrender value provided/specified by PCL is much lower than the market rate of return*

receivable from modes of investments. Hence, a customer would not buy the holiday option sold by PCL merely for the purpose of investment to gain profits, income or produce.

40. Hence, there is no concept of any fixed or guaranteed return, much less, fantastic return of profit. The very fact that the holiday option entitled the customer to receive back the value for unutilised room nights as mentioned above would go to show that there is no intention to defraud the customer. Besides, there is not a single complaint to show that PCL has defaulted in honouring this contractual obligation to any customer. Hence, PCL has been successfully running its business for the past 18 years and selling the holiday options for the past 13 years without any pending complaints. In view of the above, (without prejudice to PCL stand, rights and contentions) before taking any steps for refund / winding up, it is essential that the procedure laid down under Regulation 73 is followed i.e. (1) an information memorandum (dated and signed by all directors) should be sent to the customers who have purchased the holiday options, detailing the state of affairs of the CIS, the amount repayable to each customer and the manner in which such amount is determined, (2) The information memorandum should explicitly state that customers desirous of continuing with the CIS shall have to give a positive consent within one month from the date of the information memorandum to continue with the CIS, (3) The investors who give positive consent shall continue with the CIS, (4) If positive consent to continue with CIS is received from more than 25% of total customers, the CIS will not be wound up.”

8. The Company also submitted that the present proceedings were initiated by SEBI on the basis of a complaint dated July 2, 2013 forwarded by Mr. Sanjay Dina Patil (Member of Parliament). The Company submitted that copy of such complaint was given to it and contended that the allegations made in the complaint were erroneous as there was no investor complaint pending from its customers. The Company submitted that its customers were genuine and their whereabouts are available. The Company sought for an opportunity of cross-examination of the complainant to bring out the truth.

9. The Company has submitted that it has stopped selling the first 12 schemes as enlisted in paragraph 5 of the SCN since 2008-09 or 2009-10 or 2010-11 or 2011-12 or 2012-13, as under:

	No new member since
• Pancard Clubs – Comfort Membership for 3 years	2008-09
• Pancard Clubs - Luxury Membership for 6 years	2008-09
• Pancard Clubs - Premium Holiday Membership for 10 years	2010-11

• Pancard Clubs – Regular Holiday Membership for 10 years	2010-11
• Pancard Clubs – Royal Membership for 9 years	2010-11
• Pancard Clubs – Standard Membership for 9 years	2009-10
• Pancard Clubs – Supreme Holiday Membership for 9 years	2010-11
• Pancard Clubs - Golden Holiday Membership for 5 years	2008-09
• Pancard Clubs – Platinum Holiday Membership for 6 years	2012-13
• Pancard Clubs - Regal Holiday Membership for 9 years	2011-12
• Pancard Clubs – New Comfort Holiday membership for 3 years	2012-13
• Pancard Clubs - New Luxury Holiday for 3 years	2010-11

9. The noticees were afforded an opportunity of personal hearing on February 02, 2016, when the Company was represented by Mr. Pradeep Sancheti, Senior Advocate, who made submissions. The following is the record of proceedings of the personal hearing:

- “1. *The company was represented by their legal counsel. Authority letters filed.*
2. *The learned senior advocate submitted that the company had filed a letter dated February 01, 2016 (i.e. yesterday) with SEBI requesting for inspection of documents and copies of such documents and requested for adjournment of the hearing as the company’s application had to be considered by SEBI. When the learned advocate was informed of the time line (i.e. February 29, 2016) within which the order in the matter had to be issued as per directions of the Hon’ble SAT, he submitted that they would immediately approach the Hon’ble SAT for extension of time.*
3. *The learned senior advocate was advised that if the Hon’ble SAT does not extend the time for passing of the order, the personal hearing, as last and final opportunity, would be held on February 10, 2016 at 11 a.m.*
4. *SEBI shall expeditiously dispose of the above said application. In case, the noticees are allowed inspection of documents, the same shall be completed prior to the above mentioned date of hearing”.*

10. It is noted that Hon’ble SAT, vide Order dated February 08, 2016 (in Misc. Appln. No. 7/2016 in Appeal no. 254/2014), dismissed the application filed by the Company for extension of time. SEBI had granted the noticees an opportunity of inspection of documents on February 08, 2016, when their representatives inspected the documents which have been relied on by SEBI while issuing the SCN dated August 24, 2015. The noticees had also obtained the copies of the documents. SEBI also forwarded (vide

e-mail dated February 09, 2016) certain documents including SEBI's letter dated October 21, 2013 to Mr. Sanjay Dina Patil. As already scheduled, the further hearing, as a last and final opportunity, was held on February 10, 2016. The record of proceedings of this hearing is as follows:

1. *“One Mr. Sanskar Marathe, Advocate represented that he appears for the marketing agents of the Company. He was allowed to make a written representation, if any, by Monday (i.e. February 15, 2016) and personal hearing was not granted.*
2. *Mr. Pradeep Sancheti, Senior Advocate appeared for the **Company**. He filed two applications. One was for directing SEBI to produce documents as mentioned therein and the other application was a request for cross-examining Mr. Sanjay Dina Patil, who had forwarded a complaint dated July 02, 2013 to SEBI.*

The learned senior advocate was informed that the request made in his applications would be dealt with in the Order and was advised to make his submissions. Thereafter, the learned senior advocate made submissions and tendered compilation of documents and case laws in support of his submissions. As requested by him, liberty is granted to file written submissions along with documents, if any, on or before February 16, 2016.

3. *Mr. Sandeep Parekh appeared for the **directors (noticees 2 to 7 in the SCN)** of the Company and adopted the submissions of the Company. He requested that the noticees may be allowed to file their written submissions within two days of the Company filing its written submissions. This request was allowed and accordingly these noticees shall file their written submissions latest by February 18, 2016.*
4. *Personal hearing is concluded and the matter is reserved for order”.*

11. Although the Company had, on February 16, 2016, sought for further time on to file its written submissions, SEBI rejected the request in view of the timeline (Order to be passed by February 29th) set by Hon'ble SAT in the matter. The Company submitted its written submissions vide email dated February 16, 2016, reiterating the submissions made in the personal hearings. Such submissions pertained to –

- (a) Request for disclosure of documents, replies, complaints etc relied upon by SEBI to arrive at the conclusion that Time Share Scheme of the Company did not constitute Collective Investment Scheme after examining the case of the Company during 2010-2011;
- (b) Cross-examination of Sanjay Dina Patil who had filed complaint dated July 02, 2013;
- (c) SEBI's jurisdiction in the matter in view of Explanation to section 12(1B) of the SEBI Act;
- (d) Estoppel. The following were the events, according to the Company, that led to SEBI being estopped:
 - i. The Company had written a letter on February 27, 2001 enclosing application forms of various plans and sought clarification from SEBI whether the same fell under the provisions of CIS or any other regulations.

- ii. The Company also sent a letter dated June 20, 2002 informing about the concept of holiday options, terms and conditions, brochure and tariff card of various hotels.
- iii. SEBI had confirmed vide letters dated February 04, 2013 (sent to MCA) and October 21, 2012 (reply to complainant, Mr. Sanjay Dina Patil) that the schemes of Company were not in the nature of CIS.
- iv. SEBI is therefore estopped from taking a different view now.

- (e) Company's bonafides;
- (f) Rate of interest and commission as alleged in the SCN being incorrect;
- (g) SCN Demand notice by the service tax authorities – contending that two authorities cannot have conflicting views with respect to the business of the Company;
- (h) Schemes not satisfying section 11AA of SEBI Act;
- (i) Request for directing the procedure to be followed under regulation 73 of the CIS regulations.

12. With the liberty granted in the personal hearing on February 10, 2016, the **marketing agents of the Company** had filed their written submissions, *inter alia* submitting as under:

- (a) The SCN is not maintainable as it does not fall within the true spirit and definition of CIS under the SEBI Act.
- (b) The Company apparently provides insurance to all its customers from reputed insurance companies. Whenever, a contract provides for a component of insurance, such investment would be excluded from the purview of CIS. SEBI therefore does not have jurisdiction in the matter.
- (c) The Company, in order to ensure compliance with all rules, regulations and provisions of law had written letters to various authorities including RBI and SEBI informing them about the holiday options and seeking their opinion about the same. RBI had clarified that time share company was not covered under its jurisdiction and deposit taken as advance cannot be treated as public deposit. SEBI also concluded that the activities of the Company did not attract CIS Regulations. This stand was taken in 2013 and therefore SEBI cannot now change its stand with retrospective effect.
- (d) The Company started selling various holiday options from 2002 and continued to sell holiday options till date, wherein the marketing persons explained to the customers the particulars of the

various holiday options. The customers had opted for the plans pursuant to knowing about the same.

- (e) Unlike other holiday options available in the market where the customers lose their money if they do not exercise their right of using the room nights, the Company's plans were flexible as they provided an option to the customer to seek surrender value.
- (f) The provisions of the SEBI Act and the regulations are curative in nature and not penal. Therefore, passing penal orders would mean no benefit to customers and public at large as the result would in any case fail to uphold the spirit of the SEBI Act and the purpose for which it was enacted.
- (g) Customers are satisfied with the facilities/services offered by the Company and that many customers have their holiday options still operative and their tenure has not expired. If any adverse orders are passed against the Company, the holiday options purchased by the customers will be rendered redundant and they will suffer irreparable losses. Further, such adverse orders will also have a greater effect on the marketing persons (making these submissions here) and more than 5000 persons who are not before SEBI now. A list of marketing persons supporting the marketing persons making these submissions were attached.
- (h) Lot of customers have availed EMI option facility wherein EMI's are still pending in order to become a member, which in case of adverse orders would result in uncertainty of amounts already paid by the customers.
- (i) Any adverse order or restriction by SEBI at this juncture may prove to be counterproductive and damaging. Such order would create panic among time share option holders and they would rush to pull out their money which in the normal course would have opted to utilize. The same would make the Company seriously vulnerable.
- (j) The marketing persons have requested SEBI not to issue directions against the Company or the other noticees.

13. The directors (noticees 2-7 in SCN) filed their written submissions vide letter dated February 18, 2016. They have adopted the reply dated December 30, 2015 filed by the Company and also reiterate the submissions made in the written submissions dated February 16, 2016 of the Company. Additional submissions made by these noticees are summarized below:

- (a) With respect to the first condition under section 11AA(2)(i) of the SEBI Act, they submitted that under Pancard's business model, each agreement with its customers is distinctly identifiable by the Company and each customer pays for availing of Pancard's hospitality services, in compliance with the prevalent Know Your Customer norms. There is no common pooling (Black's Law Dictionary, Ninth Edition defines a *'pool'* in the following terms: "*an association of individuals or entities who share resources and funds to promote their joint undertaking*") of funds being done. The consideration received by Pancard from the customers may be used for any purpose: paying wages, business development, internal costs or training expenses of staff, developing properties worldwide – and not "*utilized for the purpose of the scheme or arrangement*" as is the clear prescription under Section 11AA(2)(i) of the SEBI Act.
- (b) Pancard carries out a straightforward transaction in two legs, where first the consideration is received and subsequently, the room nights are credited in favour of the customer, which may be drawn down depending on the requirement of the customer. Just like for any other service, Pancard maintains independent accounts of payment of money and usage of promised room nights, by its customers. If SEBI's allegations are to be accepted, it would lead to an absurd position where every business entering into a large number of agreements for services or goods – to be provided or delivered at a future date – would be considered as fulfilling the first condition of Section 11AA of the SEBI Act.
- (c) In an era where each large business house receives advances, there may be no company, whether public or private, listed or unlisted, in manufacturing, agriculture or service activities that may escape the unfettered and catch-all provision of Section 11AA(2)(i), far beyond what SEBI is legislatively allowed to regulate. The mandate of the Dave Committee Report was to assist SEBI in evolving a framework for the regulation of schemes that issued instruments like Agro Bonds and Plantation Bonds, and not business activities relating to timeshare and related leisure activities. Amongst its recommendations, it stated that, "*committee wishes to make it clear that the substance of such arrangements should be relied upon to determine whether the scheme is a collective investment scheme or not.*" It is necessary to maintain the distinction between CIS (pooling) and collection of money for a business purpose. A builder may also collect money from its buyers, however it does not tantamount to pooling that happens in case of plantation schemes.

- (d) SEBI is empowered to address the situation where companies or persons float schemes offering a 'pie-in-the-sky' enticements to prospective investors and subsequently defrauding them, by offering them 'plantation/agro bonds' or similar instruments evidencing rights over/ownership of certain assets which may or may not exist or hold as much value as promised. The intent of the law, it may be noted, is not to impinge on genuine business transactions.
- (e) The monies received are neither maintained in any common fund nor are invested for any specific purpose, but are considered as payments received for provision of services. Therefore, there is no 'pooling' or utilization solely for the purposes of a purported 'scheme or arrangement'.
- (f) In the instant case, there is no assurance of any returns or yield whatsoever by the Company, especially since the agreement is not predicated on any return of monies, but on the utilization of hospitality or related services for a pre-defined period, for which the consideration has been paid in advance by customers. The timeshare business allows its customers to lock in the ability to enjoy future holidays at prices determined today. This, it is submitted, is in the nature of any other standard form of contract for performance of services. The rights of usage, of hospitality and leisure activities, conferred on the customer in exchange for a consideration are *not* as a return on his investment (in the nature of profit, income, produce or property). The specific words in Section 11AA(2)(ii), that is, '*profits, income, produce and property*' are used to denote returns received from a given scheme or arrangement.
- (g) Black's Law Dictionary (6th edition, 11th reprint, 1997) defines the term '*manage*' as follows:

"To control and direct, to administer, to take charge of. To conduct; to carry on the affairs of a business or establishment. Generally applied to affairs that are somewhat complicated and that involve skill and judgment".

In light of the definition and the activities carried out by Pancard, it is pertinent to note that the Company does not have any entitlement to control or administer the monies paid by the customers, within the meaning that is envisaged under the SEBI Act. The monies paid by the customers are only towards the performance of the promises made by Pancard, like in any other commercial agreement. After the agreement is executed, the customer has control over the time, mode and manner of using the room nights during the tenure of the agreement. If the customer wishes to utilize the room nights or gift it to his friends and/or family, he is free to do so.

- (h) The title to the assets that form a part of the timeshare business remain with Pancard (or where applicable, with such other company with whom Pancard has entered into a tie-up arrangement) at all times. Moreover, the hotel properties in question form part of the hotel business and do patronize guests other than the various customers of Pancard's timeshare offerings. Hence the hotel properties are managed for the Company's hospitality business and are '*not managed on behalf of the applicants*'.
- (i) Pancard does not operate any scheme or arrangement and the question of managing or operating it does not and cannot arise. Furthermore, the term 'managing' must take colour, for the purpose of interpretation, from the other provisions which mandate the requirement of 'pooling' of contributions. In the absence of there being any '*pooling*', it is not possible to '*manage*' such funds.
- (j) Pancard's customers are free to manage their own holiday plan and its utilization and therefore, have complete day-to-day control on the operation of the holiday plan. The Company has no control on how its customers choose to manage their holiday plan and similarly, Pancard cannot disallow the utilization of room nights by the customer in the manner that the customer deems fit. Accordingly, the sole authority and control over the management of room nights is in the hands of the customer. Pancard's customers may use the room nights during the relevant period at any time at their sole discretion subject to availability of rooms. The customers may choose to gift, sale, transfer their room-night entitlement to friends/relatives/third party completely at their discretion. Further, they are also free to utilize their room nights with any hospitality service provider of their choosing, on prior intimation to Pancard.
- (k) The above facts and circumstances establish that Pancard does not fulfil the criteria laid down in Section 11AA of the SEBI Act and hence is not a CIS and as such no certificate of registration from SEBI under Section 12(1B) of the SEBI Act is required to be obtained by the Company.
- (l) It was submitted that in the Indian context of timeshare operations, SEBI expressed its views on "*Time Sharing Schemes*" in an Agenda Memorandum to the Board titled '*Status Note on Collective Investment Schemes*' for the meeting of 3 January, 2012, as follows:

"A timeshare is a form of right to the use of a property, or the term used to describe such properties. These properties are typically resort condominium units, in which multiple parties hold rights to use the

property, and each sharer is allotted a period of time (typically one week, and almost always the same time every year) in which they may use the property. Units may be on a part-ownership or lease/"right to use" basis, in which the sharer holds no claim to ownership of the property."

