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Collective Investment Scheme in India: Analysis of Legal Framework

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ABSTRACT

Collective Investment Scheme (CIS) is an investment scheme in which multiple people combine their money to invest in a specific asset(s) and share the profits as agreed upon prior to pooling the funds. Post-independence the CIS has grown greatly. The non-uniformed and largely unregulated environment has provided good scope for the misuse of the funds. Large-scale mis-utilization of funds and consequent fraudulent activities lead to establishing a regulated system for the operation of CIS. Committee was constituted under the Chairmanship of Dr. S. A. Dave to examine and finalize the draft for the regulation of Collective investment scheme. Subsequently the SEBI notification on collective investment scheme known as SEBI (collective investment schemes) regulation 1996 was issued on 15th Oct 1999. The SEBI (collective investment schemes) regulation 1996 described the way in which the Collective Investment Management Company should be registered, conditions for registration, process involve in the issue of Certificate of Registration, obligation of CIMC, winding up process of CIMC and liabilities of Trustees for the proper performance of CIS in India. The researcher will analyze these aspects in detail for understanding the process laid down for protection of interest of Unit holder in CIS in India.

I. INTRODUCTION

As the name implies, a Collective Investment Scheme (CIS) is an investment scheme in which multiple people combine their money to invest in a specific asset(s) and share the profits as agreed upon prior to pooling the funds.² A Collective Investment Management Company is a business entity formed under the Companies Act of 2013 and registered with SEBI under the SEBI (Collective Investment Schemes) Regulations of 1999 with the purpose of organizing, operating, and managing a Collective Investment Scheme.

SEBI (Collective Investment Scheme) Regulations, 1999, which was amended on March 6, 2017 explained the rules regarding registration of Collective investment Management

¹ Author is a Research Scholar MNLU, Nagpur, India.

² Collective Investment Scheme, Dec 15. 2016 available at [http://www.Arthapedia.In/Index.php?Title=Collective_Investment_Scheme_\(Cis\)](http://www.Arthapedia.In/Index.php?Title=Collective_Investment_Scheme_(Cis)), (Visited February 24, 2021).

Company, business activities and obligations of collective Investment Management Company, Trustees and their obligations, collective investment scheme of collective investment management company, General obligations of company, inspection and audit of company.³ The scheme worked under the trust of a person who holds the property of CIMC for the benefit and on behalf of unit holder. The instrument of trust is executed under the Indian Registration Act, 1908 by the CIMC in favor of trustee whose name is written on it. The trust deed should contain such clauses as are specified and other clauses as are necessary for safeguarding the interest of unit holder. No trust deed should contain the clause that wills limits or extinguish the right and liability of CIMC and will affect the interest of the unit holder or any clause in trust deed which will invalid the indemnity of CIMC and trustee for loss or damage clause to the to the unit holder due to negligence or act of omissions.

Unit holder means person-holding unit in collective investment scheme so that the trustees of company for the benefit out of investment will invest his money in proper manner. History of CIS In India start from 1990s was various instances of collection of money by numerous agro based and plantation company's start. Which eventually failed to provide any return on investment even the promise of around 18-30% return. Post-independence the CIS has grown greatly. The non-uniformed and largely ire-regulated environment has provided good scope to mischief to misuse the funds. Large-scale miss-utilization of funds and consequent fraudulent activities lead to establishing a regulated system for the operation of CIS.⁴

In context of that Government of India decided to have a regulatory framework for the collective investment entities which issue the instrument like agro bonds, plantation bonds etc. will be put in place. The government decided that the scheme through which such instrument is issued would be treated as collective investment scheme coming under the provision of the SEBI Act.⁵ SEBI on 26th of November 1997 and 18th December 1997 prohibited the collective investment scheme still the CIS regulations are notifies from sponsoring any new scheme. Press release further stated that instrument such as agro bond, plantation bond would be treated as CIS under the security and Exchange Board of India Act, 1992.

All the companies having such activities were required to file information with SEBI. Moreover, general public was also informed that no person can sponsor or cause to be

³ SEBI (Collective Investment Scheme) Regulations, 1999.

