

## Crowd Funding- Start-Ups from Crawl to Run (From Idea to Enterprise)

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### Abstract

*“To Our good and the Nation’s good- I initiate, you fund, I reward, let us Prosper”*

On India’s 69<sup>th</sup> Independence Day Celebrations at Red Fort, the elected head of India, Prime Minister Narendra Modi, gave his speech on ‘Team India’ and focussed on the importance of enabling start-ups and quoted ‘Start-up India’ & ‘Stand-up India’. In India, though start-ups enter the economy with high hopes and greater passion, it dies with a series of hurdles that come in their way. Howsoever, their death comes in mostly because of their inability to raise required and adequate capital. To curb the mortality rate, SEBI has, in recent times, taken many new initiatives- one such initiative (but yet to be enacted) is Crowd Funding which is designed for individuals with new innovative ideas who can further build a start-up. The start-up can depend on a large crowd of people in the capital requirements by posting the ideas online via the internet using social networking sites which would reach a larger mass within a short span of time. Welcoming SEBI’s initiative, this paper would herein focus on the Consultation Paper on Crowd Funding, 2014 with its implications, pros and cons, the issues underlying interpretation with the lack of a watch dog to regulate online funding portals read with the practical application and the need for change by which there is a wide opportunity for start-ups to raise and shine and thus in reality would promote the economic spirit of the nation.

**KEYWORDS:** Crowd funding, start-up, SEBI Initiative, capital for business

### Introduction- Gear Up

*“Ideas excite me.; As soon as I get excited the adrenaline gets going and the next thing I know I’m borrowing energy from the ideas themselves” - Ray Bradbury<sup>1</sup>*

Start-ups are very recent and popularly flipped coins. According to Merriam-Webster, start-ups mean the act or an instance of setting in operation or motion; or a fledgling business enterprise<sup>2</sup>. Start-up is a company working to solve a problem where the solution is not obvious and success is not guaranteed<sup>3</sup>. Given that the probability of failure is high and breaking even is unduly postponed culminating with a deep fear factor, because of the perils involved, would-be investors hesitate to think of an investment in a start-up. A start-up never reaches the success sky as if it is a clear straight drawn line; it has to go through number of dots to make a line. As an egg bursts to caterpillar which further becomes a larva which undergoes drastic transformation to fly out as butterfly, a start-up has to undergo various crucial stages before it actually has its birth. The start-ups mostly die in the womb before it is born because of its inability to raise the required capital. To reduce the mortality rate, SEBI has recently taken many new initiatives wherein start-ups are benefitted and allowed

<sup>1</sup> Ray Bradbury is an American fantasy science fiction writer.

<sup>2</sup> Start-up, MERRIAM-WEBSTER., <http://www.merriam-webster.com/dictionary/start-up> (last seen on Aug. 03, 2015).

<sup>3</sup> Neil Blumenthal, cofounder and co-CEO of Warby Parker.

to travel in the very long road lying ahead of them. One such recent initiative came up as a discussion paper named Crowd Funding<sup>4</sup>.

The term Crowd Funding though is new, is relatively not new. The concept is not as alien as one may think; precisely its roots can be found in the age old and till date practise, colloquially called “Shagun” gifts in marriages wherein relatives, friends and family contribute small tokens of cash in covers to make it easy for the start-up couple to have an enlightened future. The mutated form of the very same idea is Crowd Funding. It is a crawling baby process in India wherein any start-up in need of fund can raise the same through internet and social networking sites by reaching the public at large. Needless to mention, the actual novelty exists in the way by which finance is raised through online portals, the usage of internet and the technological base<sup>5</sup> involved in it. At the end of the day, in large masses we find that the true value of crowd funding lies not with money but ultimately with the even more superior and powerful wealth, ‘people’.