While SEBI has not yet taken a decision on whether timeshare qualifies as a CIS, securities laws precepts establish that the two are mutually exclusive businesses.

- (m) Upon entering into an agreement with the Company, the customer has a right to avail of accommodation and utilise leisure facilities at any of the properties of Pancard and its affiliates in accordance with the terms and conditions of such agreement. Accordingly, the customer is offered the option of utilizing room nights against their stay at any non-Pancard hospitality property. The customer's rights of availing such services are almost entirely unfettered and on prior intimation to Pancard, the relevant number of room nights can be offset in accordance with the charges applicable by such other resorts/hotels.
- (n) Further, from an accounting perspective, the Company's business is to sell time share and provide holiday related facilities to its customers for a specified period each year, over a number of years, for which fee is collected either in full up front, or on a deferred payment basis. Admission fee, which is non-refundable, is recognized as income on admission of an applicant. Entitlement fee (disclosed under Deferred Income towards holiday facilities), which entitles the holder for the holiday facilities over the time share plan usage period, is recognized as income equally over the usage period. Requests for cancellation are accounted for when it is accepted by Pancard. In respect of instalments which are considered to be doubtful of recovery by the Company, the same is treated as a cancellation and accounted for accordingly.
- (o) It has never been the intention of Pancard to deceive SEBI or any statutory authority as the Company had approached all relevant statutory authorities seeking their approval and opinion and continued to operate its business in a bona fide manner. Further, two authorities have conflicting views with respect to the nature of business carried out by Pancard. SEBI considers the business of Pancard as a CIS whereas the Director General of Central Excise Intelligence is of the view that the activities rendered by Pancard are in the nature of services exigible to service tax under the Finance Act, 1994. The stand being taken by SEBI now is contrary to the view

taken by RBI, opinion of leading jurists, principles of income tax and service tax and the view taken by SEBI view on previous occasions.

- (p) Further, Pancard till date has not received any complaint from its customers in this matter. Neither has there been any act or omission by the Company or Directors which was intended to defraud investors or adversely affect the integrity of the securities market. The Company has performed and honoured the obligations under the respective agreements with its customers.
- (q) As stated herein, in the present case, at the time of commencement of sale of holiday options Pancard itself had sought the opinion of various statutory authorities, including SEBI. Even SEBI from time to time was of the opinion that the activities of Pancard are not governed by the CIS Regulations. Therefore, the Directors who were in charge of the conduct of the Company's business, under such *bona fide* belief, carried on the business activities of Pancard from 2002 onwards. Hence, no harsh steps should be taken against the Directors.
- (r) In the event SEBI concludes that the activities of Pancard fall within the ambit of a CIS, the directions purported to be taken by SEBI under Regulation 65 of the CIS Regulations ought not to be dealt in isolation but must be taken into consideration along with Regulation 73 of the CIS Regulations.
- (s) Pancard has been engaged in carrying on its business under the genuine belief that its activities do not fall within the ambit of a CIS. Further, as stated above, until recently, SEBI too was of the opinion that the Company's business did not fall within the scope of a CIS. Therefore, the Directors have been undertaking the Company's business activities under an honest assumption that such activities were not a CIS and accordingly no registration was necessary under the CIS Regulations. The information submitted by the Company, would indicate that the Company has not been engaged in any sham real estate business that is detrimental to the interests of investors, but has been providing genuine holiday options to its customers.
- (t) Further, had SEBI maintained since the beginning that timeshares, such as those in the form of holiday options being provided by the Company, were equivalent to a CIS, when Pancard had approached SEBI in 2002, the Company would have applied for registration under the CIS Regulations. However, it was only in the year 2013 that SEBI wrote a letter to Pancard alleging that it was mobilizing funds from the public in the nature of CIS. It is humbly submitted that, in

such circumstances, it is unreasonable and unjust to pass any adverse order against the Directors, without providing the Company an opportunity to register.

- (u) Furthermore, reference may be made to Regulations 68 to 74 of the CIS Regulations which disclose that they are all part of a clear scheme. The scheme being that if any person has been operating a CIS, he could make an application for provisional registration. For this purpose, it is also essential that there must be a declaration of the scheme being run by the company as a CIS. Keeping in mind the submissions made hereinabove, on the interpretation of Section 11AA, if any company/person believes that they do not fall within the mischief of Section 11AA of the SEBI Act, it may be necessary for the appropriate authority, in this case SEBI, to consider and declare the scheme of the company as being a CIS. If this be so, it is only on such declaration that the company is operating a CIS, *viz.*, that a declaration that all the provisions of Section 11AA (2)(i) to (iv) are satisfied by the scheme run by the company, would the opportunity to obtain provisional registration under Regulation 68 come into play. Similarly, a perusal of the Regulation 70 shows that for the purpose of obtaining provisional registration, the applicant must satisfy SEBI that its schemes of are in the nature of CIS. Hence, in the event of the applicant not considering the scheme as being in the nature of a CIS, neither Regulation 68 nor 70 would come into play or be in operation.
- (v) It is, therefore, respectfully submitted in the absence of a belief by the Company that its activities are in the nature of a CIS and a determination by SEBI that the Company's activities were indeed CIS, it is unreasonable to expect that the Company ought to have been registered under the CIS Regulations. Therefore, assuming not conceding that the holiday options provided by Pancard are a CIS, as perceived by SEBI, SEBI ought to provide an opportunity to the Company to seek registration under the CIS Regulations.
- (w) In light of the submissions, the directors requested that no directions as stipulated in section 11, 11B, 11(4) of the SEBI Act and Regulation 65 of the CIS Regulations should be issued against them.

14. I have considered the SCN, the material enclosed with it, the reply filed by company, the submissions made in the personal hearing and the same reiterated in the written submissions of the company and its directors (notices 2 to 7 in SCN). The SCN has mentioned the various schemes (20

schemes as per details provided by company from 01.10.2013 to 19.06.2015) offered by the company to the general public during the period 2002 to 2014 and observed that –

1. A person could become a member of Pancard Club- Holiday Membership.
2. The customer could chose a particular scheme as per his requirement by buying “room nights” at a discounted price than the regular room tariff.
3. The customer could use the room nights or transfer/gift to a third party or surrender the same.
4. In the event of the customer surrendering the room nights, he is entitled to the “surrender value” as per the scheme opted by him payable at the end of the membership plan. It is also noted that the surrender value may also be utilised to get the product and services of the company and its associates.
5. It is pertinent to note that this ‘surrender value’ is always higher in value as compared to the ‘offer price’ used for purchase of room nights.

The company also offers benefits like discount card, accidental death, insurance coverage, medi-claim coverage etc. The SCN has prima-facie observed that the schemes of the company are in the nature of Collective Investment Scheme in terms of section 11 AA(2) of the SEBI Act. The SCN alleged that the company and its six directors have contravened section 12(1B) of the SEBI Act and regulations 3 and 65 of the CIS Regulation. The SCN also alleged that the schemes of the company are deemed to be CIS as the company had mobilised/pooled funds from customers in excess of Rs.100 crore and that such schemes are not exempted under section 11AA(3) of the SEBI Act. The SCN had called upon the noticees to show cause as to why the schemes of the company should not be held to be CIS and if held so, to show cause why appropriate action including directions under sections 11, 11(4) and 11B of the SEBI Act read with regulation 65 of the CIS Regulations should not be issued. This order shall first proceed to determine whether the schemes, as alleged in the SCN, are CIS, under section 11AA of the SEBI Act. However, before proceeding further, there are few preliminary submissions (dealing with SEBI’s jurisdiction, request for inspection/documents etc) which needs to be dealt with:

I. SEBI’s jurisdiction in the matter:

The notices have contended that the present matter is specifically excluded from the scope and purview of the Collective Investment Scheme as set out in Explanation to section 12(1B) of the SEBI Act. This provision states as follows:

“... a collective investment scheme or mutual fund shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment besides the component of insurance issued by an insurer”.

According to the noticees, the holiday plans offered by the company also offer free insurance benefits. As an illustration, the company has referred to the insurance cover offered in the company's Sunrise Holiday Plan and New Relax Holiday Plan. The Company further submitted that each and every member of the company who has opted for its holiday plan, since inception in the year 2002, are offered free insurance benefits, from an IRDA approved insurance company, commensurate with the terms and conditions of the holiday plan opted by the member. The company further submitted that the insurance benefit could either be accidental insurance benefit or medi-claim benefit or life insurance benefit or a combination of any two or all based on the holiday plan as opted. The company has also explained the procedure for providing general insurance benefit by way of medi-claim or accidental death and life insurance benefits to its members/investors/customers. The company has contended that the only requirement under the explanation to section 12(1B) of the SEBI Act is that any instrument or unit which provides a component of insurance issued by an insurer shall not be deemed to be a collective investment scheme. According to the company, the SCN was not warranted as it offers “insurance issued by an insurer” and therefore outside the purview of section 12(1B).

As per the noticees, if there was any element of doubt as to who would provide such insurance, it was submitted that the insurance cover is obtained by the company by payment of premium to the respective insurance companies. The company further stated that these insurance companies are duly registered and recognized by the IRDA and contended that there is no further requirement under the SEBI Act so as to fall within the ambit of explanation to section 12(1B). The company stated that the SCN has contemplated penal action and contended that it is settled law that when there are two possible and reasonable construction, the court must lean towards that construction which exempts the party from penalty rather than the one which imposes penalty. The company placed reliance on the cases of Tolaram Relumal and another vs State of Bombay {AIR (1954) SC 496} and Assistant Commissioner of Bangalore and others vs Velliappa Textiles Ltd and others {AIR (2004) SC 86}

I have considered the above arguments made by the noticee. The thrust of these arguments is on the explanation to section 12(1B) of the SEBI Act.

Explanation to section 12(1B) of the SEBI Act was inserted vide the Securities and Insurance Laws (Amendment and Validation) Act, 2010- with effect from April 09, 2010. The events that led to this insertion are as follows:

- SEBI passed an Order dated April 09, 2010, concluding that Unit Linked Insurance Policies (commonly referred as ULIPs) are a combination of investment and insurance and therefore the investment components are in the nature of mutual funds which can only be offered/launched after obtaining registration from SEBI under section 12(1B) of the SEBI Act. This order had restrained the 14 insurance companies from issuing any offer document, advertisement, brochure soliciting money from investors or raise money from investors by way of new/and or additional subscription for any product (including ULIPs) having an investment component in the nature of mutual funds, till they obtain the requisite certificate of registration from SEBI
- This SEBI order was objected to by the insurer companies and their regulator, IRDA.
- The question of jurisdiction was then referred to the Hon'ble Supreme Court.
- Before any decision, the Government promulgated an Ordinance on June 18, 2010, which clarified that "Life Insurance Business" also include any ULIPs and accordingly amending the Insurance Act, SEBI Act and SCRA and also set up a joint mechanism to address the difference of opinion among certain regulators which may arise in future.
- Thereafter, the Amendment and Validation Act of 2010 was passed which replaced the Ordinance.

As per the Explanation to section 12(1B) of the SEBI Act, CIS or Mutual Fund shall not include any ULIP or scrips or any such instrument or unit by whatever name called, which provides a component of investment besides the component of insurance issued by an insurer. What is therefore excluded is the ULIP (or any such instrument) which provides a component of investment and insurance, issued by an insurer. As per this provision, the product (combining investment & insurance) which is exempt from the aforesaid explanation, has to be issued by an

insurer. Therefore, the Explanation envisages a combined product which has to be issued by an insurer and it cannot be the case that the combined product is issued by an entity wherein the component of insurance is provided by some insurer. There is therefore, no ambiguity regarding who would offer the product as sought to be presented by the company. In the present case, the company offers a scheme (Holiday Plan/room nights) which has accidental insurance benefit offered by an insurer. The Company is not an “insurer” as defined in the section 2(9) of the Insurance Act, 1938, and therefore, such schemes would not be covered under the exemption provided under the explanation to section 12(1B). A reference is also made to the explanation made in section 2(h) of the Securities Contract (Regulation) Act, 1956 (‘SCRA’), which provides that “*securities*” shall not include any ULIP or any instrument which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938.

The noticees have referred to two case laws to submit that if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction that exempt, the subject from penalty rather than the one which imposes penalty. I, now examine whether both constructions are equally reasonable. One construction, as explained above, asserts that if a product has components of investment and insurance; both provided by the same offeror, obviously an insurance company in this case as none else can offer a contract of insurance – the product will not be regulated by SEBI but by IRDA. The construction proffered by the noticees makes it possible for anyone to include an accident insurance and the whole product becomes free of both the regulators or alternatively all financial products gravitate to IRDA. The construction offered by the noticee will make it possible for a bank to offer accident insurance along with a deposit and claim that it cannot be regulated by RBI. Thus, it is obvious that the construction preferred by the noticees is not reasonable.

Additionally, it needs to be noted that the provision is the “Explanation” to section 12(1B), which is not a penal provision. Therefore, the applicability of the said case laws here is doubtful. Further, the directions that are passed under sections 11 and 11B are remedial/preventive in nature issued in the interest of investors and securities market and are not penal in nature. In view of the above, it is concluded that SEBI would have jurisdiction on any scheme which is a collective investment

scheme, as defined under section 11AA of the SEBI Act read with sections 12(1B) and 11(2) thereof

- II.** Another argument made by the notices is that they offer only holiday plans and do not deal in “securities” and therefore not within the purview of SEBI. In this regard, my findings are given below:

SEBI has been established to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. In terms of section 11(1) of the SEBI Act, SEBI is empowered to take such measures as it thinks fit in order to uphold SEBI’s mandate under the SEBI Act. Under section 11(2), the “measures” shall include registering and regulating the working *inter alia* of CIS. Section 11AA of the SEBI Act provides necessary guidance to determine whether any scheme or arrangement is a CIS or not. It is also to be noted that units or any other instrument issued by any CIS to the investors in such schemes would be a “**security**” under section 2(h) of the SCRA and section 2(1)(i) of the SEBI Act. SEBI has also framed the CIS Regulations for stipulating conditions for registration of CIS and other related matters. The moment the scheme satisfies the provisions of section 11AA of the SEBI Act, the Company launching and operating such schemes would come under the regulatory jurisdiction of SEBI and the applicable securities laws. In view of the above, the contention of the Company is misplaced.

- III. Estoppel:** The noticees submitted that SEBI had, at various stages, confirmed that the activities of the company were not in the nature of CIS. The company has referred to SEBI’s letters dated 04/2/13 (to MCA) and 21/10/13 (reply to Mr. Sanjay Dina Patil) in this regard. The Company submitted that the manner in which it carried on its business did not undergo any change and all documents pertaining to the company’s holiday plan have been examined by SEBI more than once since 2010-11. According to the Company, whether the holiday plans are covered within the definition of CIS is a question of fact. The Company contended that after having concluded that its activities are not governed by the CIS regulations, SEBI is estopped from taking a contrary stand regarding the holiday plans. The Company further submitted that from 2001 till 2013, SEBI was of the view that the holiday plan of company

was outside CIS and that under bonafide belief, the Company had carried on its business for 16 years.