⁴ "Development Collective Investment Scheme in India", available at <https://Blog.Ipleaders.In/Collective-Investment-Scheme/>, (Visited February 24, 2021).

⁵ Arti Krishanan, Collective Investment Schemes: All You Wanted to Know About, THE HINDU NEWSPAPER, 28th Sep. 2016, available on <https://Www.Thehindubusinessline.Com/Opinion/Columns/Aarati-Krishnan/Coll-ective-Investment-Schemes-All-You-Wanted-To-Know-About/Article7698990.Ece>, (Visited February 24, 2018).

sponsored any new collective scheme or raise fund. Committee was constituted which submitted the report on 5th April 1999 under Dr. S. A. Dave to examine and finalize the draft for the regulation of Collective investment scheme. Subsequently the SEBI notification on collective investment scheme known as SEBI (collective investment schemes) regulation 1996 was issued on 15th Oct 1999.⁶ Under the regulation it was required that person who are operating the collective investment scheme require to make application to the SEBI for the grant of registration within period of 2 month from the date of notification. Any person who is denied by the SEBI for the registration required winding up the scheme in manner specified in notification. No person or entity will be allowed to carry CIS without the certificate of registration from SEBI.⁷

A registered Collective Investment Management Company is eligible to raise funds from the public by launching schemes. Various documents are required to be submitted for registration of CIMC. Such schemes have to be compulsorily credit rated as well as appraised by an appraising agency. The schemes also have to be approved by the Trustee and contain disclosures, as provided in the Regulations, which would enable the investors to make informed decision. A copy of the offer document of the scheme has to be filed with SEBI and if no modifications are suggested by SEBI within 21 days from the date of filing, then the Collective Investment Management Company is entitled to issue the offer document to the public for raising funds from them.⁸ No company will be allowed to collect the deposit unless registered under SEBI. Existing Collective Investment Company was not allowed to raise fund for new scheme unless certificate of registration of company from SEBI is issued to them for the same even though they have obtained provisional registration.⁹

Exception to collective investment scheme: following do not constitute collective Investment scheme:

- Co-operative society or society being registered under any law relating to cooperative society making any scheme or arrangement does not constitute CIS.
- Contract of insurance does not constitute CIS to which Insurance act applies.

⁶ Rosemary K. Abraham “Collective Investment Scheme” available at http://www.Arthapedia.In/Index.Php?Title=Collective_Investment_Scheme_%28cis%29, (Visited On February 25, 2021).

⁷ “Collective Investment Scheme” available at [http://www.Arthapedia.In/Index.Php?Title=Collective_Investment_Scheme_\(Cis\)](http://www.Arthapedia.In/Index.Php?Title=Collective_Investment_Scheme_(Cis)), (Visited On February 24, 2021).

⁸ Security And Exchange Board of India, https://www.Sebi.Gov.In/Sebi_Data/Faqfiles/Jan-2017/1485846814724.Pdf, (Visited 24th Feb. 2021).

⁹ C Achuthan, Varindhavan Forests Ltd. And ...Vs The Securities and Exchange Board, 13th Sep. 2002, available on <https://Indiakanon.Org/Doc/1801874/>, (Visited on February 25, 2018).

- Non-Financing companies under scheme accept deposits or arrangement does not constitute the CIS.
- Pension scheme or the insurance scheme under employee provident fund.
- Deposit accepted under section 58A of the Companies' Act, 2013.
- Under which deposit accepted by company declared as a Nidhi or mutual benefit society.¹⁰
- Falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982(40 of 1982);
- Under which contributions made are in the nature of subscription to a mutual fund.

Collective investment fund scheme is a trust-based scheme and popular form of investment in which each investor has proportionate share in CSI portfolio based on how much money he or she contribute. The word Unit referees to the portion or part of CIF owned by owned by the investor. Collective investment scheme provides relatively secure mean of investing on stock exchange and other financial instrument. The sums of money that are exchanged on stock exchanged and in money market them too princely for most people. The money or fund from the investor is invested in a pooled to form the CIS portfolio.¹¹

According to SEBI Act 1992 collective investment scheme or arrangement is specified in the section 11 AA that provide that scheme or arrangement which satisfied the condition referred in sec 2 or sub section 2 A.¹² In Sec 11AA sub section 2 stated that 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 arrangement¹³

¹⁰ Collective Investment Scheme (Cis), [http://www.Arthapedia.In/Index.Php? Title=Collective_Investment_Scheme_\(Cis\)](http://www.Arthapedia.In/Index.Php? Title=Collective_Investment_Scheme_(Cis)), (Visited on February 24, 2021).