### Getting the Concept Right

Sometimes, crowd funding is likely to be interchanged with its probable twin-sister crowd sourcing. In crowd funding the principle involved is distributive merger of financial resources. Crowd funding is a hub of ideas put together demanding capital managing itself as an as an effective market tool and surviving in itself as a channel of sales and branding<sup>6</sup>. Whereas Jeff Howe<sup>7</sup> has defined crowd sourcing as the usage of technology and online medium to put forth any problem that needs to be conquered, before the large masses from where knowledge and wisdom sharing can be expected. Crowd sourcing follows the principle of division of labour. So conceptually, they are two different bodies sharing a same parental lineage.

Crowd funding is a more viable and smart move by SEBI as against the concept of angel funding wherein angels who are rolling on the economic resources contribute their shower to the newly seeded start-up. Recently, Tata has been press reported as one of the biggest angel to start-ups and opened its first investment to Boston based Altaeros in early 2014 followed by Snapdeal, Bluestone, Ola, Paytm and the latest being Kaaryah, an online fashion retail being funded in June 2015<sup>8</sup>. Many a times it

<sup>4</sup>Consultation Paper on Crowd Funding in India, SEBI (Jun. 17, 2014), [http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1403005615257.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1403005615257.pdf) (last seen on Jul. 26, 2015).

<sup>5</sup>Daniela Castrataro, *A Social History of Crowd Funding*, SOCIAL MEDIA WEEK, <http://socialmediaweek.org/blog/2011/12/a-social-history-of-crowdfunding/>, (last seen on Aug 03, 2015).

<sup>6</sup>XuWenwen, *Crowdfunding more than source of capital*, SHANGHAIDAILY February 17, 2015, <http://www.shanghaidaily.com/hangzhou/Crowdfunding-more-than-source-of-capital/shdaily.shtml>, (last seen on Aug. 04, 2015).

<sup>7</sup>MajaBott, Björn-SörenGigler, and Gregor Young, *The Role of Crowdsourcing for Better Governance in Fragile State Contexts*, 107, 107, in *Closing the Feedback Loop: Can Technology Bridge the Accountability Gap*, WORLD BANK E-LIBRARY.

<sup>8</sup>MadhavChanchani, *How do Ratan Tata's investments in 10 startups fare now*, ECONOMIC TIMES June 05, 2015, <http://economictimes.indiatimes.com/small-biz/startups/how-do-ratan-tatas-investments-in-10-startups-fare-now/articleshow/47547672.cms>, (last seen on Aug. 04, 2015).

becomes risky<sup>9</sup> for the well-off investor when the start-up fails to come out of the soil. Vice versa noted, that not all start-ups can reach Tata and Birla for funding. Having said that, it will not be an error to point that crowd funding is way efficient by differing itself from reaching the angels or professionals and instead depends on commoners who ultimately end up being customers thereby neither risking them nor left helpless oneself.

In SEBI parlance, Crowd Funding is considered as compilation of finances from unlimited number of potential investors via online platforms or social networking sites for any innovative idea which can be further developed as a project, business, philanthropic purpose and which can also be for some activity with public interest<sup>10</sup> which might include exchange of rewards to attract the greater public. It is purely a way to tap almost the entire universe for the requisite capital to make the bud idea to blossom. This concept can be in essence portrayed as an opportunity provided for the start-ups to market their project, thereby generating interest among the greater public<sup>11</sup> and enrich themselves with requisite funds for nourishment.

Whenever the start-ups goes knocking on the doors of the greater masses, there should exist some or the other driving factor for the crowd to essentially contribute for the idea to turn it up into a reality. Those driving factors may either be of internal motivations such as societal good, generosity, compassion, humanity, public interest or external motives such as rewards, credit points, free products, gift coupons and equity shares<sup>12</sup>. Based on these general drivers, SEBI classified crowd funding into two broad kinds- community crowd funding and financial return crowd funding. The former is further categorized as social lending or donation crowd funding and reward crowd funding. The latter includes peer to peer crowd funding and equity crowd funding. These aspects of crowd funding provides with various channels for the start-ups to choose the best suited means that can be adopted by that particular start-up to raise the requisite capital.