SEBI is of the view that any economic activity would not constitute CIS provided the same is outside the purview of section 11AA of the SEBI Act. In the present case, SEBI's contention is that what noticee offers is a CIS in the guise of time share business. In the SEBI letter dated October 21, 2013 addressed to Mr. Sanjay Dina Patil, SEBI has stated that in view of the documents related to the Company's brochures and a few other complaints/reference received, SEBI was re-examining the matter and in the process of ascertaining whether the activities of the Company are in the nature of CIS as defined under section 11AA of the SEBI Act, as amended by the Securities Laws (Amendment) Ordinance, 2013. SEBI had also collected material from the Company (as sought vide SEBI letter dated September 17, 2013 and various letters thereafter) in pursuance of its detailed examination into the Company's activities/businesses. SEBI changed its *prima facie* opinion regarding the nature of the noticee's business on reconsideration of the documents submitted by the Company and the amendment to section 11AA brought in by the Ordinance in 2013. Thus, the argument of the noticees regarding 'estoppel' is without any merit.

Further, 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 not 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 business activities/schemes of the company, SEBI had changed

its views and had initiated proceedings vide the SEBI interim order and the instant SCN. Therefore, the plea of estoppel would not hold good against the statutory provisions as may be applicable in this present matter.

IV. Cross-examination of Sanjay Dina Patil:

The noticees have requested to cross-examine the complainant. However, as the SCN does not rely on this complaint and the same have not been relied in this Order, I find this request to be infructuous.

V. Request for disclosure of documents, replies, complaints etc relied upon by SEBI to arrive at the conclusion that Time Share Scheme of the Company did not constitute Collective Investment Scheme after examining the case of the Company during 2010-2011:

The noticees have cited case laws and argued that such documents are necessary for a fair trial. It was submitted that these documents were important to ascertain on what ground or for what reasons SEBI came to the conclusion after examining the documents of the Company that its holiday plans did not constitute CIS. The noticees have also submitted that an adverse inference can be drawn if a party refuses to furnish/produce for inspection relevant documents in its possession.

I note that it is on record that SEBI had taken a previous view that the schemes of the Company did not constitute CIS. However, on a reconsideration of the case of the Company, SEBI having *prima facie* taken a view that these schemes constitute CIS, an interim order with reasons was issued. Further, a SCN has been issued which has referred to the material which formed the basis for the allegations made in the SCN. The noticees were afforded opportunity of inspection of documents and were also provided copies of such documents. Further, I would also restrict myself, in accordance with the principle of fair play, to such documents relied on in the SCN, while making my observations on the merits of the matter. In view of the same, I am of the view that no prejudice is caused to the noticees if such records forming part of the previous view are not disclosed to them.

15. Coming back to the question whether the Company was operating a collective investment scheme, I note that the SCN has mentioned a total of 30 schemes, the date when each scheme came into operation, the average price for the room nights, the offer price of the package, the surrender value, the total amount collected under each scheme, the amount paid to the customer on surrendering the room nights. The following portions from the SCN are therefore relevant to note:

5. "As per the audited financial Statement for the financial year 2013-14, Noticee no. 1, is engaged in the business of owning, developing and operating hotels, clubs and resorts across India as well as offering different time share options. From the details provided by noticee no. 1 during October 01, 2013 to June 19, 2015, it is observed that it 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 Holiday for 5 years
- Divine Holiday for 66 months
- Pancard Clubs-Dezire Holiday for 37 months

6. As per the terms and conditions of the above mentioned schemes, 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.

Further, in the scheme details provided at E, G, I, J and R of point No 7 of the instant show cause notice, the applicant can surrender certain room nights/ or certain percentage of room nights immediately and balance at the end of membership period.

Under all these above mentioned schemes, the applicants are also offered free insurance benefits from IRDA approved Insurance Companies.

7. From the details of scheme wise analysis, the following facts are observed:

A. 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)

- i. 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.
- ii. 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 utilized	No of applicants utilized the rooms 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	27420	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	767,021,944	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	3,27,44,18,683	2,20,185

- iii. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 224.72 crores from 2,20,185 customers/investors by selling 37,45,358 room nights under Comfort Membership Plan. 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 noticee no. 1. From the details it is concluded that 0.013% room nights sold by noticee no. 1 were utilised and 99.97% of the room nights purchased by the investors were surrendered and estimated surrender value was opted.

B. Pancard Clubs- Royal Membership for 9 years (with effect from 1st July 2002):

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

- i. 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 the membership. 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.
- ii. Members can avail their room nights entitlements throughout the year and at any of the existing, affiliated or proposed clubs/resorts of the noticee no. 1.
- iii. 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 utilized	No of applicants utilized the rooms 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	2329	652,170	119

2007-08	59,561,205	212,719	3664	136	59	3559	996,445	65
2008-09	8,644,890	30,875	20	80	25	34439	9,658,775	552
2009-10	132,280	472		148	43	2342	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	84,18,29,885	30,06,536	54,275	1,405	383	7,32,110	59,68,08,931	19,661

- iv. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 84.18 crores from 54,257 customers/ investors by selling 30,06,536 room nights under Royal Membership Plan. From the details it is seen that out of the 30,06,536 room nights sold, as on March 31, 2014 only 1,450 room nights were utilised by 383 investors and 7,32,110 room nights were surrendered and 22,73,021 room nights are about to be either utilised or surrendered. However, out of the total room nights either utilised or surrendered (7,33,515 room nights), 0.19% room nights were utilised and 99.80% of room nights were surrendered and estimated surrender value was opted. It can be seen that the tenure of the scheme is for period of 9 years. Accordingly, out of the total room nights sold (10,09,898) till 2004-05, which have completed the scheme tenure of 9 years, only 1,405 room nights were utilised and 7,33,515 room nights were surrendered.

C. Pancard Clubs- Standard Membership for 9 years (effect from 1st July 2002):

Current Tariff Actual Price for four Room Nights Package	Average Price for Room Nights	Offer Price of the package at a Discount	Entitlement of Room Nights	Current Surrender Value for Eighteen Room Nights @ Rs. 850/- per Room Night.
Rs. 4,000/- (1,000*4)		Rs. 1,120/- (280*4)	4	Rs. 3,400/- (850*4)

- i. 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 the membership. 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.
- ii. Members can avail their room night entitlements throughout the year and at any of the existing, affiliated or proposed clubs/resorts of the noticee no. 1.
- iii. The details of the year wise room nights sold and redeemed during the period 2002-03 to 2013 -14 is provided as under: (Standard Plan)

Year	Total amount collected	No of room nights sold	No of applicants	No of room night utilized	No of applicants utilized the rooms nights	No of room nights surrendered	Amount paid for surrendering the room nights	No of applicants surrendered the room nights
2002-03	38,219,160	136,497	28,085	7	5			

2003-04	46,724,120	166,872	38,335	27	21			
2004-05	42,609,320	152,176	17,966	68	36			
2005-06	57,008,754	203,603	46,418	39	20	486	136,045	120
2006-07	114,124,366	407,587	92,985	91	57	81	68,565	43
2007-08	28,425,080	101,518	24,065	78	41	40	11,200	15
2008-09	870,520	3,109	751	17	12	180	50,400	15
2009-10				33	29	68	19,040	12
2010-11				47	28	43	12,096	9
2011-12				281	125	55,767	47,401,840	11,864
2012-13					108	141,451	120,233,750	31,781
2013-14				176	53	115,719	98,360,990	25,804
Total	32,79,81,320	11,71,362	2,48,605	864	535	3,13,835	26,62,93,926	69,663

- iv. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 32.79 crores from 248605 customers/ investors by selling 11,71,362 room nights under Standard Membership Plan. From the details it is seen that out of the 11,71,362 room nights sold, as on March 31, 2014 only 864 room nights were utilised by 535 investors and 3,13,835 room nights were surrendered and 8,56,663 room nights are about to be either utilised or surrendered. However, out of the total room nights either utilised or surrendered till March 31, 2014 (3,14,699 room nights), 0.27% room nights were utilised and 99.72% of room nights were surrendered and estimated surrender value was opted. It can be seen that the tenure of the scheme is for period of 9 years. Accordingly, out of the total room nights sold (4,55,545) till 2004-05, which have completed the scheme tenure of 9 years, only 864 room nights were utilised and 3,13,835 room nights were surrendered.

D. Pancard Clubs- Supreme Holiday Membership for 9 years (effective from 15th September 2002):

Current Tariff for four Room Nights Package	Average Actual Price for Room Package	Offer Price of the package at a Discount	Entitlement of Room Nights	Current Surrender Value for Eighteen Room Nights @ Rs. 850/- per Room Night.
Rs. (1,000*4)	4,000/-	Rs. 1,120/- (280*4)	4	Rs. 3,400/- (850*4)

- i. 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 the membership. 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.
- ii. Members can avail their room nights entitlements throughout the year and at any of the existing, affiliated or proposed clubs/resorts of the noticee no. 1.

Year	Total amount collected	No of room nights sold	No of applicants	No of room night utilized	No of applicants utilized the rooms nights	No of room nights surrendered	Amount paid for surrendering the room nights	No of applicants surrendered the room nights
2002-03	10,854,480	38,766	6,408					
2003-04	12,754,000	45,550	2,670	3	2	6	1,700	1
2004-05	15,954,275	56,980	2,119	5	2			
2005-06	28,070,873	100,253	2,898	9	5	597	167,040	139
2006-07	82,809,432	295,748	9,836	20	8	352	98,525	77
2007-08	137,329,055	490,461	9,630	6	3	1,653	462,725	44
2008-09	2,237,970	7,993	1	24	8	791	221,480	30
2009-10				29	8	534	149,658	15
2010-11	1,680	6		10	5	658	184,200	10
2011-12				386	30	13,837	11,761,370	718
2012-13					22	35,627	30,283,205	2,944
2013-14				121	6	43,353	36,850,310	1,772
Total	29,00,11,765	10,35,757	33,562	613	99	97,408	8,01,80,213	5,750

- iii. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 29 crores from 33,562 customers/investors by selling 10,35,757 room nights under Supreme Holiday Membership Plan. From the details, it is seen that out of the 10,35,757 room nights sold, as on March 31, 2014 only 613 room nights were utilised by 99 investors and 97,408 room nights were surrendered and 9,37,736 room nights are about to be either utilised or surrendered. However, out of the total room nights either utilised or surrendered till March 31, 2014 (98021 room nights), 0.62% room nights were utilised and 99.37% of room nights were surrendered and estimated surrender value was opted. It can be seen that the tenure of the scheme is for period of 9 years. Accordingly, out of the total room nights sold (141296) till 2004-05, which have completed the scheme tenure of 9 years, only 613 room nights were utilised and 97408 room nights were surrendered.

E. Pancard Clubs- Golden Holiday Membership for 5 years (effective from 16th April 2003).

Current Average Tariff of One Hundred & Eighty Actual Price room nights Package	Offer Price of the package at a Discount	Total Entitlement of Room Nights	Total Entitlement for usage of Room Nights per Month	Current Surrender Value as on Today.
Rs. 1,80,000/- (1,000*180)	Rs. 1,02,600/- (570*180)	180	3	Rs. 850/- Per Room Night

- i. As per the terms and conditions for the scheme, the applicant can commence utilising his room night entitlements after 30 days from the date of the membership. Member shall be entitled to utilise maximum of three room nights per month, against the total entitlement of 180 room nights. Out of

the quarterly entitlements, a member can surrender 1 room night immediately and balance at the end of membership period.

- ii. The details of the year wise room nights sold and redeemed during the period 2003-04 to 2013 -14 is provided as under: (Golden Plan)

Year	Total amount collected	No of room nights sold	No of applicants	No of room night utilized	No of applicants utilized the rooms nights	No of room nights surrendered	Amount paid for surrendering the room nights	No of applicants surrendered the room nights
2003-04	1,846,800	3,240	17			86	73,100	15
2004-05	2,462,400	4,320	23			1,343	839,203	40
2005-06	4,104,000	7,200	36			537	456,579	73
2006-07						4,181	3,553,976	76
2007-08	410,400	720	1			1,228	1,043,955	75
2008-09						2,077	1,765,426	75
2009-10						3,027	2,572,756	75
2010-11						1,790	1,521,700	69
2011-12						786	668,350	8
2012-13								
2013-14								
Total	88,23,600	15,480	77	0	0	15,055	1,24,95,045	506

- iii. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 88.23 lakhs from 77 customers/ investors by selling 15,480 room nights under Golden Holiday Membership Plan. From the details it is seen that out of the 15,480 room nights sold, as on March 31, 2014 zero room nights were utilised and 15,055 room nights were surrendered and 425 room nights are pending for utilization or for surrender. However, out of the total room nights either utilised or surrendered till March 31, 2014 (15,055 room nights), 100% of room nights were surrendered and estimated surrender value was opted and not a single room night was utilised.

F. Pancard Clubs-Luxury Membership for 6 years (effect from 1st April 2004):

Current Tariff for seven Room Nights Package	Average Actual Price for Room Nights	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. 7,000/- (1,000*7)		Rs. 2975/- (425*7)	7	Rs. 5,950/- (850*7)

- i. 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.

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

Year	Total amount collected	No of room nights sold	No of applicants	No of room night utilized	No of applicants utilized the rooms nights	No of room nights surrendered	Amount paid for surrendering the room nights	No of applicants surrendered the room nights
2002-03	191,979,300	451,716	18,510	1	1			
2003-04	353,233,990	831,139	27,641	30	13			
2004-05	350,791,935	825,393	28,057	132	39			
2005-06	609,874,969	1,435,000	41,479	62	23	3,371	2,865,355	934
2006-07	1,739,395,861	4,092,696	102,077	160	64	3,453	2,935,365	419
2007-08	315,780,435	743,013	19,328	322	66	2,526	2,147,060	353
2008-09				94	34	345,214	293,431,820	22,420
2009-10				109	49	789,499	671,074,035	26,291
2010-11				94	22	845,449	718,631,360	20,079
2011-12				766	116	1,662,743	1,413,331,426	43,991
2012-13					50	3,376,521	2870043200	86,600
2013-14				13	4	1,256,471	1068000130	35,005
Total	3,56,10,56,490	83,78,957	2,37,092	1,783	481	82,85,247	7,04,24,59,751	2,36,092

- iii. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 356.10 crores from 2,37,092 customers/ investors by selling 83,78,957 room nights under Luxury Membership Plan. From the details it is seen that out of the 8378957 room nights sold, as on March 31, 2014 1,783 room nights were utilised and 82,85,247 room nights were surrendered and 91,927 room nights are about to be either utilised or surrendered. However, out of the total room nights either utilised or surrendered till March 31, 2014 (82,87,030 room nights), 0.021% of room nights were utilised and 99.97% of room nights were surrendered and estimated surrender value was opted.

G. Pancard Clubs- Regular Holiday Membership for 10 years (effect from 1st April 2004):

Current Average Tariff Actual Price for two hundred & forty room nights Package	Offer Price of the package at a Discount	Total Entitlement of Room Nights	Total Entitlement of Room Nights per Month	Current Surrender Value As on Today.
Rs. 2,40,000/- (1,000*240)	Rs. 1,02,000/- (425*240)	240	2	Rs. 850/- Per Room Night

- i. As per the terms and conditions for the scheme, the applicant can commence utilising his room night entitlements after 30 days from the date of the membership. Member shall be entitled to utilise

maximum of two room nights per month, against total of 240 room nights. Out of the quarterly entitlements, a member can surrender 50% of his entitlement immediately and balance at the end of membership period.