¹¹ Collective Investment V Direct Investment" available at <http://www.Understandinginvesting.Org/Go-Further/Ci/>,(Visited On February 25, 2021).

¹² Mukul Agarwal, Riche Sancheti, I"Ndia: Regulating The Unregulated: Sebi Interprets What Qualifies As A Collective Investment Scheme" 14th August 2018, available on <http://Www.Mondaq.Com/India/X/257746/Financial+Services/Regulating+The+Unregulated+Sebi+Interprets+What+Qualifies+As+A+Collective+Investment+Scheme>,(Visited On February 25, 2021).

¹³ Swastika Chakraborty, Holiday Package as Collective Investment Scheme, 14th June 2017, available aty <http://Corporatelawreporter.Com/2017/06/14/Holiday-Packages-And-Collective-Investment-Schemes-Sebi-Perspectives-And-Ruling/>,(Visited February 25, 2021).

- (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.

Sub Sec 2A of Sec 11 AA states that 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.¹⁴ SEBI modified the definition of CIS to include any scheme/arrangement floated by any person instead of company as defined before. Even the scheme with the value of more than Rs 100 Crore shall also be considered as CIS by SEBI.

Union Budget 2016-17 has proposed a comprehensive central legislation to deal with the illicit deposit of money in scheme. Similarly, a State Level Coordination Committee (SLCC) were constituted in May 2014 and is the joint forum formed in all state to facilitate, information sharing among the regulators like Reserve Bank of India, SEBI, Insurance regulatory and development authority, Pension Fund regulatory and development authority, National Housing bank and registrar of company etc. SLCC launch a website on 4th August to curb the illegal collection of deposits. In that site people can know which organ is allowed to take the deposits, lodge complaint along with that it shares the information with people regarding the illegal acceptance of deposit by unscrupulous entities.

For the purpose of collective investment, a company is establish called as the Collective investment managing company. CIMC is defined under the SEBI (Collective investment schemes) regulations, 1999 which states that CIMC means company incorporated under the Companies' Act, 2013 and registered with SEBI under these regulations whose objective is to organize, operate and manage a collective investment.¹⁵

II. HOW TO APPLY FOR THE REGISTRATION OF COLLECTIVE INVESTMENT COMPANY?

Non-refundable application fee with the application form must be submitted as specified in the regulation. If the application does not fulfill the criteria required for the registration, the registration will be denied by the SEBI. However before rejecting the application SEBI must give the one-month period to the applicant to remove or add those things that will make them

¹⁴ "Sebi Act 1992" available on https://www.Sebi.Gov.In/Sebi_Data/Attachdocs/1456380272563.Pdf, (Visited on February 25, 2021).

¹⁵ Capital Market and Securities Law, Page No 226, (Visited on February 25, 2021).

eligible for the registration.¹⁶

(A) Conditions Required for the Registration

Applicant applying for the registration must be registered as company under the company's Act of 2013. The applicant must specify in their Memorandum of Association that managing the collective investment scheme is its main objective. At the time of registration, the applicant must have at least 3 crore net worth but after the period of three year of registration the applicant should have the net worth of 5 crore. The applicant must have proper infrastructure for the functioning of the collective investment scheme. The key managerial person of that company must be well-qualified person with no charges of moral turpitude, economic offence or violation of any security laws. 50 % director of CIMC should be independent from the influence of person holding the position to dominate the company. One director of company who is not subjected to the retirement from board of CIMC must be representative of Trustee. The company must not be the trustee of CIS. In case of existing collective investment scheme, it complies with provision of chapter IX of regulation¹⁷. Chapter IX deals with the provisional registration, registration of existing scheme, and repayment of investor on non-registration of existing investment scheme.¹⁸