### **Insight on the Consultation Paper**

‘He who cries, get nursed’ as SEBI understood, eventually realised the need for a curative therapy to the epidemic disease that sheered the start-ups<sup>13</sup> and gave an antidote named ‘Consultation Paper on Crowd Funding in India’<sup>14</sup>. The paper focuses its eternity to explain crowd funding and gives a brief idea of the provisions existing in other jurisdictions and the manner in which it would be operated within India and imposed questions in order to ensure fair play in legalising crowd funding in India. Given the annexure<sup>15</sup> by SEBI the research is to summarily make an attempt to dwell

<sup>9</sup>SEBI (*Alternative Investment Funds*) 2012, SEBI NOTIFICATION PR NO.62/2012 (21/05/2012), <http://www.sebi.gov.in/sebiweb/home/adsearch.jsp?type=search&websearch=alternative%20investment%20funds>, (last seen on Aug. 04, 2015).

<sup>10</sup>Supra 4.

<sup>11</sup>*What is Crowd Funding*, DAILY CROWDSOURCE, <http://dailycrowdsourcing.com/training/crowdfunding/what-is-crowdfunding>, (last seen on Aug. 04, 2015).

<sup>12</sup>Armin Schwenbacher and Benjamin Carralade, *Crowd funding of Small Entrepreneurial Ventures*, HANDBOOK OF ENTREPRENEURIAL FINANCE, Oxford University Press, 2010.

<sup>13</sup>Hereinafter start-ups would also include Small and Medium Scale Enterprises in it.

<sup>14</sup>SEBI Consultation Paper, June 17, 2014.

<sup>15</sup>The list of questions which required discussion before considering it being law in India.

upon those aspects *in Toto*.

**For Crowd Funding:** Affirmatively given would be the reply for being questioned over India's readiness for Crowd funding. This move quite passionately gives an ardent democratic set up of the nation whereby every citizen including the larger masses of ordinary persons not falling within the classification of the so-called business magnets are being showered with opportunities to explore and be investors. Thus, directly participating in the economical development. Moreover opening up in internet portals without having to comply with the rigid regulatory proceedings is an extra boost to the start-ups who step into the new business environment.

**Expand Investors:** SEBI in its paper came up with a new variant named 'Accredited Investors' and that in turn delimits and narrows the scope of the playground offered. By allowing only Qualified Institutional Buyers or Company with minimum net worth of Rs.20 Crores or High Net worth Individuals with minimum 2 Crores turnover and fixed minimum ceiling limit of Rs.10 lakhs for an Eligible Retail Investor, SEBI has again curtailed individual investment in the process. Since the entire concept is based on raising the required fund for the business, setting up of the constrained field to the small investors and individuals is not a remarkable move. Designed for 'crowd' indicates the arms extension to group of individuals, customers or small investors, such classified view is not a trend setter. Moreover considering Article 19 (1) (g) of the Constitution of India and through its applicability to these individuals who prefer to be investors, restriction is not a nurturing treatment. Hence unrestricted freedom to carry on their trade via investment seems encouraging for the betterment and enhancement of the society.

**Investment Limits:** Regards the minimal investment, limits of Rs.20000 per person seems fairly reasonable. However given the reality where start-ups, many a times fail to be the tasty cup-cake to the QIB, Company, HNI or ERIs as the case may be, it would evidently be a full moon to impose collective minimum level of investment or the multiples of the face value which every class should have with the start-up. Hence it would be considerate to dispense with such requirement and have basic minimum value of Rs.20000 without any inequitable treatment.

**Number of Investors:** Reiterating the prior stand, having a cap of Rs.20000 and delimiting the number of investors only to 200 might not be a tenable approach for crowd funding. When an idea is being posted online and if there are number of small investors fascinated with it and move about investing in the development of the idea, stopping them from investing because of the maximum reach of the investors does not serve the purpose. It is hence considered better to increase the number to such an extent where investors and the start-ups can mutually profit.