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

Year	Total amount collected	No of room nights sold	No of applicants	No of room night utilized	No of applicants utilized the rooms nights	No of room nights surrendered	Amount paid for surrendering the room nights	No of applicants surrendered the room nights
2002-03	15,963,000	37,560	1,649				334,050	100
2003-04	33,218,000	78,160	288			7,723	4,575,550	1,937
2004-05	58,266,000	137,096	5,400			38,231	19,440,350	7,337
2005-06	71,381,500	167,956	587			17,843	13,432,165	1,369
2006-07	121,889,050	286,798	970	4	2	13,541	9,887,625	2,188
2007-08	134,640,000	316,800	951			51,231	43,546,292	4,101
2008-09	57,374,650	134,999	400			58,850	48,747,358	4,702
2009-10	16,219,500	38,164	142	12	3	64,471	53,780,700	3,833
2010-11				21	4	20,813	17,614,110	4,249
2011-12				104	8	62,363	52,384,671	3,825
2012-13					6	83,158	59,362,710	3,920
2013-14				239	2	91,544	77,812,675	3,959
Total	50,89,51,700	11,97,533	10,387	380	25	5,09,768	40,09,18,256	41,520

- iii. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 50.89 crores from 10,387 customers/investors by selling 11,97,533 room nights under Regular Holiday Membership Plan. From the details, it is seen that out of the 11,97,533 room nights sold, as on March 31, 2014 only 380 room nights were utilised by 25 investors and 5,09,768 room nights were surrendered and 6,87,385 room nights are about to be either utilised or surrendered. However, out of the total room nights either utilised or surrendered till March 31, 2014 (5,10,148 room nights), 0.74% room nights were utilised and 99.92% of room nights were surrendered and estimated surrender value was opted.

H. Pancard Clubs- Platinum Holiday Membership for 6 years (effective from 1st April 2004):

Current Average Tariff for Twelve nights	Offer Price of the Room Nights at a Discount	Minimum Room Nights to be bought	Minimum offer price to be paid	Current Surrender Value as on Today @ Rs. 850/- per Room Night
Rs. 12,000/- (1,000*12)	Rs.550/- per Room Night & Rs. 275/- per Half Room Night	12	6,600/-	Rs. 10,200/-

- i. 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 the membership. 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.
- ii. The details of the year-wise room nights sold and redeemed during the period 2003-04 to 2013 -14 is provided as under: (Platinum Plan)

Year	Total amount collected	No of room nights sold	No of applicants	No of room night utilized	No of applicants utilized the rooms nights	No of room nights surrendered	Amount paid for surrendering the room nights	No of applicants surrendered the room nights
2003-04	15,748,700	28,634	9,193					
2004-05	40,065,300	72,846	11,834					
2005-06	75,966,010	138,120	19,025	4	2	424	232,950	13
2006-07	82,433,630	149,879	35,924			306,782	168,730,085	52,338
2007-08	280,947,395	510,813	55,003					
2008-09	301,514,175	548,207	419	17	5			
2009-10	165,461,365	300,839	0	1	1	118,570	65,213,485	6,137
2010-11	68,672,117	124,858		8	2	115,524	98,195,075	8,568
2011-12	10,450	19	0	34	10	223,420	189,906,939	8,237
2012-13					11	382,187	374,360,685	21,422
2013-14				41	5	727,205	618,123,925	34,683
Total	1,03,08,19,142	18,74,215	1,31,398	105	36	18,74,112	1,51,47,63,144	1,31,398

- iii. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 103.08 crores from 1,31,398 customers/ investors by selling 18,74,215 room nights under Platinum Holiday Membership Plan. From the details, it is seen that out of the 18,74,215 room nights sold, as on March 31, 2014 only 105 room nights were utilised by 36 investors and 18,74,112 room nights were surrendered. From the details it is concluded that 0.005% room nights sold by noticee no. 1 were utilised and 99.99% of the room nights purchased by the investors were surrendered and estimated surrender value was opted.

I. Pancard Clubs-New Regular Holidays for 10 years (with effect from April 01, 2004):

Current Tariff Actual price for two Hundred & Forty Room Nights Package	Average Offer Price of the package at discount	Total entitlement room nights	Total entitlement Room Nights per month	Current surrender Value as on Today
Rs. 2,40,000/- (1,000*240)	Rs. 1,02,000/- (425*240)	240	2	Rs. 850 (per room night)

- i. Applicant can commence utilising his room night entitlements after 60 days from acceptance of his application by the company. As per the policy of noticee no. 1, an applicant shall be entitled to utilise a maximum of 2 room nights per month. Out of the monthly/quarterly entitlements, an applicant can surrender 50% of his entitlement immediately and the balance room nights at the expiry of the tenure.
- ii. Upon Expiration of tenure of under the aforementioned scheme, the applicant may surrender his unutilised room nights and noticee no. 1 in its discretion may give an option to its applicant to convert his unutilised room nights, to the extent of surrender value, into shares, debentures (this is in addition to the three more options provided to the customers).
- iii. The details of the year-wise room nights sold and redeemed during the period 2008-09 to 2013 -14 is provided as under: (New Regular Plan)

Year	Total amount collected	No of room nights sold	No of applicants	No of room night utilized	No of applicants utilized the rooms nights	No of room nights surrendered	Amount paid for surrendering the room nights	No of applicants surrendered the room nights
2008-09	76,398,000	179,760	505					
2009-10	171,161,900	402,734	1,106			6,588	5,599,850	1,437
2010-11	252,612,450	594,382	1,581			39,293	30,696,250	2,333
2011-12	226,250,300	532,354	1,335	777	14	75,305	62,208,050	4,247
2012-13	241,706,000	568,720	1,454	630	12	106,854	88,072,200	5,697
2013-14	213,659,400	502,728	1,137	400	19	135,489	111,361,050	6,850
Total	1,18,17,88,050	27,80,678	7,118	1,807	45	3,63,529	29,79,37,400	20,564

- iv. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 118.17 crores from 7,118 customers/ investors by selling 27,80,678 room nights under New Regular Holiday Membership Plan. From the details, it is seen that out of the 27,80,678 room nights sold, as on March 31, 2014 only 1,807 room nights were utilised by 45 investors and 3,63,529 room nights were surrendered and 24,15,342 room nights are about to be either utilised or surrendered. However, out of the total room nights either utilised or surrendered till March 31, 2014 (3,65,336 room nights), 0.49% room nights were utilised and 99.50% of room nights were surrendered and estimated surrender value was opted.

J. Pancard Clubs- Premium Holiday Membership for 10 years (effect from September 01, 2004).

Current Tariff Actual Price for seven Room Nights Package	Average Price for the package at a Discount	Offer Price of the package at a Discount	Entitlement of Room Nights	Total Entitlement of Room Nights per Quarter	Current Surrender Value As on Today.
Rs. 80,000/-	Rs. 34,000/-	Rs. 34,000/-	80	2	Rs. 850/-

(1,000*80)	(425*7)			Per Room Night
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- i. As per the terms and conditions for the scheme, the applicant can commence utilising his room night entitlements after 30 days from the date of the membership. Member shall be entitled to utilise maximum of two room nights per quarter, against the total of 80 room nights. Out of the quarterly entitlements, a member can surrender 50% of his entitlement immediately and balance at the end of membership period.
- ii. The details of the year-wise room nights sold and redeemed during the period 2002-03 to 2013 -14 is provided as under: (Premium Plan)

Year	Total amount collected	No of room nights sold	No of applicants	No of room night utilized	No of applicants utilized the room nights	No of room nights surrendered	Amount paid for surrendering the room nights	No of applicants surrendered the room nights
2002-03	12,410,000	29,200	1,335			177	150,450	170
2003-04	20,673,120	48,643	489	3	1	6,430	3,594,070	1,824
2004-05	25,500,000	60,000	5,526	11	4	16,579	8,856,345	7,350
2005-06	26,358,075	62,019	399			7,383	5,935,665	1,297
2006-07	34,503,045	81,184	497	4	2	3,502	2,806,759	2,026
2007-08	26,283,700	61,844	610	4	2	12,345	10,493,628	3,357
2008-09	23,862,475	56,147	542	1	1	21,673	16,796,233	4,609
2009-10	2,754,000	6,480	62			20,089	16,700,185	4,255
2010-11				21	4	20,813	17,614,110	4,249
2011-12				39	8	19,597	16,646,500	4,248
2012-13					7	39,786	25,049,500	4,487
2013-14				235	9	38,274	32,532,900	4,357
Total	17,23,44,415	4,05,517	9,460	318	38	2,06,648	15,71,76,345	42,229

- iii. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 17.23 crores from 9,460 customers/ investors by selling 4,05,517 room nights under Premium Holiday Membership Plan. From the details, it is seen that out of the 4,05,517 room nights sold, as on March 31, 2014 only 318 room nights were utilised by 38 investors and 2,06,648 room nights were surrendered and 1,98,551 room nights are about to be either utilised or surrendered. However, out of the total room nights either utilised or surrendered till March 31, 2014 (2,06,966 room nights), 0.15% room nights were utilised and 99.84% of room nights were surrendered and estimated surrender value was opted.

K. Pancard Clubs- Regal Holiday Membership for 9 years (effective from 1st April 2005):

Current Tariff for three Room Nights	Average for three Room Nights	Offer Price of three Room Nights at a Discount	Minimum Room Nights to be bought	Room to be	Current Surrender Value of three nights as on Today @ Rs. 850/- per Room Night.
Rs. (1,000*3)	3,000/-	Rs. 1,300/-	3		Rs. 2,550/-

- i. 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 the membership. Members can avail their room nights entitlements throughout the year and at any of the existing, affiliated or proposed clubs/resorts of the noticee no. 1.
- ii. The details of the year-wise room nights sold and redeemed during the period 2005-06 to 2013 -14 is provided as under: (Regal Plan)

Year	Total amount collected	No of room nights sold	No of applicants	No of room night utilized	No of applicants utilized the rooms nights	No of room nights surrendered	Amount paid for surrendering the room nights	No of applicants surrendered the room nights
2005-06	6,569,400	15,160	15,528			58	25,000	10
2006-07	12,810,375	29,562	29,567			2	900	1
2007-08	41,783,465	96,424	10,955					
2008-09	19,137,685	44,164						
2009-10	87,800	203	0	3	1	463	200,600	11
2010-11	121,850	281		6	2	889	385,380	28
2011-12				6	1	126	107,100	12
2012-13					4	38,188	32,459,828	6,888
2013-14				22	5	88,809	75,487,908	15,643
Total	8,05,10,575	1,85,794	56,050	37	13	1,28,535	10,86,66,716	22,593

- iii. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 8.05 crores from 56,050 customers/ investors by selling 1,85,794 room nights under Regal Holiday Membership Plan. From the details, it is seen that out of the 1,85,794 room nights sold, as on March 31, 2014 only 37 room nights were utilised by 13 investors and 1,28,535 room nights were surrendered and 57,222 room nights are about to be either utilised or surrendered. However, out of the total room nights either utilised or surrendered till March 31, 2014 (1,28,572 room nights), 0.028% room nights were utilised and 99.97% of room nights were surrendered and estimated surrender value was opted.

L. Pancard Clubs- New Comfort Holiday Membership for 3 years (with effect from May 22, 2007).

Current Tariff for three Room Nights	Average 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
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			@ Rs. 1,260/- per Room Night.
Rs. 6,000/- (2,000*3)	Rs. 2,700/- (900*3)	3	Rs. 3,780/-

- i. 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 33% of the total room nights purchased by him in a single financial year.
- ii. The details of the year-wise room nights sold and redeemed during the period 2007-08 to 2013 -14 is provided as under: (New Comfort Plan)

Year	Total amount collected	No of room nights sold	No of applicants	No of room night utilized	No of applicants utilized the rooms nights	No of room nights surrendered	Amount paid for surrendering the room nights	No of applicants surrendered the room nights
2007-08	1,189,351,500	1,321,502	100,393	2	2			
2008-09	436,504,800	485,005	38,308	31	14			
2009-10	523,550	582	54	25	11	1,520	1,367,700	31
2010-11				16	8	1,064,703	1,341,525,320	85,953
2011-12	577,500	642	213			702,869	885,614,330	47,475
2012-13						23,692	29,851,800	3,672
2013-14						12,497	15,746,710	1,537
Total	1,62,69,57,350	18,07,731	1,38,968	74	35	18,05,281	2,27,41,05,860	1,38,668

- iii. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 162.69 crores from 1,38,968 customers/ investors by selling 18,07,731 room nights under New Comfort Holiday Membership Plan. From the details, it is seen that out of the 18,07,731 room nights sold, as on March 31, 2014 only 74 room nights were utilised by 35 investors and 18,05,281 room nights were surrendered. From the details it is concluded that 0.004% room nights sold by noticee no. 1 were utilised and 99.99% of the room nights purchased by the investors were surrendered and estimated surrender value was opted.

M. Pancard Clubs- New Luxury Holiday for 3 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. 1,800/- per Room Night.
Rs. 6,000/- (2,000*3)	Rs. 2,700/- (900*3)	3	Rs. 5,400/-

- i. 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 33% of the total room nights purchased by him in a single financial year.
- ii. The details of the year-wise room nights sold and redeemed during the period 2007-08 to 2013 -14 is provided as under: (New Luxury Plan)

Year	Total amount collected	No of room nights sold	No of applicants	No of room night utilized	No of applicants utilized the rooms nights	No of room nights surrendered	Amount paid for surrendering the room nights	No of applicants surrendered the room nights
2007-08	1,572,129,900	1,746,811	94,021	4	2			
2008-09	688,654,500	765,172	37,671	29	9			
2009-10	424,100	471	28	20	8	3,306	2,975,000	68
2010-11				31	20	1,731	1,557,600	45
2011-12				154	42	310	558,650	14
2012-13					48	147	263,700	5
2013-14				200	49	1,428,270	2,570,886,150	68,160
Total	2,26,12,08,500	25,12,454	1,31,720	438	178	14,33,764	2,57,62,41,100	68,292

- iii. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 226.12 crores from 1,31,720 customers/ investors by selling 25,12,454 room nights under New Luxury Holiday Plan. From the details, it is seen that out of the 25,12,454 room nights sold, as on March 31, 2014 only 438 room nights were utilised by 178 investors and 14,33,764 room nights were surrendered and 10,78,252 room nights are about to be either utilised or surrendered. However, out of the total room nights either utilised or surrendered till March 31, 2014 (14,34,202 room nights), 0.030% room nights were utilised and 99.96% of room nights were surrendered and estimated surrender value was opted.

N. Pancard Clubs- New Royal Holiday for 9 years (with effective from May 22, 2007)

Current Tariff for One Room Nights	Average (2,000*1)	Offer Price of One Room Nights at a Discount	Minimum Room Nights to be bought	Estimated Surrender Value of One unused room nights @ Rs. 2,700/- per Room Night.
Rs. 6,000/-	(2,000*1)	Rs. 2,700/- (900*3)	3	Rs. 2,700/-

- i. 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 33% of the total room nights purchased by him in a single financial year.