(B) Issue of Certificate of Registration

SEBI shall grant the certificate of registration to applicant when the entire requirement has been fulfilled and the applicant according to the regulation specification has made the payment of fees.¹⁹

(C) Terms and Conditions for Grant of Certificate

The certificate granted should be subject to condition and the director of CIMC should not be director of any CIMC unless that person is independent director and approval of Board of CIMC has been obtained. CIMC should inform the SEBI regarding material furnish at the time of obtaining the certificate of registration. The trustee with prior approval must appoint the directors of the company. The changes in the controlling of company must be done only by

¹⁶ "Companies (Registered Valuers and Valuation) Rules, 2017" available at http://www.Mca.Gov.In/Ministry/Pdf/Companies_Registered_Valuers_Rules_2017.Pdf, (Visited on February 25, 2018).

¹⁷ SEBI (Foreign Portfolio Investors) Regulations, 2014 available at https://Www.Sebi.Gov.In/Sebi_Data/Attachdocs/1416889450959.Pdf, (Visited on February 24, 2021).

¹⁸ Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999, IXth Chapter, available at https://www.Sebi.Gov.In/Sebi_Data/Attachdocs/1331284151848.Pdf, (Visited on February 25, 2021).

¹⁹ "Faq- Collective Investment Scheme" available at https://www.Sebi.Gov.In/Sebi_Data/Faqfiles/Jan-2017/1485846814724.Pdf, (Visited on February 25, 2021).

taking the approval of SEBI along with trustee and Unit holder holding half of the nominal value of capital. CIMC must try to resolve any grievance of unit holder within period of one month.

(D) Obligations of Collective Investment Management Company

There are certain obligations on the CIMC given under the SEBI regulation of 1999, which company required to follow are as follows:

- The property of company required to be managed properly on behalf of Unit holder and proper precaution must be taken by the key managerial persons of company to function the company according to regulation of SEBI. The document of company must be kept properly along with the trustee deed.
- The company should appoint registrar and share transfer agent who should following the code of conduct as specified in third scheduled. Third schedule basically talks about interest of unit holder, dissemination of Information, conflict of interest between trustee and CIMC, Segregation, Investment as per objective.
- The company must inform the receipt of payment to SEBI.
- The meeting of board of CIMC must be hold at least twice in three month and it must be making sure that any employee or officer of company must not take any adverse benefit or try to receive benefit out of information known to them to other which will be detrimental for the benefit scheme.²⁰
- Company must ensure to follows the guideline, directive and circular issued by SEBI from time to time.
- CIMC should prepare report on all activity and regulations of SEBI quarterly and submit same to the trustee within one month of the expiry of each quarter. Trustee and CIMC should have all the information regarding the newly appointed directors within Fifteen days of their appointment. Unit holder should be informed about the balanced sheet, profit and loss accounts.
- Unit certificate can be transfer easily. CIMC on production of instrument of transfer together with relevant unit certificate registered the transfer and return the unit certificate to the person to which the unit is transfer. Transfer of unit certificate to the transferee must be done within period of thirty days from the date of production.

²⁰ Pavit Singh Kocher, Sebi's Action on Illegal Collective Investment Schemes, 9th July 2015, available on <https://Indiacorplaw.In/2015/07/Sebis-Action-On-Illegal-Collective.Html>, (Visited on February 26, 2021).

III. WINDING UP OF SCHEME OR ARRANGEMENT

There is process given under the regulation for the winding up of company. However, the winding up of scheme can be done when expiry of period mentioned in scheme or on completion of objective specified in the offer documents with the opinion of trustee and with the approval of SEBI. If the unit holder holding at least three fourth capital value wanted scheme to wind up with the approval of SEBI they can wind up the company. This winding up of scheme by the three fourth majority is detrimental to the right of minority as even they are willing to be part of scheme or arrangement they cannot because in such case majority prevailed. Similarly, SEBI can itself wind up scheme if for it the scheme will prejudice the interest of unit holder. CIMC can itself wind up company if the purpose of scheme will not be fulfilled with prior approval of the SEBI, Unit holder (three-fourth), and prior approval of Trustee.²¹