**Embrace Private Companies:** With the minimum share capital requirement been dispensed with for both the private<sup>16</sup> and the public companies<sup>17</sup> by the Companies (Amendment) Act, 2015 the actual difference currently exists between the number of members and the transferability of shares. Provided that important distinction is being diluted by the Act itself, limited view allowing only the unlisted companies to crowd fund is not a good treat. It is ideally the private companies which crave for the fund to prosper, hence, discriminatory treatment should be done away with.

<sup>16</sup>Sec 2 (68) of the Companies (Amendment) Act, 2015.

<sup>17</sup>Sec 2 (71) of the Companies (Amendment) Act, 2015.

**Disclose- Don't forego IP:** One mandatory pre-requisite to raise required fund is information asymmetry and disclosure of ideas to a greater extent. In order to achieve the specified purpose, there exists a need to grant a non-exclusive license of the intellectual property rights<sup>18</sup>. Whenever the expressions of ideas are being widely published instances of theft, inadvertent infringement may take place. Recently United States Patent and Trademark Office have accepted the 'First Inventor to File' system replacing the 'First to Invent' system<sup>19</sup>. With India being new to crowd funding, these aspects of IP protection are not contemplated in the discussion paper. Hence, it would be reasonable on the part of the start-up to ensure that the pool of ideas with the IP asset does not lessen its value during its sustenance.

**Towards Credit Rating:** No start-up can give the high on protective feel to its investors. This being the reality, the crowd will hesitate to fund the start-up when the future remains a question and left unpredicted. To curb such differences, credit rating can be observed which will help in propounding the relation between the risk undertaken and the return that would be positively obtained<sup>20</sup>. Those mechanisms provide for the assessment of the basics involved in the public issue whereby reliable, independent information would be obtained about the mission, vision and clarity of the business involved and that thereby increasing the confidence to invest in the start-up business.

**Joint Venture for betterment:** SEBI has come up with the classification of the entities that can perform the role of the crowd funding platforms in three classes. In specific, Class I entities are those so accommodated with SEBI which includes stock exchanges and the depositories whereas Class II entities are those named Technology Business Incubators which by its nomenclature identifies itself to assist and technically develop the business from the beginning of its struggle of existence. These incubators are structured in a posture so that it would always extend its arms to the start-ups right from the basics of the business to planning according to the market demands, provide higher networking and communication, greater technological and advisory assistance wherever and whenever required<sup>21</sup>. With efficient TBIs, if given an opportunity to blend with the Class I entities as a joint venture, significant results can be expected with certainty.

**Screening Committee to screen the 'idea':** The screening committee should have the expertise and technical personalities belonging to various fields so that there can be thorough check of the idea, form and purpose of the upcoming funding. The committee further should be made availed of all the facilities with good atmosphere

<sup>18</sup> *Kickstarter vs. Quirky: How Crowdsourcing Can Impact Intellectual Property*, TECHNORI, <http://technori.com/2012/10/2597-kickstarter-and-quirky-how-crowdsourcing-can-impact-intellectual-property/>, (last seen on Aug. 11, 2015).

<sup>19</sup> Charles L. Mauro, *Look Before You Leap...Intellectual Property and Crowd Funding: Why Major Crowd Funding Sites Couldn't Care Less About Protecting Your Ideas and How to Deal With It*, PULSEUX BLOG, <http://www.mauronewmedia.com/blog/look-before-you-leapintellectual-property-and-crowd-funding-why-major-crowd-funding-sites-couldnt-care-less-about-protecting-your-ideas-and-how-to-deal-with-it/>, (last seen on Aug. 12, 2015).

<sup>20</sup> *Capital Markets and Securities Laws*, 46, INSTITUTE OF COMPANY SECRETARIES OF INDIA.

<sup>21</sup> *Institutional Mechanisms, Technology Business Incubators (TBI)*, NATIONAL SCIENCE AND TECHNOLOGY ENTREPRENEURSHIP DEVELOPMENT, <http://www.nstedb.com/institutional/tbi.htm>, (last seen on Aug. 12, 2015).

according to the differential ideas that may come up. Separate research and development assistances with adequate technological transfer may have to be considered towards the better working of the committee.