- ii. The details of the year-wise room nights sold and redeemed during the period 2007-08 to 2013 -14 is provided as under: (New Royal Plan)

Year	Total amount collected	No of room nights sold	No of applicants	No of room night utilized	No of applicants utilized the rooms nights	No of room nights surrendered	Amount paid for surrendering the room nights	No of applicants surrendered the room nights
2007-08	279,784,750	310,872	97,258					
2008-09	754,518,650	838,354	154,207	4	4			
2009-10	934,709,115	1,038,566	146,618	16	7	944	849,735	45
2010-11	842,401,255	936,001	121,644	50	24	3,682	3,314,100	133
2011-12	863,353,829	959,282	125,259	1,068	411	1,111	2,998,645	76
2012-13	856,119,400	951,244	112,496	5,708	2,081	2,234	2,010,600	65
2013-14	874,355,100	971,506	108,707	8,479	3,723	2,292	2,062,880	55
Total	5,40,52,42,099	60,05,825	8,66,189	15,325	6,250	10,263	1,12,35,960	374

- iii. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 540.52 crores from 8,66,189 customers/ investors by selling 60,05,825 room nights under New Royal Holiday Membership Plan. From the details it is seen that out of the 60,05,825 room nights sold, as on March 31, 2014, only 15,325 room nights were utilised by 6,250 investors and 10,263 room nights were surrendered and 59,80,237 room nights are about to be either utilised or surrendered. However, out of the total room nights either utilised or surrendered till March 31, 2014 (25,588 room nights), 59.89% room nights were utilised and 40.10% of room nights were surrendered and estimated surrender value was opted. It can be seen that the tenure of the scheme is for period of 9 years and the scheme is effective from May 22, 2007. Accordingly, it can be concluded that the plan is not ripen enough for surrendering the unutilised room nights. It can be seen that out of the total room nights sold only 0.25% of room nights were actually utilised.

O. Pancard Clubs – New Premium Holiday for 10 years (with effect from May 22, 2007)

Current Average Tariff for Eighty room Nights	Offer Price of Eighty room Nights	Total entitlement room nights	Total entitlement Room Nights per quarter	Current estimated surrender Value per unutilized room nights
Rs. 80,000/- (1,000*80)	Rs. 34,000/- (425*80)	80	2	Rs. 850 (per room night)

- i. Applicant can commence utilising his room night entitlements after 60 days from acceptance of his application by the company. As per terms and conditions for the scheme, an applicant shall be entitled to utilise a maximum of 2 room nights per month. Out of the monthly/quarterly entitlements, an applicant can surrender 50% of his entitlement immediately and the balance room nights at the expiry of the tenure.

- ii. Upon expiration of tenure of under the aforementioned scheme, the applicant may surrender his unutilised room nights and noticee no. 1 in its discretion may give an option to its applicant to convert his unutilised room nights, to the extent of surrender value, into shares, debentures (this is in addition to the three more options explained at Para 5 (ii) provided to the customers).
- iii. The details of the year-wise room nights sold and redeemed during the period 2008-09 to 2013 -14 is provided as under: (New Premium Plan)

Year	Total amount collected	No of room nights sold	No of applicants	No of room night utilized	No of applicants utilized the rooms nights	No of room nights surrendered	Amount paid for surrendering the room nights	No of applicants surrendered the room nights
2008-09	102,000	240	2					
2009-10	30,193,000	71,042	665			423	359,550	231
2010-11	41,476,825	97,593	770	23	5	3,672	3,121,200	770
2011-12	35,476,100	83,473	633	50	11	10,151	8,254,350	1,663
2012-13	38,624,000	90,880	640	116	9	13,071	11,042,350	2,288
2013-14	25,874,000	60,880	432	180	13	16,837	14,277,450	2,716
Total	17,17,45,925	4,04,108	3,142	369	38	44,154	3,70,54,900	7,668

- iv. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 17.17 crores from 3,142 customers/ investors by selling 4,04,108 room nights under New Premium Holiday Plan. From the details it is seen that out of the 4,04,108 room nights sold, as on March 31, 2014 only 369 room nights were utilised by 38 investors and 44,154 room nights were surrendered and 3,59,585 room nights are about to be either utilised or surrendered. However, out of the total room nights either utilised or surrendered till March 31, 2014 (44,523 room nights), 0.82% room nights were utilised and 99.17% of room nights were surrendered and estimated surrender value was opted.

P. Pancard Clubs-Delight Holiday for 6.3 years (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 room nights @ Rs.1800/- per room nights
Rs. 6,000/- (2,000*3)	Rs. 2,700/- (900*3)	3	Rs.5,400/-

- i. As per the terms and conditions for the scheme, an 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 33% of the total room nights purchased by him in a single financial year.
- ii. Upon expiration of tenure of the aforementioned scheme, the applicant may surrender his unutilised room nights and noticee no. 1 in its discretion may give an option to its applicant to convert his

unutilised room nights, to the extent of surrender value, into shares, debentures (this is in addition to the three more options explained at Para 5 (ii) provided to the customers).

- iii. The applicants are also offered free insurance benefits from IRDA approved Insurance Companies.
- iv. The details of the year wise room nights sold and redeemed during the period 2008-09 to 2013 -14 is provided as under: (Delight Plan)

Year	Total amount collected	No of room nights sold	No of applicants	No of room night utilized	No of applicants utilized the room nights	No of room nights surrendered	Amount paid for surrendering the room nights	No of applicants surrendered the room nights
2008-09	1,538,802,000	1,709,780	97,149	2	1			
2009-10	2,261,222,183	2,512,469	119,711	21	8	342	307,515	35
2010-11	2,501,593,980	2,779,549	112,881	62	21	4,218	3,796,600	73
2011-12	2,983,030,433	3,314,478	121,795	1,803	219	6,347	5,712,300	84
2012-13	3,271,972,500	3,635,525	134,590	8,326	537	30,975	27,877,900	2,110
2013-14	3,868,821,180	4,298,690	134,576	13,448	1,310	7,903	7,112,520	111
Total	16,42,54,42,276	1,82,50,491	7,20,702	23,662	2,096	49,785	4,48,06,835	2,413

- v. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 1642.54 crores from 7,20,702 customers/ investors by selling 1,82,50,491 room nights under Delight Holiday Membership Plan. From the details it is seen that out of the 1,82,50,491 room nights sold, as on March 31, 2014, only 23,662 room nights were utilised by 2,096 investors and 49,785 room nights were surrendered and 1,81,77,044 room nights are about to be either utilised or surrendered. However, out of the total room nights either utilised or surrendered till March 31, 2014 (73,447 room nights), 32.21% room nights were utilised and 67.78% of room nights were surrendered and estimated surrender value was opted. It can be seen that the tenure of the scheme is for period of 6.3 years and the scheme is effective from May 02, 2008. Accordingly, it can be concluded that the plan is not ripen enough for surrendering the unutilised room nights. It can be seen that out of the total room nights sold only 0.12% of room nights were actually utilised.

Q. Pancard Clubs-Relax Holiday for 3.3 years (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/- (2,000*3)	Rs. 2700/- (900*3)	3	Rs.3780

- i. As per the terms and conditions for the scheme, an 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 33% of the total room nights purchased by him in a single financial year.

- ii. Upon expiration of tenure of the aforementioned scheme, the applicant may surrender his unutilised room nights and noticee no. 1 in its discretion may give an option to its applicant to convert his unutilised room nights, to the extent of surrender value, into shares, debentures (this is in addition to the three more options as explained at Para 5 (ii) provided to the customers).
- iii. The details of the year-wise room nights sold and redeemed during the period 2008-09 to 2013 -14 is provided as under: (Relax Plan)

Year	Total amount collected	No of room nights sold	No of applicants	No of room night utilized	No of applicants utilized the rooms nights	No of room nights surrendered	Amount paid for surrendering the room nights	No of applicants surrendered the room nights
2008-09	1,557,441,000	1,730,490	133,893	1	1			
2009-10	2,836,265,455	3,151,406	197,081	19	12	346	311,630	16
2010-11	4,124,278,020	4,582,531	230,267	121	53	1,724	1,552,000	65
2011-12	4,890,014,198	5,433,349	271,292	4,840	787	721,853	909,534,700	64,746
2012-13	5,779,355,400	6,421,506	302,747	30,545	1,819	2,763,229	3,481,668,864	179,127
2013-14	7,979,647,700	8,866,275	346,528	43,146	4,186	4,277,304	5,389,403,500	222,967
Total	27,16,70,01,773	3,01,85,557	14,81,808	78,672	6,858	77,64,456	9,78,24,70,694	4,66,921

- iv. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 2716.70 crores from 14, 81,808 customers/ investors by selling 3,01,85,557 room nights under Relax Holiday Plan. From the details, it is seen that out of the 3,01,85,557 room nights sold, as on March 31, 2014 only 78,672 room nights were utilised by 6,858 investors and 77,64,456 room nights were surrendered and 22,34,24,429 room nights are about to be either utilised or surrendered. However, out of the total room nights either utilised or surrendered till March 31, 2014 (78,43,128 room nights), 1.003% room nights were utilised and 98.99% of room nights were surrendered and estimated surrender value was opted.

R. Sunrise Holiday for 5 years (with effect from February 05, 2009):

Current Tariff for one hundred and twenty room nights	Average for one hundred and twenty room nights	Offer Price of one hundred and twenty room nights	Total entitlement of room nights	Entitlement of room nights per months	Current Estimated surrender value per unutilized room nights.
Rs. 2,40,000/- (2,000*120)	Rs. 1,08,000/- (900*120)		120	2	Rs.1800

- i. Applicant can commence utilising his room night entitlements after 60 days from acceptance of his application by the company. As per the terms and conditions for the scheme, an applicant shall be entitled to utilise a maximum of 2 room nights per month. Out of the monthly/quarterly entitlements, an applicant can surrender 50% of his entitlement immediately and the balance room nights at the expiry of the tenure.

- ii. Upon expiration of tenure of the aforementioned scheme, the applicant may surrender his unutilised room nights and noticee no. 1 in its discretion may give an option to its applicant to convert his unutilised room nights, to the extent of surrender value, into shares, debentures (this is in addition to the three more options as explained at Para 5(ii) provide to the customers).
- iii. The details of the year- wise room nights sold and redeemed during the period 2008-09 to 2013 -14 is provided as under: (Sunrise Plan)

Year	Total amount collected	No of room nights sold	No of applicants	No of room night utilized	No of applicants utilized the rooms nights	No of room nights surrendered	Amount paid for surrendering the room nights	No of applicants surrendered the room nights
2008-09	4,428,000	4,920	33					
2009-10	48,385,500	53,762	336			2,740	2,466,000	330
2010-11	81,540,000	90,600	458			9,947	8,952,150	564
2011-12	55,404,000	61,560	318	5	2	19,667	17,700,300	1,095
2012-13	7,344,000	8,160	48	18	1	21,152	19,036,800	1,143
2013-14	50,544,000	56,160	257			27,978	25,180,200	1,404
Total	24,76,45,500	2,75,162	1,450	23	3	81,484	7,33,35,450	4,536

- iv. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 24.76 crores from 1,450 customers/ investors by selling 2,75,162 room nights under Relax Holiday Plan. From the details it is seen that out of the 2,75,162 room nights sold, as on March 31, 2014 only 23 room nights were utilised by 3 investors and 81,484 room nights were surrendered and 1,93,655 room nights are about to be either utilised or surrendered. However, out of the total room nights either utilised or surrendered till March 31, 2014 (81,507 room nights), 0.028% room nights were utilised and 99.97% of room nights were surrendered and estimated surrender value was opted.

S. Divine Holiday for 66 months (with effect from May 01, 2009):

Current Average Tariff for four room nights	Offer Price of four room nights	Minimum room nights to be acquired	Minimum amount to be paid	Current surrender @Rs.1200/- per nights	Estimated value per room
Rs. 8,000/- (2,000*4)	Rs. 3,600/- (900*4)	4	Rs. 3,600/-	Rs.4,800/-	

- i. The applicant shall have to complete his payment towards the committed number of room nights in a maximum period of 36 months from the date of first payment. Persons completing all the 36 payments for the committed number of room nights shall be considered as a valid applicant and shall be formalised for and eligible for the benefits of the scheme. In the event of non-payment of instalment consistently, the applicant shall be levied a late fee of Rs. 15 per month for each such delayed payment.

- ii. Applicant can commence utilising his room night entitlements after 60 days from completion of all the 36 payments towards committed room nights. As per terms and conditions for the scheme, an applicant shall be entitled to utilise a maximum of 33% of the total room nights purchased by him in a single financial year. For availing the room nights, at the affiliated destination, applicant shall have to pay exchange fees of Rs. 150 per room nights.
- iii. Upon expiration of tenure of the aforementioned scheme, the applicant may surrender his unutilised room nights and noticee no. 1 in its discretion may give an option to its applicant to convert his unutilised room nights, to the extent of surrender value, into shares, debentures (this is in addition to the three more options as explained at Para 5 (ii) provided to the customers).
- iv. The details of the year wise room nights sold and redeemed during the period 2009-10 to 2013 -14 is provided as under: (Divine Plan)

Year	Total amount collected	No of room nights sold	No of applicants	No of room night utilized	No of applicants utilized the rooms nights	No of room nights surrendered	Amount paid for surrendering the room nights	No of applicants surrendered the room nights
2009-10	234,219,415	260,244	113,646			8	6,825	1
2010-11	689,986,965	766,652	124,289			394	355,000	33
2011-12	1,467,748,075	1,630,831	158,350			1,236	1,112,800	75
2012-13	1,713,401,350	1,903,779	198,602	567	26	4,652	4,186,700	315
2013-14	2,649,314,055	2,943,682	200,338	1,236	162	6,323	5,690,560	317
Total	6,75,46,69,860	75,05,188	7,95,225	1,803	188	12,613	1,13,51,885	741

- v. From the above table, it can be seen that noticee no. 1 has mobilised around Rs. 675.46 crores from 7,95,225 customers/investors by selling 75,05,188 room nights under Divine Holiday Membership Plan. From the details it is seen that out of the 75,05,188 room nights sold, as on March 31, 2014, only 1,803 room nights were utilised by 188 investors and 12,613 room nights were surrendered and 74,90,772 room nights are about to be either utilised or surrendered. However, out of the total room nights either utilised or surrendered till March 31, 2014 (14,416 room nights), 12.50% room nights were utilised and 87.49% of room nights were surrendered and estimated surrender value was opted. It can be seen that the tenure of the scheme is for period of 66 months and the scheme is effective from May 01, 2009. Accordingly, it can be concluded that the plan is not ripen enough for surrendering the unutilised room nights. It can be seen that out of the total room nights sold only 0.16% of room nights were actually utilised.

T. Pancard Clubs-Dezire Holiday for 37 months (with effect from March 01, 2013):

Current Average Tariff for Nine room nights	Offer Price of nine room nights at a discount	Minimum room nights	Payment Facility	
			Monthly basis	Quarterly basis
Rs. 18,000 (2,000*9)	Rs. 8,100	9	Rs. 300	Rs. 900

- i. The applicant can choose option of monthly or quarterly payment of the room night instalment at the time of obtaining the room nights. The applicant shall have to complete their payment towards the committed number of room nights in a maximum period of 27 months from the date of first payment. Person completing all the 27 payments for the committed number of room nights shall be considered as a valid applicant and shall be formalised for and eligible for the benefits of the scheme. In the event of non-payment of instalment consistently, the applicant shall be levied a late fee of Rs. 25 per month for monthly option and Rs. 75 /-per quarter for quarterly option for each such delayed payment.
- ii. Upon expiration of tenure of the aforementioned scheme, the applicant may surrender his unutilised room nights and noticee no. 1 in its discretion may give an option to its applicant to convert his unutilised room nights, to the extent of surrender value, into shares, debentures (this is in addition to the three more options as explained at Para 5 (ii) provided to the customers).
- iii. The details of the year-wise room nights sold and redeemed during the period 2012-13 to 2013 -14 is provided as under: (Dezire Plan)

Year	Total amount collected	No of room nights sold	No of applicants	No of room night utilized	No of applicants utilized the rooms nights	No of room nights surrendered	Amount paid for surrendering the room nights	No of applicants surrendered the room nights
2012-13	375,000	417	341					
2013-14	35,177,600	39,086	7,762					
Total	3,55,52,600	39,503	8,103					

- iv. It can be seen that the tenure of the scheme is for period of 37 months and the scheme is effective from March 01, 2013. Accordingly, it can be concluded that the plan is not ripen enough for surrendering the unutilized room nights.”

