



Equi Corp Associates
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Collective Investment Schemes in India



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Introduction to Collective Investment Schemes (CIS)

The Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999 (“CIS Regulations”) were issued with effect from October 15, 1999 by the Securities and Exchange Board of India (“SEBI”) to regulate all types of collective investment schemes in India.

As per S.11AA of the SEBI Act, 1992, a Collective Investment Schemes (“CIS”) is any scheme or arrangement, which satisfies the following conditions:

- i. The contributions, or payments made by the investors, by whatever name called, are pooled & utilized solely for the purposes of the scheme or arrangement;*
- ii. The contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;*
- iii. The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;*
- iv. The investors do not have day to day control over the management & operations of the scheme or arrangement.*

An investment scheme wherein several individuals come together to pool their money for investing in a particular asset(s) and for sharing the returns arising from that investment as per the agreement reached between them prior to pooling in the money



Exemptions to Collective Investment Schemes (CIS)

Following schemes or arrangements that have been exempted to CIS Regulations :

- i. Made or offered by a co-operative society;*
- ii. Under which deposits are accepted by a non-banking financial companies;*
- iii. Being a contract of insurance;*
- iv. Providing for any scheme, Pension Scheme or the Insurance Scheme framed under Employees Provident Fund;*
- v. Under which deposits are accepted under Companies Act, 2013;*
- vi. Under which deposits are accepted by a company declared as a Nidhi or a mutually benefit society;*
- vii. Falling within the meaning of Chit Business as defined in Clause (d) of S.2 of the Chit Fund Act, 1982;*
- viii. Under which contributions made are in the nature of subscription to a mutual fund.*

SEBI Actions Against Non Registered CIS

Many companies especially in semi-urban and rural areas are accepting deposits in their firm's name and also promising two to three times returns in two to four years without taking any legal permissions or registration as CIS. In light of a lot of news relating to sham entities garnering funds through fraudulent investment schemes with promise of huge returns mainly in the name of property development and agriculture, SEBI has in the last few years, intensified its scrutiny of investment structures that raise domestic capital on an unregulated basis. Securities Appellate Tribunal (hereinafter the "SAT") recently passed an order upholding SEBI's findings against Alchemist Infra Reality Limited, SAHARA, PACL etc. The SAT order along with recent pronouncement by the Supreme Court have probed unregulated investment arrangements to conclude whether or not they constitute CIS, as Schemes are required to be registered with SEBI in pursuance to CIS Regulation.

- (i) As per SEBI's latest data, around 664 entities collected INR 3,518 crores in 1998-99.
 - *Among these 75 companies wound up their schemes and returned money to investors.*
 - *Prosecution action has been launched against remaining 589 entities.**
- (ii) As on March 31, 2013, there were 171 CIMCs still operating without SEBI approval against whom court proceedings have been initiated.
 - *Penalty imposed in such from INR 30,000/- to INR 10,00,000/- (depending upon the money mobilized in contravention of the Regulation.*
 - *Rigorous imprisonment for promoters and associates of upto 6 months.**
- (iii) Various courts in the country slapped convictions in 14 cases related to illegal CIS in fiscal year 2012-13, taking the total of such verdicts to 138.*

SEBI leading Actions Against Non Registered CIS

***Alchemist Infra Realty Limited** - The Company accepted contribution from investors for collective utilization and pooled the investment with the object of carrying out the overall scheme/ arrangement because the Company had the discretion to allot such area in its project as it considered appropriate. Further, under a conveyance deed the area of plot for each individual was denoted as 'proportionate undivided interest'. The purchaser was thus not entitled to claim division and/or partition of the said proportionate undivided interest. The purchasers could not either interfere with the working, managing, controlling and supervising of the said plot in any manner whatsoever.*

This in SEBI's view, were not limbs of a buy-sell arrangement, but a pooling of money pursuant to a scheme or arrangement.

Based on these findings, SEBI concluded that the company's activity were in the nature of a CIMC and held it to be in violation of the Regulation as the company didn't have the requisite approvals from SEBI.

SEBI accordingly passed directions to the Company and its directors to wind up the existing Scheme and further ordered the Company to refund all the collected money.

SAT confirmed SEBI's finding and upheld the SEBI order under appeal which was made by the Company and its directors, by adopting the reasoning similar to that provided by SEBI in the SEBI order.

***Maitreya Services Private Limited** – SEBI issued an order in March 2013 against this company in March 2013 directing to wind up its CIS and refund the money to its subscribers.*

SEBI barred the company and its directors from the securities market till the time all its CIS were wound up and decided to initiate prosecution proceedings against them.

Charges like offences of fraud, cheating, criminal breach of trust and misappropriation of public funds have been filed.