It is required that company must inform about the winding up of company in the newspaper having nationwide publication and in local newspaper where the company registered in local language of country. When the property of company started to be realized by sale. Firstly, liability of company must be paid then the unit holder must be returned with amount of money equals to their share after the liabilities are realized. The unit holder and SEBI must be informed about the amount of money spend for the liabilities of company, step taken for the realization of assets of company, expenses for winding up of company. Similarly, certificate from the auditor of scheme to the effect that all the assets of the scheme are realized and detailed of distribution to the unit holder must be submitted to Unit holder and SEBI.²²

IV. LIABILITIES AND RESPONSIBILITIES OF TRUSTEE

Liabilities and responsibilities of Trustee are very important to understand that's why we are dealing with the liabilities of trustee under separate chapter I.e., Chapter No. 4 in this research paper. Several liabilities are given to the trustees under the SEBI (Collective Investment scheme), regulation 1999 along with that we are going to discuss about the appointment of trustee and termination of trustee.²³

²¹ Collective Investment Schemes -Public Notice, Security and Exchange Board of India, 10th Dec. 1999, available on https://www.sebi.gov.in/Otherentry/Dec-1999/Collective-Investment-Schemes-Public-Notice_20836.html, (Visited on February 25, 2021).

²² Regulated Activities: Establishing, Operating or Winding Up A Collective Investment Scheme, available on [https://uk.practicallaw.thomsonreuters.com/1-203-1891?TransitionType=Default&ContextData=\(Sc.Default\)&FirstPage=True&Bhcp=1](https://uk.practicallaw.thomsonreuters.com/1-203-1891?TransitionType=Default&ContextData=(Sc.Default)&FirstPage=True&Bhcp=1), (Visited On February 25, 2021).

²³ "Legal Duties of Trustees" available at <https://knowhownonprofit.org/governance/board-responsibilities/legal-duties-of-trustees>, (Visited On February 26, 2018).

(A) Eligibility for the Appointment of Trustee

No person should be appointed as trustee if that person has any direct or indirect relation with person who holds position to dominate the CIMC. The person who is going to be appointed, as the trustee must be registered with SEBI as debenture trustee under SEBI regulation, 1993 then only he is liable to be appointed as a trustee of CIS. No person can be trustee if he violates any law of security law or commit offence under SEBI or other authority to which power is delegated by the SEBI. Trustee and CIMC must enter into agreement for the managing of the scheme's property on behalf of Unit holder and to fulfill the objectives of company for which CIMC has been established.²⁴

(B) Content of Trustee deed

Trustee deed should contain such clause that will safeguard the interest of Unit holder. There can be no clause in trust deed that will indemnify the trustee or any other person from the liabilities of damages cause to unit holder due to commission or omission of any act. No clause should be there which has effect of limiting or extinguishing the liabilities and responsibility of the CIMC.

(C) Rights and Liabilities of Trustees

The collective investment managing company should prepared the quarterly report of their activities and must submit the report with the trustees within periods of one month of the expiry of the quarter. Trustee must ensure that the CIMC has sufficient Infrastructure for the functioning of scheme. Trustee must appoint all key managerial person including the directors of company with qualification and other trait required to fulfill the objectives of scheme properly along with bio data of their relevant experience. SEBI created the list of auditors to audit the account of company trustee must appoint the auditor for company from the same list. Trustee has right to obtain any information required by him from the CIMC whether it is book of account or any other record/ report for the scheme. Trustee can appoint compliance officer to comply with the provision of Act or regulations by SEBI. He is the one who appoint the registrar of company along with transfer agent.²⁵

Trustee must design the mechanism for the internal functioning including the internal auditing system. He is responsible to hold the assets on company on behalf of unit holder hence it is his responsibility to take insurance of the assets or property of the CIMC. He must only focus on

²⁴ "Securities And Exchange Board of India (Collective Investment Schemes) Regulations, 1999" available <https://www.sebi.gov.in/Acts/Cisreg.html>, (Visited On February 25, 2021).

²⁵ Security and Exchange Board of India, 1992.

the managing the scheme only hence should undertake the activities of managing scheme only. He must take all necessary steps to ensure that the interest of unit holder will not be prejudice by any activities of him.