16. The SCN had also mentioned the ‘return’ which were offered under various schemes of the Company. These returns (compounded yearly) were calculated on the return on investment.

Sr. No	Name of the Scheme	Tenure	Offer Price of the package at the discount	Surrender Value at the end of Tenure	Returns
1	Comfort Membership	3	3,000	4,250	12.31%
2	Royal Membership	9	5,040	15,300	13.13%
3	Standard Membership	9	1,120	3,400	13.13%
4	Supreme Holiday Membership	9	1,120	3,400	13.13%
5	Golden Holiday Membership	5	1,02,600	1,53,000	8.32%
6	Luxury Membership	6	2,975	5,950	12.25%
7	Regular Holiday Membership	10	1,02,000	2,04,000	7.18%

8	Platinum Holiday Membership	6	6,600	10,200	7.52%
9	New Regular Holidays	10	1,02,000	2,04,000	7.18%
10	Premium Holiday Membership	10	34,000	68,000	7.18%
11	Regal Holiday Membership	9	1,300	2,550	7.77%
12	New Comfort Holiday Membership	3	2,700	3,780	11.87%
13	New Luxury Holiday	3	2,700	5,400	25.99%
14	New Royal Holiday	9	2,700	8,100	12.98%
15	New Premium Holiday	10	34,000	68,000	7.18%
16	Delight Holiday	6.3	2,700	5,400	11.63%
17	Relax Holiday	3.3	2,700	3,780	10.73%
18	Sunrise Holiday	5	1,08,000	2,16,000	14.87%
19	Divine Holiday	5.5	3,600	4,800	5.37%
20	Dezire Holiday	3.083	8,100	11,100	10.76%

The SCN alleged that in case of surrender of room nights, the investor is expected to receive an interest rate of 5.37 % to 25.99% (*if compounded annually*) depending upon the scheme. The Company has stated that the ‘return’ in New Luxury Holiday scheme should be 12.25% (*tenure as per SCN was 3 years, whereas it was 6 years as per Company*) against 25.99% mentioned in the SCN and also that the same for Regal Holiday Membership scheme (*tenure as per SCN is 9 years, as per Company is 7 years*) is 10.10% as against 7.77% mentioned in SCN. Therefore, according to the Company, the rate of interest were in the range of 5.37% to 14.87%. However, what is important to note is that the investor receives the ‘surrender value’ which carries interest on the amount (offer price) paid to the Company and that the surrender value is higher than the contribution paid by the investor.

17. The SCN has *prima facie* observed that the schemes of the Company satisfied all the conditions mentioned under section 11AA(2) of the SEBI Act and are therefore in the nature of collective investment schemes. It therefore becomes necessary to refer to the provisions of section 11AA of the SEBI Act in order to determine whether the schemes/plans launched and carried out by it is a “Collective Investment Scheme”. The said provision is reproduced below:

“Collective investment scheme.

11AA. (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) or sub-section (2A) shall be a collective investment scheme:

Provided that any pooling of funds under any scheme or arrangement, which is not registered with the 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 collective investment scheme.

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

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

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

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

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

(2A) *Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.*

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

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

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

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

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

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

(vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956 (1 of 1956);

(vii) falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982 (40 of 1982);
(viii) under which contributions made are in the nature of subscription to a mutual fund;
(ix) such other scheme or arrangement which the Central Government may, in consultation with the Board, notify,] shall not be a collective investment scheme”.

18. The **first condition**, under section 11AA(2) of the SEBI Act, is that the contributions or payments made by the investors by whatever name called are pooled and utilized for the purposes of the scheme or arrangement. With respect to this condition, the SCN had observed as follows:

“14. *It is observed that the noticee no. 1 is operating investment plans through its Holidays Plans, which it offers to the public. Holiday Plan Certificates of confirmation are issued to individual investors who purchase the Holiday Plans. Noticee no. 1 has submitted that during the financial years 2002-03 to 2013-14 raised a sum of Rs. 7034.67 crores from a total of 51,55,516 investors under its twenty schemes mentioned above. Under the various Holiday Plans, room nights are awarded by noticee no. 1 to investors who purchase the Holiday Plans, and if the investor desires, the room nights can be rented out or surrendered to noticee no. 1. It is seen from the balance sheet since 2001-02 to 2013-14 that the noticee no 1 has share capital of Rs.50,12,12 and meager loan amount but continuously acquired assets(inter alia Hotels and resorts worth Rs. 1076.68 crores). It is observed from the above details that the money pooled from the investors are utilised for acquiring assets including hotel and resorts. Thus, apparently the contribution made by investors in response to the Holiday Plans offered by noticee no. 1 are pooled and utilized for providing various holiday facilities, and in case the said facilities are not availed, then the same can be surrendered. Further, such pooled money may be used to acquire hotels, resorts or for paying the returns to the investors”.*

The Company, in its defense, has submitted the following:

- (a) “The Company has submitted that in its business model each customer buys a holiday option from the Company which can be utilised for booking rooms in hotels/resorts and for other ancillary services. Upon entering into agreements of varying tenures and amounts with PCL on a principal-to-principal basis, the customers have a right to utilize facilities at any of PCL or its affiliated properties, in accordance with the terms and conditions of the plan which they choose to subscribe to PCL 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. Customers are entitled to utilization of Room Nights and other services. In other words, the contract is only for provision

of services. According to the Company, mere purchase of holiday option cannot amount to 'pooling of funds' as mentioned in section 11AA (2) (i) and therefore, the holiday option sold by the Company cannot be termed as 'scheme or arrangement'.

- (b) The Company maintains independent accounts of payment of money and usage of promised Room Nights by its customers. Therefore, it cannot be termed as pooling of funds from general public.
- (c) The amount received by PCL from customers is shown as '**advance against sale of room nights**' in the books of accounts maintained by PCL and the said position is represented to the tax authorities. The Income Tax Department is contending that the advances received by PCL from customers are 'revenue receipts' and are liable to be included in taxable income for the year of receipt itself. The issue is pending before the Hon'ble Apex Court. The Income Tax department is taking a position that "*Merely because the advance amount collected is liable to be refunded in certain contingencies and circumstances, does not mean that it is not a receipt. It is a revenue receipt.*" Whichever interpretation is accepted, the above clearly shows that the consideration received by PCL is either 'advance against sale of room nights' or 'revenue receipts' but it does not amount to 'pooling of funds' with the meaning of Section 11AA(2)(i).
- (d) PCL enters into simple agreements with customers for provision of service in return for a consideration by the customers. PCL carries out a straightforward transaction in two legs, wherein first the consideration is received and subsequently, the Room Nights are credited in favour of the customer which may be drawn down depending on the requirement and wishes of the customer. They are service-level agreements evidencing a customer's right to avail of hospitality facilities at a later date. Moreover, the Service Tax Department has issued show cause notice proposing to treat the amount received by PCL as "Hospitality Services". Since, the holiday option being sold in lieu of services, Service Tax should be levied on the holiday option. Hence, even the Service Tax Department has levied service tax on the premises that PCL is rendering services and is not 'pooling funds'.

- (e) In every contract for sale and/or services, there is payment of consideration by one party and delivery of service or goods by the other party; that however cannot be termed as profit, income, produce, property, income etc. under section 11AA (2) (i).
- (f) The sale proceeds are utilised by PCL at its sole discretion for various purposes including purchasing of hotels, resorts and clubs and for the general business of PCL. Hence, the sale proceeds received from customers are not utilised for the purpose of the scheme or arrangement.
- (g) As stated above, there is no 'pooling' of funds in case of the holiday options. The holiday options do not envisage any 'pooling' of contributions or payments made by the customers or funds raised from the customers to the various holiday options of PCL. The concept of 'pooling' entails collection of funds received from various contributories to invest for any purpose. However, in the case of the holiday options provided by PCL, the amounts paid by the customers are towards consideration for purchase of room-nights (stay in hotels/resorts) by the customers. These room-nights can then be utilized by the customers for the purpose of utilizing the boarding facilities of hotels affiliated to PCL or its associates. It is submitted therefore that the payment of monies by the customers of PCL cannot by any stretch, be termed as 'pooling' as understood by section 11AA of the SEBI Act.
- (h) Further, the amounts paid by the customers are not utilised 'solely' for the purpose of any specific Options. The exact manner in which the funds received from the customers towards purchase of room-nights are "deployed" by PCL is not governed by the terms of any scheme. There is also no specification by PCL or by the customers on how the funds should be utilized. The amounts paid represents the income, and is utilized by PCL for the general business of PCL, and it is the duty of PCL to ensure that the customers are able to stay for the room-nights he has paid for. In other words, there is no prior demarcation that the amount paid by the customers would be utilized only for the purpose of the particular Option availed by the customer or for any specific Option.
- (i) Therefore, the time share holidays sold by PCL do not fulfil any of the criteria set out in section 11AA(2)(i)".

The Company also submitted that the amounts paid by the members are not utilised 'solely' for the purpose of any particular holiday plan availed by the member and that the amount received is utilized by the Company for developing properties worldwide to provide world class facilities to all its members. The business of PCL is not restricted to provide holiday plans under the holiday plan schemes referred to above. The business of the PCL, *inter alia* includes hospitality and hotel business whereby the hotel and club facilities are offered to members at large for a consideration. Thus, according to the Company, the contention of SEBI that the funds are utilized solely for the purpose of 'scheme or arrangement' is untenable.

I have considered such submissions. The Company has admitted receiving contribution from customers, under its schemes, towards offering room nights as alleged in the SCN. The Company has also stated that it owns/operates 42 hospitality properties across the world and has access to over 6500 hotels and resorts through the international membership of Resort Condominium International. The Company has submitted that on entering into an agreement with the Company, the customer has a right to avail of accommodation and utilize room nights. Therefore, the 'scheme' or 'arrangement' of the Company is offering the customers room nights in terms of the plans. The surrender value, mentioned in each of the plans, is a feature inherent to all such schemes.

The Company's contention is that it does not utilize the amounts paid by its customers for the purpose of any holiday plan and is utilized for developing properties worldwide as the Company's business is not restricted to only the holiday plans. The room nights are offered only on the basis of the infrastructure (hotels/resorts, permission to stay in a non-Pancard hotel etc) set up/acquired by the Company with the monies pooled from customers.

As mentioned in the SCN, the share capital of the Company is only Rs.50,12,000/-. The SCN has also stated that the Company has borrowed a meagre loan amount. The Company has, however, mobilized Rs.7035 crore from 51,55,516 investors from 2002-03 to 2013-14. This would immediately lead to the inference that the Company's business activities are run with the help of the money mobilized from customers under the holiday plans/room nights. Therefore, it can be held that the Company pools the contribution of its customers made under the schemes offering room nights for the purposes of the scheme. Further, I also note that the SCN has stated that only 0.49% (Company has stated this figure to

be 3-4%) of room nights were utilized for the period 2001-01 to 2013-14. It can be seen that a very meagre percentage of customers actually use the room nights and the substantial numbers surrender the room nights and receive the 'surrender value'. As mentioned above, the provision to surrender the room nights is an integral part of the schemes. Therefore, it can be concluded that the Company pools the monies from the customers and utilizes for the scheme and other related businesses/activities including for paying the 'surrender value' to the customers who surrender the room nights. Further, as per the schemes of the Company, the customer does not immediately get to utilize the rooms and has to wait for a particular period (as per the scheme) only after which the customer becomes entitled to use room nights. In this regard, I wish to refer to the following observations made by the Hon'ble SAT in the case of *NGHI Developers India Limited* decided on July 23, 2013:

*"19. The Appellants submit that in the present case the land is first purchased by the Appellants with its own funds. With respect to this submission, we state that the concept of CIS as envisaged by the legislature does not take into account any such variable. The fact stands that the money collected from the customers of the Appellants ostensibly for the purpose of purchase of land is pooled together and then utilized for the purposes of the scheme, whether to buy more land or to develop the land already in possession of the Appellants. **In this regard, it is noteworthy that the Appellants first seek contributions from members of the public based on the standard agreement and the application form. On receiving contributions, they issue certificates confirming the receipt of the amount of money paid by the customers to the Appellants. This money, in turn, is utilized by the Appellants to further buy land after pooling the investments of all customers. This leads to the conclusion that there is in fact a scheme in place which involves pooling of the investments of the Appellants**". {Emphasis supplied}*

Therefore, there is in place, scheme/s launched and operated by the Company through which the Company mobilizes monies from public and pools the same with respect to its activities including the schemes. The submissions regarding the claim made by the Income Tax Department and the Service Tax Department are therefore extraneous to the matter.

In view of the above discussion, I do not see merit in the submissions of the Company and accordingly hold that the first condition under section 11AA(2)(i) of the SEBI Act is satisfied.

19. The second condition under section 11AA(2) of the SEBI Act is that the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income,

produce or property, whether movable or immovable from such scheme or arrangement. The SCN has observed the following with respect to this condition:

“15. *It is observed that Noticee no. 1 is collecting money from investors and assuring them a certain return on investment, which is in the nature of profit. For example, in the Divine Holiday scheme, if any person invests an amount of Rs.3600/- (i.e.4 room nights) then after 66 months the investor gets a return of Rs.4800 for surrendering the four room nights. Similarly, in its Sunrise Holiday Scheme, the investors are assured a return of Rs.1800/- on an investment of Rs. 900/-, at the end of five years. Further, as compared to the total number of investors in its Holiday Plans, only small proportion of investors i.e. less than 0.5% (of the sold room nights) are actually seen to have availed the holiday facilities being marketed by noticee no.1. This indicates that most of the investors in the said schemes invested on account of the promise of assured returns. Thus, it is clear that the contributions made by investors towards schemes offered by noticee no.1 are with the view to receive profits or income.”*

The Company had contended the following to say that its schemes do not satisfy the second condition:

- (a) “The primary object of the Company for introducing the above-mentioned plan was to sell the holiday option which could be utilised for availing faculties/services offered at hotels/resorts/clubs etc. The customer was provided certain further features for his benefit.
- (b) The customers purchase the holiday option which can be utilised over a period of time, *inter alia*, for booking rooms in hotels/resorts. Only if the holiday option is left unutilised, the customers get surrender value at the end of the tenure of the plan. Thus, there is no ‘principal amount’ and consequently no ‘interest’ paid to the customers.
- (c) In case the customers utilise the holiday option, there is no question of refund of consideration and consequently there would be no payment of surrender value.
- (d) Therefore, none of the options proposed by the Company involve any profit-sharing with the customers. The rights of usage, hospitality and leisure activities, conferred on the customer in exchange for a consideration are not as a return on his consideration amount, but as a promise of performance of a service pursuant to his fulfilment of the terms and conditions of the agreement.
- (e) Therefore, there is mere conferral of rights of enjoyment and usage of rooms and ancillary hospitality services to the customers. The monies paid by the customers were only

towards the performance of the promises made by PCL, like in any other commercial agreement. After the agreement is executed, the customer is free to utilize his/her share of the room nights as per his/her wish at any time during the tenure and as per the terms and conditions of the agreement.