Securities Appellate Tribunal (hereinafter referred to as "SAT") upheld the SEBI order against SAT

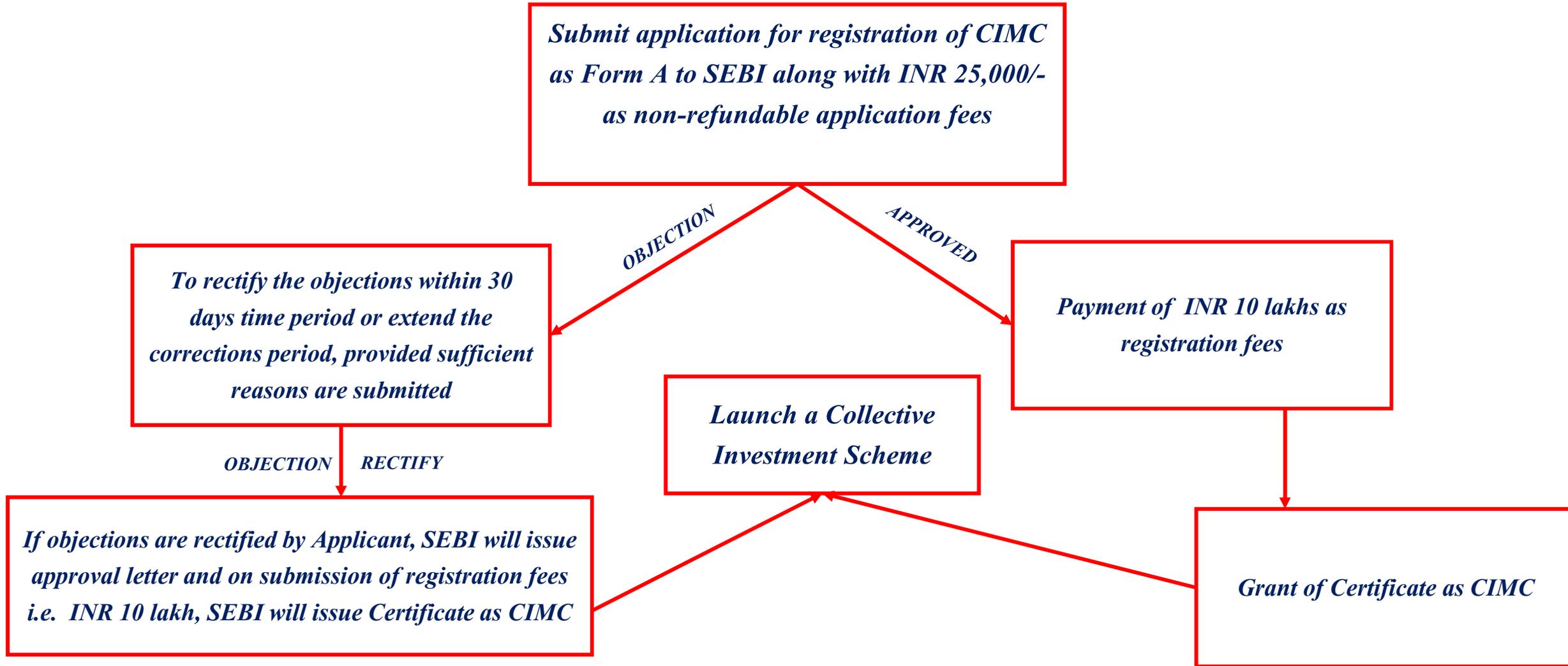
Besides the above two cases, there are several leading cases, where SEBI had taken stern action such as Sahara, Peral Group, Rose Valley, Sun Plant Agro....the bottom line in each case was either they were not registered as CIS or non-compliant to CIS Regulations

Collective Investment Scheme Company (CIMC)

As per the CIS Regulation no other entity other than a CIMC registered with SEBI can launch a CIS. The eligibility criteria for an entity to be granted SEBI approval for operating as a CIMC are as follows:-

- *Registered as a company under the Companies Act, 1956/2013;*
- *Memorandum of Association specifies managing of CIS as one of its main objectives;*
- *Net worth of not less INR 5 crores, provided at time of making application the net worth can be INR 3 crores which is to be increased by applicant to INR 5 crores within three years of date of registration as a CIMC;*
- *Fit and proper person for grant of such certificate;*
- *Has adequate infrastructure to enable it to operate CIS in accordance with the provision of these regulations;*
- *Directors or key personnel shall have relevant experience and have not been convicted for an offence involving moral turpitude or for any economic offence or for the violation of any securities laws;*
- *At least 50 percent of the directors are independent;*
- *No person directly or indirectly related to the applicant entity has been refused registration by SEBI under the Act; and*
- *At least one director not subject to retirement is representative of the trustee.*

SEBI Registration of CIMC





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