**No Fee but Carried Interest:** To avoid the direct conflict of interest between the start-up and the online portal, the fee can be obtained through the principle of ‘Carried Interest’<sup>22</sup>. Briefly, it is a concept wherein the investor believes upon the third parties herein addressed as general partners for the effort and the work they put in and then they would be in ultimatum paid in proportion<sup>23</sup>. In crowd funding, it becomes an in built relationship wherein the start-ups rely on the online portals, third party here for its societal and economic uplift. Instead having fees, payment in proportionality to the promotion of the ideas and the fund thereby collected through carrier interest would bring in consensus-ad-idem.

**Alternative and Smooth Exit option:** Exit options are those options available for the start-up or the firm as the case may be, to terminate its further operations and activities at a very less cost with an affordable atmosphere<sup>24</sup>. Start-up is a risky scenario for the starters whereby they undergo all the pleasure and pain by themselves. If the start-ups are threatened with rigid rules of their option to let go their business and ending up in liquidation then the true idea of easing the business will not take place. As that of the exit options provided in regular capital markets, herein transferring the shares by private individuals, giving an opportunity of initial public offering and in circumstances providing for the consolidating of the companies, through mergers and acquisitions can be adopted<sup>25</sup>. Adding put option whereby on the happening of certain contingent events the shares can be disposed off, letting buy back of shares and allowing winding up as per the provisions of the Company Law, 2013 can also be recognised.

**Need for Auditing and Accounting Standards**<sup>26</sup>: The main function of an auditor is to give fair and true disclosure of the financial statements<sup>27</sup>. For a proper audit, maintenance of clear accounts is of utmost important. A good financial statement involves the issue of transparency thereby allows accountability of its activities which further boosts confidence among the investors and the stake holders. Crowd funding relying on the large crowd needs to accountable for the mass to gain strength in the

<sup>22</sup>ArinaShulga, *Crowdfunding Right Now (Fund Model, Broker-Dealer Model, Lending Platforms and Intrastate Offerings)*, LEXIS NEXIS® Legal Newsroom Banking and Finance, <http://www.lexisnexis.com/legalnewsroom/banking/b/venture-capital/archive/2014/08/07/crowdfunding-right-now-fund-model-broker-dealer-model-lending-platforms-and-intrastate-offerings.aspx>, (last seen on Aug. 17, 2015).

<sup>23</sup>*Carried Interest*, PRIVATE EQUITY GROWTH CAPITAL COUNCIL, <http://www.pegcc.org/about/the-pegcc-and-public-policy/carried-interest/>, (last seen on Aug 17, 2015).

<sup>24</sup>*Exit Option*, INVESTOPEDIA, <http://www.investopedia.com/terms/e/exit-option.asp>, (last seen on Aug. 19, 2015).

<sup>25</sup>*Exit Options*, EQUITISE BLOG, <https://equitise.co.nz/blog/exit-options/>, (last seen on Aug. 19, 2015).

<sup>26</sup>*The Biggest Problems of Crowd Funding*, RODINHOODS, <http://therodinhooods.com/forum/topics/the-biggest-problems-of-crowdfunding-in-india-1>, (last seen on Aug. 19, 2015).

<sup>27</sup>*Purpose & Objective of Auditing Financial Statements*, ACCOUNTING-SIMPLIFIED.COM, available at <http://accounting-simplified.com/audit/introduction/purpose-of-audit.html>, (last seen on Aug. 19, 2015).

race.

**Tax Implications:** Tax in India is generally charged on five major sources such as income, capital gains, house property, business or profession and other sources. When money is received as liquid cash, then they fall under capital receipt form where receipts will not be taxed however revenue receipts will be taxed. Considering, equity based crowd funding as capital receipt, tax is not imposed. For donation based, tax can be imposed treating it to have come from business or profession<sup>28</sup>. However tax aspects are not clearly briefed in the discussion paper.

### Issues Underlying

Although the consultation paper has inhibited various provisions towards a good kick start of crowd funding in comparison with various existing provisions worldwide, there still remain some issues which lack clarity within itself. The main issues that seek clarity revolve around the law which stays evident with the crowd funding i.e., Companies Act, 2013 and Securities Exchange Board of India Act, 1994.