- (f) The holiday options do not envisage any payment to the customers at any point in time. The customers are entitled to usage of room nights on the basis of “accommodation only”. The terms and conditions of the holiday options clearly define the rights of the customers for usage of room night. Since the discretion to avail the room-nights lies solely with the customers, the company is not in a position to force them to avail it, it is based purely on the customers’ discretion and not on the intent of the company. Further merely because there is a low usage it cannot be assumed that the customers purchased the said holiday option mainly for receiving a profit or a return.
- (g) Also, the surrender value in relation to the holiday options as defined in the terms and conditions does not represent or mandate sharing of the income/profits/produce/property arising out of the holiday options.
- (h) The definition of the term ‘surrender value’ as given in Company’s terms and conditions is as under:

Surrender Value: shall mean the estimated value of a room night as computed by the Company at various intervals of time as the company may in its absolute discretion, decide on with reference to the prevailing demand/ supply conditions in the market price as well as the competition in the hotel industry. Surrender value payment is net off all the administration charges that shall be applicable from time to time. The decision of the company with respect to the surrender value shall be final.

- (i) The holiday option is merely one of performance of reciprocal promises, devoid of any promise of a yield, whether variable or fixed. Thus, the customers do not receive any profits, income, produce or property, whether movable or immovable from such scheme or arrangements.
- (j) It is submitted that the each and every member purchasing the holiday plan from PCL would undoubtedly seek certain benefits in return of the contributions or payments made to acquire the holiday plans. This is so in case of every single entity selling holiday plans. It is rather naïve or assumed that customers would pay consideration without any

reciprocal benefit. However, there exists no profit-sharing model between the PCL and its members.

- (k) Irrespective of whether the properties developed by PCL are running well or otherwise PCL is obliged to provide the relevant benefits under the holiday plan availed by the member. Thus, drawing a correlation between the profits earned by PCL and the returns/facilities provided to members is baseless and without any justification.
- (l) The Company has therefore contended that its holiday plans do not satisfy the second condition under section 11AA(2)(ii) of the SEBI Act”.

I have considered such submissions. The Company has not disputed the surrender value being part of the schemes. The Company has also admitted that only 3-4% (*though it is 0.49% as per SCN; the Company has no explanation why SCN calculations are wrong but has only made a bald assertion*) of its customers have availed the room nights under the schemes and that the majority of customers (97% of customers, even as per the Company) have surrendered the room nights and were entitled for the ‘surrender value’. Further, the following observation in the SCN is also pertinent:

- i. *“It may be noted that item (4) and (5) are the major items under the head of Current liability. With respect to (4) the auditor has noted that provision has been made in respect of all unutilised outstanding room nights. Provision has been made for the difference between the estimated surrender value and the offer price and has been equally distributed from the period in which the membership was sold and the period in which the membership matures.*
- ii. *With respect to item number (5) the auditor has noted that the amount received as advance against room nights does not get the character of income till the time it is determinable as to when the room nights shall be utilised by the member. Therefore, the amount received is credited under the head "advance against sale of room nights" and is reflected under the head "current liabilities".*
- iii. *From the above financial details and the observations made by auditors, it can be concluded that actual utilisation of room nights is insignificant compared to the surrender value. The income from membership and annual subscription fee is consistently too less (ranging between Rs. 0.04 crores to 1.02 crores).”*

Therefore, the argument that the customer does not get any return/profit is not acceptable. As per the Divine Holiday plan for 66 months, the Company offers four room nights for Rs.3600/- {Rs.900/-x4} (as against the current tariff of Rs.8000/- or four nights-Rs.2000/-x4), the minimum amount to be paid. The surrender value as per the plan is Rs.4800/- (Rs.1200/- x 4). Further, as per the plan, a customer could utilize only 33% of the total room nights purchased by him in a single financial year after 60 days from completion of payment of instalments. Therefore,

the surrender value is the return/income or profit which the customer receives if he surrenders the room nights which are purchased by him.

If the intention of the Company was to promote utilization of holiday plans then it should have ideally deducted charges/expenses from the contribution paid by the customer. It is a common understanding that all service providers deduct money (for administration, expenses, penalty etc.) if a person does not avail the services of the provider, like hotels, airlines, etc. The Company states that it has treated the investors' money as advance (for room/holiday plan). Therefore, the 'surrender' is something akin to cancellation or unwillingness of the customers in such case to utilize the services of such provider, the surrender value should be always lower than the initial amount paid. However, as per the schemes of the Company, the surrender value is higher than the contribution made by the customer.

Considering that the scheme offers the benefit called the "surrender value" (higher in value than the contribution of investor) and also as more than 97% of the customers have received the surrender value, and further that the Company has admittedly offered "insurance benefits" to its customers, it can be definitely said that the customer have made the contributions or payments to the schemes of the Company with a view to receive benefits/profits/income, from such scheme or arrangement.

The Company has also submitted that the returns under its schemes were in the range of 5.37% to 14.87% and there was nothing lucrative about the same. The Company has also contended that it would be improper to classify its holiday plans as *Ponzi schemes*. In this regard, I note that the second condition does not mention about any rates of return that would be required to classify a scheme as a CIS. It only mentions "*profits, income, produce or property, whether movable or immovable from such scheme or arrangement*". Therefore, if a return is received in the form of monetary value, produce or property from a scheme, the scheme in question is said to have satisfied this condition.

In view of the above, I conclude that the schemes, as alleged in the SCN, satisfy the second condition under section 11AA(2)(ii) of the SEBI Act.

20. The third and fourth conditions under section 11AA(2) are that **the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors, and the investors do not have day-to-day control over the management and operation of the scheme or arrangement.** The SCN has stated that the money collected from public in the form of investments made in the various Holiday Plans of the Company are used by the Company to manage and maintain various accommodation and other holiday facilities at different locations. Reference was made to clause 16 of the brochure/offer document of the schemes of the Company which allow the Company to “reserve 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 market conditions/cost factors”. The SCN further stated that the Company takes decisions regarding the management and use of the money collected from investors and has total control over its property and also has day-to-day control over the operation of the scheme and that the investors do not have any say in the management and operation of the Company. The noticees made the following submissions in this regard:

- (a) “There is no restraint on the utilisation of holiday option. Thus, the customers have complete control on the time, mode and manner of using the holiday option. Thus, there are no investors and there are no contributions managed on behalf of investors.
- (b) The holiday option is sold by PCL to the customers. The sale proceeds received are reflected as ‘advance against sale of room nights’. This being a purely a sale transaction, there is no question of managing scheme or arrangement on behalf of investor.
- (c) The title to the assets that form a part of the time share business remain with PCL (or where applicable, with its group company or with the company with whom PCL has a tie up) at all times. Moreover, the hotel properties in question form part of the hotel business and do patronize guests other than the various customers of PCL. Hence the hotel properties are managed for PCL’s hospitality business and are not ‘managed on behalf of the customers’.
- (d) Therefore, the time share holidays sold by PCL do not fulfil any of the criteria set out in Section 11AA(2)(iii)”.

As regards, section 11AA(2)(iv) of the SEBI Act, the Company had stated the following:

- (a) “The holiday option can be utilised at any time, mode or manner. Moreover, the customers have complete freedom in dealing with the holiday option. A customer can choose to utilise the holiday option to avail various facilities at various hotels, resorts and clubs of PCL.
- (b) A customer also has the option has the option to gift the holiday option to near and dear ones.
- (c) A customer also has the option to opt for exchange / barter the services.
- (d) Moreover, PCL does not impose restrictions and its customers are free to utilise the holiday option during any week, any season, any location as per their choice.
- (e) Therefore, the customer has complete control over utilization of the holiday option. The time share holidays sold by PCL do not fulfil any of the criteria set out in Section 11AA(2)(iv)”.

Even as per the Company, the customers, who have subscribed to the schemes (room nights) have the option to either avail the room nights as per the scheme or to receive the surrender value in case they surrender the room nights. The Company has also stated that it keeps the contributions “as advance against room nights” and uses for its business including purchasing of hotels, resorts and clubs and general business of the Company. Therefore, it can be clearly seen that the contribution once paid to the Company are managed by the Company and not by the customers who have contributed the same under the schemes of the Company. Therefore, the contention that there are no contributions that are managed is incorrect. The Company has also contended that there is no restraint on the utilisation of holiday option and that the customers have complete control on the time, mode and manner of using the holiday option. However, these are only the entitlements available to a customer under the scheme and the same cannot give the customer any right to manage their contribution. Further, even as per the schemes, the rooms would be available subject to availability.

The SCN has also mentioned about clause 16 of the brochure/offer document of the schemes of the Company wherein the Company has reserved the right to modify/ alter/ amend/ revoke the benefits/privileges and or the terms and conditions contained in whole or in part at its sole discretion or according to the prevailing market conditions/cost factors. This would make it very clear that it is the Company that has control over the contribution and the schemes. In view of the above reasons, I conclude that property, contribution or investment forming part of scheme or arrangement, whether

identifiable or not, is managed on behalf of the investors by the Company and the investors do not have day-to-day control over the management and operation of the scheme or arrangement, thereby satisfying the third and fourth conditions under section 11AA(2)(iii) & (iv) of the SEBI Act, 1992.

21. The SCN has alleged that the schemes of the Company are “deemed to be CIS” as the Company had pooled more than one hundred crore rupees and which are not registered with SEBI and also not covered under section 11AA(3) of the SEBI Act. In this regard, I refer to the following provisions of section 11AA of the SEBI Act:

11AA. (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) or sub-section (2A) shall be a collective investment scheme:

Provided that any pooling of funds under any scheme or arrangement, which is not registered with the 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 collective investment scheme.

The SCN has already mentioned that the Company had mobilized **Rs.7035 crore** during the period 2002-03 and 2013-14 under the schemes which have been found to be collective investment schemes. The following details taken from the SCN are relevant to note here:

Sl. No	Financial Year	Income from membership and annual subscription fee	Provision for surrender value payable	Advance against sale of room nights	Current liability	Holiday members surrender value	Marketing expenses
Figures are in Rs/crores							
1	2001-02	0.04	Nil	Nil	43.28	Nil	0.08
2	2002-03	0.03	1.99	49.15	117.97	02.03	8.15
3	2003-04	0.03	13.22	122.46	237.37	11.66	14.46
4	2004-05	0.02	34.29	210.16	386.60	22.09	22.92
5	2005-06	0.03	62.09	354.12	586.56	34.48	31.94
6	2006-07	0.11	150.84	678.64	1022.56	99.59	98.65
7	2007-08	0.09	317.32	1074.79	1572.87	182.42	122.27
8	2008-09	0.10	473.76	1549.02	2160.25	207.79	168.89
9	2009-10	0.31	688.75	2087.68	2908.49	297.19	194.07
10	2010-11	0.46	953.93	2778.76	3882.78	368.54	145.98
11	2011-12	0.67	1376.14	3607.13	5099.82	587.71	292.52
12	2012-13	0.85	1781.31	4352.34	6263.93	707.11	276.63
13	2013-14	1.02	1803.40	5284.76	7317.84	433.07	246.90

The Company is not registered with SEBI to offer CIS and the activities/schemes are not exempted under section 11AA(3) of the SEBI Act. Therefore, the schemes of the Company are also deemed to be collective investment schemes.

22. The Company has also tried to equate its schemes with others who offer holiday plans and has submitted that it has provided for the “surrender value” in the interest of its customers as otherwise they may lose their contribution if they do not use the room nights allotted to them as per the schemes. As the Company was offering a ‘return’ on the contributions made by the customers who subscribe to the plans of the Company and as such schemes are CIS as held above, the same should be under a regulatory mechanism in order to safeguard the interest of such investors/customers.

23. The Company has also submitted that it creates a ‘chose in action’ or an ‘actionable claim’ under the Transfer of Property Act, when it offers room nights to the customers after accepting their contributions. Even if it is assumed that the customer gets such rights, the same could be under the contract that governs the Company and them. However, these factors cannot dilute the finding that the schemes are CIS after they satisfy the provisions of section 11AA of the SEBI Act. Further, the ‘actionable claim’ argument will concern only a miniscule minority as an overwhelming majority never use the rooms. The law is very clear in this regard. Any person who wishes to launch a CIS could do so after obtaining registration from SEBI as mandated under sections 11(2)(c) and 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations and in compliance with the applicable law. Any persons who has launched CIS and carried on with such activity, without registration, shall wind up and refund the monies as per the scheme of the CIS Regulations.

24. I also note that Hon’ble SAT, vide Order dated February 03, 2016, made in Appeals Nos. 436 & 437 of 2015 (Royal Twinkle Star Club Private Limited and others vs. SEBI) had upheld the decision made in the SEBI Order dated August 21, 2015 that the appellants have floated and operated CIS without registering with SEBI and hence in violation of CIS Regulations. What is important to note is the following portion, wherein Hon’ble SAT has summarized the business model of Royal Twinkle:

“3. *Briefly stated the facts of the case are that; the Appellant-company started its business of selling of holidays plans on 6th May, 2008. The Appellant i.e. RTSCL belongs to Mirab Group of Companies which is stated to be engaged in various business activities, including the business of running hotels and restaurants since the year 2002. The Appellant*

started various time sharing holiday schemes offering customers various options, including non-refundable and refundable schemes. It means the customers/investors who might not be in a position to avail a holiday plan within a specified period, would be repaid their money with a certain additional monetary benefit on the expiry of the said period. In case they utilize the holiday plan, there would be no question of any refund. This seems to be the crux of the refundable schemes. Whereas in the nonrefundable schemes, fixed amount is taken from the customers/investors towards holiday plan to be utilized by the said customer/investor within a specified period and failing which the Appellant will not refund the amount on the expiry of the period. It was pointed out to us that most of the other schemes run by Mahindra Resorts, Sterling Resorts, etc. are non-refundable and beyond the purview of the concept of CIS as envisaged under Section 11A of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act, 1992").

As can be seen, the facts of the case already decided by the Hon'ble SAT and the refundable schemes operated by the Company in the present case are similar. Therefore, it is clear that the schemes of the Company being in the nature of room nights/holiday options are CIS in terms of section 11AA of the SEBI Act.

25. I also refer to the following observations made by the Hon'ble High Court of Gauhati High Court in its order dated June 25, 2015 in the matter of *Rose Valley Hotels & Entertainments Ltd and Ors*:

"19) There is no credible material placed by the petitioner to convince the court that all the members who have subscribed had the dominant intention of enjoying the stay at the hotels. Only on the basis of the format of an application for subscription of membership it cannot be conclusively held that the scheme is only for enjoying the stay in the hotels. It could have been held so if there was no alternative term of refund of deposit with a lucrative rate of 17.6 percent per annum. This aspect of the matter requires a detailed enquiry about the names and identities of all the subscribers, their social status, their annual income, etc to find out how many persons have genuinely subscribed for membership for availing the benefit of stay in the hotel. On the basis of incoherent material produced by the petitioner like format of membership it is not possible to agree with the contention that the scheme is only a holiday management scheme and does not come under the purview of the collective investment scheme more so because of the fact that there is a term in the contract of refund of money with a lucrative rates of interest. If the interest on deposit was the alluring factor on the part of the investors then the case would squarely fall under sub-clause (ii) of sub-section 11AA of the SEBI Act...."

26. It is also important to note that the Hon'ble Supreme Court in the matter of PGF Limited vs. UoI and another (ref. MANU/SC/0247/2013, has observed "*.....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.*" The Hon'ble Supreme Court further observed "*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.....,*". The Hon'ble Supreme Court further observed -

"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."

27. In view of the discussions made, I hereby conclude that the schemes of the Company, as alleged in the SCN, are collective investment schemes in terms of section 11AA(1) and (2) of the SEBI Act. The Company has not obtained registration as required under section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations.