He must inform about the activities in company to the SEBI specially regarding the minimum net worth of company and any shortfall in the net worth. He must take remedial measure when trustee is off view that the activities of CIMC is not in compliance to achieve the objectives. The trustee or Collective Investment Management Company shall allow the inspecting officer to have a reasonable access to the premises occupied by it or by any other person on its behalf and also provide necessary infrastructure for examining any books, records, documents, and computer data in the possession of the trustee and Collective Investment Management Company or such other person and also provide copies of documents or other materials which in the opinion of the inspecting officer are relevant for the purpose of the inspection.²⁶

Trustee should overview all work of CIMC on quarterly basis i.e. by the end of March, June, September, and December every year. Trustee must care about the receiving the complaint from unit holder and must try to resolve the grievance within the time. Trustee must make sure that the net worth of company should not be deplete so much that could be detrimental to the interest of the Unit holder. Trustee should be abided by the code of conduct prescribed in the Third scheduled of the regulation. Trusty must issue certificate to the SEBI that all the activities of the company is according to the objectives of company and regulation of SEBI.²⁷

Trusty should try to make auditing of accounts by auditor at the end of financial year by an auditor empaneled with SEBI. Each scheme is required to be rated by the rating agency. Trustee should inform the SEBI that there is a violation of regulations of SEBI, which will affect interest of Unit holder as well as company.

V. TERMINATION OF TRUSTEESHIP

Trusteeship of trustee should come to end only when he ceases to be trustee under the SEBI (debenture trustees) regulation 1993. If Company is in the course of being wind up. If unit holder holding at least three forth of the capital value in the CIMC then the unit holders have right to remove the trustee by passing the resolution provided that the prior approval of SEBI is required to be obtained. Even SEBI by own can remove the trustee, SEBI is of the view that

²⁶ Sebi Regulation 1999, available on https://www.Sebi.Gov.In/Sebi_Data/Attachdocs/1331284151848.Pdf, (Visited on February 27, 2021).

²⁷ Trustee's Responsibility for Safe Custody of Assets of a Collective Investment Scheme, available at <http://www.Mas.Gov.Sg/Regulations-And-Financial-Stability/Regulations-Guidance-And-Licensing/Securities-Futures-And-Funds-Management/Circulars/2009/Trustees-Responsibility-For-Safe-Custody-Of-Assets-Of-A-Collective-Investment-Scheme.aspx>, (Visited On February 26, 2021).

trustee has violated any rule and regulation guided under the law, which will be detrimental to the CIMC and Unit holder then SEBI can terminate the Trusteeship provided that trustee must be given reasonable opportunity of being heard before action is taken under this clause. Trustee by his own can terminate his own trusteeship by own provided that notice is required to be given to the CIMC three month before intension to discontinue the service.

Termination of agreement with collective investment Management Company of the trustee can happen if the CIMC wind up under the provision of Companies Act, 2013. After the termination of trustee new trustee is required to be appointed within period of 3 month. Newly appointed trustee should take the position of terminated trustee in all relation the existing trustee has with CIMC, SEBI and UNIT holders.²⁸

VI. CRITICAL EVALUATION OF COLLECTIVE INVESTMENT AND LIABILITIES OF TRUSTEES

SEBI ordinance dated 18th July 2013, any pooling of funds under any scheme or arrangement, which is not registered with SEBI, involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme. This amount of One hundred crore is required to be reduced so that number of scheme and arrangement which having the pecuniary amount less than one hundred crore will be deemed as CIS and will be regulated by SEBI. CIMC, which wanted its share should be, traded form the stock exchange requires various kinds of document to be submitted. Every detail regarding the company is required to be furnished, which is again the time consuming and complex mechanism. Similarly various companies (CIMC) do not follow the regulations of SEBI properly. Data presented in Parliament in March 2013 show 669 companies were probed by SEBI for violating CIS regulations. Between them these companies had collected Rs 7,435 crore. Of these, 552 companies were prosecuted and convictions were secured in 124 cases. Another 75 wound up their business and refunded money to their investors.²⁹

Individuals/companies are able to raise money from gullible individuals by taking advantage of the loopholes in the legal provisions and also taking advantage of lack of clarity about roles of different agencies like MCA (Ministry of Corporate Affairs), SEBI, RBI (Reserve Bank of India), State governments, Registered Co-operative Societies etc. In Saradha groups of

²⁸ Capital market and Security Laws, Chapter Number IX, Page No 247, available at <https://www.icsi.edu/media/webmodules/publications/CapitalMarketandSecuritesLaw.pdf>, (Visited on April 9, 2021).