Crowd funding is where funds can be solicited from hundreds or thousands of investors for a project<sup>29</sup>. In consonance with Companies Act, the private company is excluded from the ambit of funding since the maximum number of members it can have is limited to two hundred<sup>30</sup> and it also strictly places a prohibition against the private company from inviting the public to subscribe for its securities<sup>31</sup>. The combined study with Section 42 (2) of the Companies Act, 2013 provides that the private company cannot place invitation more than two hundred and if the number is exceeded then it falls under the domain of public offer. Thereby it becomes implied that only a public company will end up entering the crowd funding regime. However, looking into the legislative intent by lifting the veil, it can be pointed that the scheme of crowd funding is not to build a strong wall against the private companies and private start-ups but to facilitate their inward movement into crowd funding world. Hence providing the scheme whereby offer is placed through internet which further does not limit the number of investors who can invest<sup>32</sup> creates a trouble by excluding the private sector participation. Consequently, the triggered outline seems to be defaulted with these legal provisions.

Drawing the relevance to SEBI, the root of its jurisdiction over the unlisted companies and private companies has to be identified. With special reference to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and the SEBI (Disclosure and Investor Protection) Guidelines, 2000 which was replaced by the SEBI ICDR Regulations in 2009<sup>33</sup>, the doctrine of necessity engages a vital role to protect the

<sup>28</sup>*Tax Implications of Crowd Funding*, TIKSHARE, <http://www.tikshare.com/forum/showPost/867/What-are-the-tax-implications-of-Crowd-funding-and-who-have-successfully-done-crowd-funding-in-India>, (last seen on Aug. 19, 2015).

<sup>29</sup>Para 2.2 of *Consultation Paper on Crowd Funding in India*, SEBI

<sup>30</sup>Sec 2 (68) (ii) of Companies Act, 2013.

<sup>31</sup>Sec 2 (68) (iii) of Companies Act, 2013.

<sup>32</sup>RupinPawha, PrashantPranjal, Ananya Mohan, *Crowdfunding: Is India Ready?* COMPANY LAW JOURNAL 2015, SSRN: <http://ssrn.com/abstract=2605329> (last seen on Jul. 29, 2015).

<sup>33</sup>*Public Offer made by Unlisted Companies- A Review of the Latest Case Law*, PXV LAW PARTERNS, <https://pxvlaw.wordpress.com/2013/02/25/public-offer-made-by-unlisted-companies-a-review-of-the-latest-case-law/>, (last seen on Aug. 12, 2015).

investors from the fraud and the misrepresentation committed over them. This being the scenario even when SEBI does not possess straight jacket command over the private and unlisted companies, in standalone investor protection it possess a vigilant watch dog position over the start-ups and its power goes in a prominent role. SEBI has to always make sure that the schematic crowd funding system has not been made a spot where active fraud funding can take place<sup>34</sup>. When a policy is made whereby large group of investors are involved, it becomes a mandate for SEBI to ensure their protection. Though crowd funding is helpful to new start-ups, the balance is missed and left behind with absolutely no steps taken towards investor protection. Investors and the start-ups in this scheme fail to have face to face interaction and contractual agreement when entering into investment funding<sup>35</sup>. This being the scenario, the investment conditions providing for approval of risk acknowledgment by the investors does not suffice. Crowd funding being fresh path to the investors, it needs more of awareness through mass media, circulations of associated risk factors through daily, wide alertness over the frauds that can be possibly committed on the crowd should also be clarified. For up to 48 hours before the offer deadline, the investors can be allowed to withdraw from their investment commitments for any reasons and in any case, must reconfirm changes that are made to the offering<sup>36</sup>. A part of the fund raised can be allotted separately for the investor protection<sup>37</sup> to settle any dispute which may arise when the crowd funding project starts to reach the mass. Lack of clear interpretation of these aspects will further lead only to persistent conflict of interest when the actual implementation of crowd funding takes place.