28. The noticees have submitted that if SEBI comes to the conclusion that the Company's holiday plans are CIS, before issuing various directions under regulation 65 of the CIS Regulations, the Company should be permitted, under regulation 73, to submit draft information memorandum and for approval of SEBI and to seek the consent/approval of its members. The Company has stated that the direction to wind up the operations can be done only in extreme case. The Company further submitted that SEBI had from time to time opined that the Company's activities were not governed by the CIS Regulations and therefore under this bonafide belief, the Company had carried on its business of selling holiday plans

from 2002 onwards. The Company has requested that no harsh steps should be taken against it and that the procedure under regulation 73 of the CIS Regulations ought to be followed. In support of the submissions, the noticees placed reliance in the order of Alchemist Infra Realty Limited & Ors. vs. Securities Exchange Board of India [(2013) SCC Online SAT 50], passed by the Hon'ble SAT:

*“17 At this stage it would be pertinent to note a submission, regarding the interpretation of said Regulation 73, by Mr. Kapur, the learned senior counsel appearing for the Appellants, that it applies ‘only’ to CISs which were in existence in the year 1999 when the CIS Regulations were legally enforced by publication in the Official Gazette. We have thoroughly pondered over this submission and even revisited the CIS Regulations to unearth their true import. And we note that the CIS Regulations in question were promulgated by the Government of India to protect the interests of lacs of gullible investors who are prompted to invest in such schemes by advertisement, publicity etc. **Therefore, we are of the considered opinion that a wider interpretation, which is in tune with the underlying purpose envisaged by the said Regulations, has to be adopted. We, therefore, hold that Regulation 73 is applicable to all the CISs which were existing at the time when the CIS Regulations were introduced, as also to the CISs which may have been launched at any point in time thereafter.** The tentacles and reach of Regulations 73, thus, cover a vast expanse of the corporate world and SEBI has jurisdiction over all such CISs which do or do not conform to the requirements of registration etc. laid down in the said Regulations irrespective of the date of launch of a scheme which according to SEBI has all the trappings of a CIS, and this conclusion has been reached by the Respondent in accordance with law and in the facts and circumstances of the case.”*

The Company has submitted that in order to safeguard the interest of its customers, before the order of winding up, it ought to be directed to send an information memorandum to its members who have opted to its holiday plan within two months from the date of receipt of intimation of winding up from SEBI, detailing the state of affairs of the holiday plan, the amount repayable to each member and the manner in which such amount is determined. The information memorandum shall explicitly state that members desirous of continuing with PCL's holiday plan shall have to give a positive consent within one month from the date of the information memorandum and the said members shall continue with the holiday plan at his/her own risk and responsibility. The Company further submitted that it is settled that if under the statute a particular act is to be preferred in a particular manner, the procedure described under the statute has to be followed.

The Company also submitted that enrolment of new members in the first 12 schemes has been stopped and that the remaining 8 holiday plans were stopped since August 01, 2015. According to the Company, all the new holiday plans being sold by the Company presently are without any entitlement to the members to either surrender room night or to claim refund of the unutilized room night. The Company

also submitted that any mandatory direction or winding up of the schemes would have huge adverse consequences or concerns.

I have perused such submissions. Regulation 73 of the CIS regulations comes under Chapter IX of the CIS Regulations dealing with “Existing Collective Investment Schemes”. In terms of regulation 68, **any person who has been operating a collective investment scheme at the time of commencement of the regulations shall be deemed to be an existing collective investment scheme** and shall also comply with the provisions of this Chapter. Regulation 73(1) prescribes that an existing collective investment scheme which has failed to make an application for registration to SEBI or has not been granted provisional registration by SEBI or having obtained provisional registration fails to comply with the provisions of regulation 71 shall wind up the existing collective investment scheme. It is an admitted position that the Company was incorporated in the year 1997 and commenced its activities from the year 2001. Therefore, it cannot be said that the schemes of the Company are existing collective investment scheme. Therefore, the provisions of regulation 73 are not applicable to the schemes of the Company. The noticees have referred to the observations made by the Hon’ble SAT in the matter of Alchemist Infra Realty Limited. However, in a more recent case pertaining PACL, the Hon’ble SAT has clearly laid down that regulation 73 cannot be applied to a CIS floated after the CIS Regulations came into force and has also clarified its observations made in the Alchemist case. The following observations made by the Hon’ble SAT vide its Order dated August 12, 2015 in PACL Limited vs. SEBI (Appeal no. 368/2014) are referred to and relied:

*“42. Strong reliance was placed by counsel for appellants on decision of this Tribunal in case of Alchemist Infra Realty Ltd. (supra). In that case, the scheme floated by Alchemist, after the CIS Regulations came into force was held to be CIS and since the said CIS was carried on without obtaining registration from SEBI, the CIS was ordered to be wound up under Section 11,11B of SEBI Act read with regulation 65 and 73 of CIS Regulations. While upholding the order of SEBI and rejecting the argument of Alchemist that regulation 73 cannot be applied to a CIS floated after the CIS Regulations came into force, this Tribunal in para 17 held that the provisions for winding up contained in regulation 73 is applicable to CIS existing at the time when the CIS Regulations were introduced as also to the CIS which may have been launched at any point of time thereafter. Whether a CIS floated and operated after the CIS Regulations came into force without obtaining registration from SEBI was entitled to seek registration under regulation 73 read with regulation 68 was neither an issue raised by Alchemist nor decided by this Tribunal. **Only issue raised and decided by SEBI as also by this Tribunal in Alchemist was that a CIS floated after the CIS Regulations came into***

force without obtaining certificate of registration from SEBI is liable to be wound up under the regulation 65 read with regulation 73 of the CIS Regulations. Therefore, the argument that in view of the decision of this Tribunal in case of Alchemist Infra Realty Ltd. (supra) PACL has a right to seek registration under CIS Regulations cannot be accepted'. (Emphasis supplied)

In view of the above reasons, the schemes of the Company having been launched after the CIS Regulations came into force, would not be eligible for invocation of regulation 73 of the CIS Regulations.

The directors of the Company have contended that there must be a declaration that the scheme run by the Company is a CIS and that only on such declaration would the opportunity to obtain provisional registration under regulation 68 come into play. Regulation 70, according to the noticees, shows that for the purpose of obtaining provisional registration, the applicant must satisfy that its schemes are in the nature of CIS. These submissions too are without merit in view of ample clarity made in regulation 68 of the CIS Regulations regarding who is an 'existing collective investment scheme'. It is an admitted position that the Company had launched and was carrying on schemes, in the nature of CIS, from 2002. Therefore, the provisions which are applicable to the 'existing CIS' would not be applicable to the Company.

29. The schemes, as alleged in the SCN, are found to be in the nature of CIS in terms of section 11AA of the SEBI Act. The Company has not been permitted to offer/launch and carry on CIS as it has not obtained registration from SEBI as required section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations. In view of the violations and considering the scheme of regulations 65 and 73 of the CIS Regulations along with the observations of Hon'ble SAT (made in the PACL case), such unauthorized schemes are liable to be wound up and the Company shall repay the customers/investors as per the scheme/promise made to such investors.

30. The Company has submitted that from August 2015, it has stopped selling holiday plans with the option of surrender value and such plans are similar to other entities selling holiday/membership plans (Mahindra Holidays, Sterling Holidays). The Company has submitted the brochures/application forms pertaining to such new schemes along with the reply. The schemes have not been covered in this SCN and therefore not examined in this Order.

31. The SCN is issued to the 6 directors, namely, **Sudhir Shankar Morvekar, Shoba Ratnakar Barde, Usha Arun Tari, Manish Kalidas Gandhi, Chandrasen Ganpatrao Bhise and Ramachandran Ramakrishnan**, of the Company alleging they are responsible for the conduct of the business of the Company at the relevant point of time and have allegedly violated section 12(1B) of SEBI Act read with regulations 3 and 65 of the CIS Regulations. The following table (from the MCA website) presents the date when they were appointed in the Company:

DIN/DPIN/PAN	Full Name	Present residential address	Designation	Date of Appointment
00177938	SHOBHA RATNAKAR BARDE	A6/19, LIC COLONY, BORIVALI (WEST), MUMBAI, 400103, Maharashtra, INDIA	Director	31/01/1997
00178078	USHA ARUN TARI	A/3, PRAKASH NAGAR, MOGUL LANE,, MAHIM, MUMBAI, 400016, Maharashtra, INDIA	Director	01/01/1999
00399938	SUDHIR SHANKAR MORAVEKAR	9/ 10, UTKARSH CO-OP HSG SOC, PLOT NO. 1035, J A RAUL MARG, BOTADKARWADI, PRABHADEVI, MUMBAI, 400025, Maharashtra, INDIA	Director	31/01/1997
02606802	MANISH KALIDAS GANDHI	B/18, JAY KUNJ APT.,, VIRAR (WEST), VASAI, THANE, 401303, Maharashtra, INDIA	Director	03/04/2009
02393535	CHANDRASEN GANPATRAO BHISE	GOPAL NIWAS, PLOT NO.14, ROOM NO.4, 1ST FLOOR, SION (WEST), MUMBAI, 400022, Maharashtra, INDIA	Director	07/10/2009
03510460	RAMACHANDRAN RAMAKRISHNAN	601/ BLDG NO-1A, SHREE AHIMSADHAM CHS LTD, OFF NEW, LINK ROAD, OPP. VINAY INDUSTRIAL EST., MALAD (W), MUMBAI, 400064, Maharashtra, INDIA	Director	26/04/2011

The Company has admittedly launched and carried on CIS from 2002 atleast till August 2015. Therefore, the above directors, comprising the board of directors of the Company, are responsible for the conduct of the business and affairs of the Company and also in launching and carrying on the unregistered CIS schemes. 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."

The noticee directors 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. As stated above, the schemes being unregistered CIS are bound to be wound up and monies repaid in terms of section 65 of the CIS Regulations. This remedial action cannot be said to be harsh direction. Further, in view of carrying on such unregistered CIS activities, necessary enforcement directions in respect of the Company and its directors would also be required to be taken.

I therefore, find directors, **Sudhir Shankar Morvekar, Shoba Ratnakar Barde, Usha Arun Tari, Manish Kalidas Gandhi, Chandrasen Ganpatrao Bhise and Ramachandran Ramakrishnan**, liable for the contraventions committed by the Company in launching and operating unregistered CIS, in violation of section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations.

32. The Company has submitted that there are no complaints from its investors. However, the same is incorrect as SEBI is in receipt of complaints wherein the investors while sending the same to the Company had sent a copy to SEBI.

33. The marketing persons have also made submissions which were similar to those made by the noticees. Those have been already dealt with in this Order. The grievance of the marketing persons is that if any adverse orders are passed against the Company, the holiday options purchased by the customers will be rendered redundant and they will suffer irreparable losses and also that such adverse

orders will also have a greater effect on the marketing persons. The marketing persons have also stated that the customers also avail EMI facility. When any company offers unregistered schemes, the same should be wound up and such company should return the monies contributed by the investors. This action is in the interest of investors so that their interests are not harmed if that company defaults in paying the returns. Further, an unauthorized scheme cannot be allowed to continue.

34. In view of the findings and conclusions made in paragraph 25 and 27 above, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 and Sections 11(1), 11B and 11(4) thereof and regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby dispose off the SCN dated August 24, 2015 issued to the Company and directors with the following directions:

(a) Pancard Clubs Limited and its directors Sudhir Shankar Morvekar, Shoba Ratnakar Barde, Usha Arun Tari, Manish Kalidas Gandhi, Chandrasen Ganpatrao Bhise and Ramachandran Ramakrishnan, shall abstain from collecting any money from the investors or launch or carry out any Collective Investment Schemes including the scheme which have been identified as a Collective Investment Scheme in this Order.

(b) Pancard Clubs Limited and its directors Sudhir Shankar Morvekar, Shoba Ratnakar Barde, Usha Arun Tari, Manish Kalidas Gandhi, Chandrasen Ganpatrao Bhise and Ramachandran Ramakrishnan shall wind up the existing Collective Investment Schemes and refund through 'Bank Demand Draft' or 'Pay Order', the money collected by the said company under the schemes with returns which are due to its investors as per the terms of offer within a period of three months from the date of this Order and thereafter within a period of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, including the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds.

In case the Company has made refunds, it shall produce the proof for such repayment as directed above and also submit a certificate from Chartered Accountant as directed in sub-paragraph (d) below.

- (c) **Pancard Clubs Limited and its directors Sudhir Shankar Morvekar, Shoba Ratnakar Barde, Usha Arun Tari, Manish Kalidas Gandhi, Chandrasen Ganpatrao Bhise and Ramachandran Ramakrishnan**, shall not alienate or dispose off or sell any of the assets of the **Company**, except for the purpose of making refunds to its investors as directed above.

The Hon'ble SAT, vide Order dated December 14, 2015 (in Misc. Appln. No. 332/2015 in Appeal no. 254/2014) permitted the Company to sell off/dispose/create charge in respect of assets (specified in Exhibit 4 of the Misc. Appln.) subject to complying with the conditions made therein.

The above direction shall therefore be harmoniously read with the Order of Hon'ble SAT.

- (d) After completing the aforesaid repayments in terms of sub-paragraph (b) above, the **Company, Pancard Clubs Limited** shall file a certificate of such completion with SEBI, within a period of 15 days, from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ('ICAI').
- (e) **Pancard Clubs Limited and its directors Sudhir Shankar Morvekar, Shoba Ratnakar Barde, Usha Arun Tari, Manish Kalidas Gandhi, Chandrasen Ganpatrao Bhise and Ramachandran Ramakrishnan** are also directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/ securities, if held in physical form.
- (f) **Pancard Clubs Limited and its directors Sudhir Shankar Morvekar, Shoba Ratnakar Barde, Usha Arun Tari, Manish Kalidas Gandhi, Chandrasen Ganpatrao Bhise and Ramachandran Ramakrishnan** are restrained from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities market for a period of 4 years.
- (g) In the event of failure by **Pancard Clubs Limited and its directors Sudhir Shankar Morvekar, Shoba Ratnakar Barde, Usha Arun Tari, Manish Kalidas Gandhi, Chandrasen Ganpatrao**

Bhise and Ramachandran Ramakrishnan, to comply with the above directions, the following actions shall follow:

- **Pancard Clubs Limited and its directors Sudhir Shankar Morvekar, Shoba Ratnakar Barde, Usha Arun Tari, Manish Kalidas Gandhi, Chandrasen Ganpatrao Bhise and Ramachandran Ramakrishnan** shall remain restrained from accessing the securities market and would further be prohibited from buying, selling or otherwise dealing in securities, even after the period of 4 years of restraint imposed in sub-paragraph (f) above, till all the Collective Investment Schemes of the Company are wound up and all the monies mobilized through such schemes are refunded to its investors with returns which are due to them.
- SEBI would make a reference to the State Government/ Local Police to register a civil/ criminal case against **the Company**, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds;
- SEBI would make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the **Company**.
- SEBI would make a reference to the Ministry of Corporate Affairs to restrain above-mentioned noticee directors from being directors in other companies.
- SEBI shall initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder against the Company and others responsible.

35. This order shall come into force with immediate effect.

36. I note that SEBI has already initiated adjudication proceedings against the Company for launching and carrying on unregistered CIS activities and the same is pending. Additionally, this Order shall be without prejudice to the right of SEBI to initiate prosecution proceedings under section 24 of the Securities and Exchange Board of India Act, 1992 against Pancard Clubs Limited and its directors Sudhir Shankar Morvekar, Shoba Ratnakar Barde, Usha Arun Tari, Manish Kalidas Gandhi, Chandrasen

Ganpatrao Bhise and Ramachandran Ramakrishnan including other persons who are in default, for the violations as found in this Order.

37. Copy of this Order shall be forwarded to the stock exchanges and depositories for necessary action.

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

**Date: February 29th, 2016
Place: New Delhi**