²⁹ “Why Collective Investment Schemes Are Hard to Regulate” available at <https://www.Businesstoday.In/Curent/Corporate/Saradha-Group-Collective-Investment-Schemes-Are-Hard-To-Regulate/Story/194843.html>, (Visited March 8, 2021).

companies was collecting the fund from the people illegally not following the regulations by the SEBI. SEBI inform the same to the Economic Offences Investigation Cell, west Bengal on 23rd April 2010. A letter was sent by the SEBI to west Bengal government consisting the warning regarding money illegally collected by this Saradha group as they thought that matter do not fall within its preview. SEBI continue its investigation and call upon document required for inspection from Saradha group, which send irrelevant document to avoid the step that will be taken by the SEBI. After 2 years SEBI classified the activities of Saradha group as illegal and passed the directions for regulating SEBI directions and guideline. There appears to be a need to bring this matter under one principal regulator to deal with all cases where pooling of money is taking place and investments are being made.

For the functioning of CIMC trustees are entrusted for the appointment of key managerial person for same, which require to be paid for their work. They are paid much by CIMC for their functioning. Which again burden on the unit holder. The SEBI is not competent to give quick interior order. Many times, it took SEBI 3 to 4 years to pass interior order and 5 to 6 year to give final order so we can say the resolution of any problem by SEBI is not as par the standard require for the Competent authority. One more reason for the inefficiency of SEBI is due to interventions of Supreme Court in CIS matters. There is large number of illegal pooling scheme in India, which is required to stop by new regulations, which are required to be framed as the previous regulations are decade ago. As CIMC is finding several ways to except from the regulation framed. They are having the mixture of various schemes to escape from the liability to particular authority.

There are many agents of company, which are inducing the ignorant people to invest in fraudulent scheme. They are required to be traced and punished so as to create deterred effect on the other agent. As agents are ignored and CIMC is only targeted, while passing the direction by SEBI or Supreme court. Unit holder holding $\frac{3}{4}$ majority in capital in investment can wind up scheme in such case the will of the minority holder to hold capital in scheme comes to end. If SEBI and Trustee agree to wind up with $\frac{3}{4}$ th majority then minority right doesn't matter.

VII. CONCLUSIONS

Collective investment scheme means when individual decided to invest their money by creating the pool of money for the particular purpose decided prior to pooling. For the same a company is required to registered under SEBI knows as collective investment Management Company. This company works taking into consideration of the objectives for which it is established. A Trustee is appointed to look after the function of company according to the objectives in MOA

and he should make sure that it must function without violating any law in present regarding collective investment i.e., security laws and regulations of SEBI.

Trustee is a person who is appointed to take care of property of Unit holder on his own behalf. He should make key managerial appointment like director, auditor, and many others that are required for functioning of CIMC. Trustee is a person who is having knowledge of all document or access to all-important document of company hence this position can be misused by him for his own benefit either directly or indirectly so it is important for company to make proper appointment of the trustee so that interest of Unit holder will not be prejudice.

If the CIMC wants its share to be listed on recognized stock exchange then the company has to give detailed regarding various documents, which is complex process and time taking. Every minute detail regarding functioning of company required to be submitted to the SEBI for the listing of share on stock market. Which need to be reviewed to avoid the complex and time-consuming process. CIMC requires to have at least 5 crore net worth to be registered as company which should be reduced so that number of companies can registered under SEBI as collective Investment management Company. No matter what ultimate goal of all regulation and laws must be to secure the interest of Unit holder as they are not one taking part in day-to-day activities of company so they should not be made suffer due to commission or omission of any party which will prejudice their interest. With collective investment scheme large amount of money is pooled or collected together to form the CIS portfolio.