Considering the active involvement of the internet and online portals, it is time to have an inquisition over them being an intermediary. These portals remain the connective bond between the investors and the business start-up who is loaded with ideas. They operate in a comparatively low cost and technically, they handle due diligence before posting an idea for funding campaign<sup>38</sup>. These intermediaries hold a fiduciary relationship wherein both the start-up and the investors demand more of the loyalty and performance from them<sup>39</sup>. For any portal to be an intermediary a

<sup>34</sup>Hazen, Thomas Lee, *Crowdfunding or Fraudfunding? Social Networks and the Securities Laws – Why the Specially Tailored Exemption Must be Conditioned on Meaningful Disclosure* (May 20, 2012), NORTH CAROLINA LAW REVIEW, SSRN: <http://ssrn.com/abstract=1954040>, (last seen on Aug 02, 2015).

<sup>35</sup>Heminway, Joan MacLeod, *Investor and Market Protection in the Crowd Funding Era: Disclosing to and for the 'Crowd'* (June 2014). 38 Vt. L. Rev. 827 (2014); University of Tennessee Legal Studies Research Paper No. 242. SSRN: <http://ssrn.com/abstract=2435757>, (last seen on Aug. 04, 2015).

<sup>36</sup>Kurt N. Schacht, *Does Crowdfunding Pose a Threat to Investors?*, CFA INSTITUTE MAGAZINE (May/June 2014), <http://www.cfapubs.org/doi/pdf/10.2469/cfm.v25.n3.14>, (last seen on Aug. 13, 2015).

<sup>37</sup>*Guiding Light*, NATIONAL STOCK EXCHANGE, <http://www.nseindia.com/content/press/glfi.pdf>, (last seen on Aug. 08, 2015).

<sup>38</sup>*Why we are Picky: The Importance of Curation in Crowdfunding*, FORBES, <http://www.forbes.com/sites/ryancaldbeck/2012/11/20/why-we-are-picky-the-importance-of-curation-in-crowdfunding/>, (last seen on Aug. 09, 2015).

<sup>39</sup>Heminway, Joan MacLeod, *The New Intermediary on the Block: Funding Portals under the CROWDFUND Act* (June 18, 2013), UC DAVIS BUSINESS LAW JOURNAL, Vol. 13, p. 177 (2013); University of Tennessee Legal Studies Research Paper No. 219, SSRN: <http://ssrn.com/abstract=2293248>, (last seen on Aug. 01, 2015).

registration<sup>40</sup> of the same is necessitated under the SEBI (Intermediaries) Regulations, 2009. If due registration is done, then strict compliance of the relevant provisions would have to be adhered to. Conversely, the consultation paper remains mute over the relevant issue. Thus, it becomes a high time to have a clarification and provide the portals the status of intermediary to have a better funding economy.

### **Chevalier- Insider Story of Kickstarter**

Despite growing crowd funding consultation, there came in lime light an attention gainer, the first action taken against a crowd funding site, Kickstarter.com. The website as it quotes 'explore projects everywhere'<sup>41</sup> is an online portal which helps one to raise the fund for their creative innovative ideas and ambitious endeavours. The site started around 2009, works such that the ideas are posted with a supporting motion picture which undergoes test check by their committee and subsequently posted in the website that moves on collect funds.<sup>42</sup> In a significant statement Mr. Stephen Heleker<sup>43</sup> pointed that raising fund through Kickstarter has the most democratic way that has ever been made<sup>44</sup>.

However working with such high reputation the site happened to raise fund for The Forking Path Company acted upon by Mr. Eric Chevalier. He started campaign to raise funds from the fund around May, 2012 for the purported board game 'The Doom That Came to Atlantic City'. The sole purpose of raising the money was to potentially develop the game across the globe and rewards were mentioned to be granted for those who fund for the cause<sup>45</sup>. The mission to raise funds turned out to be tremendous success at the end of the day. But with the actual time came for the reward, Chevalier came up with varied excuses for non-delivery of the rewards and had promised to refund the amount back. With no positive move from the other side, aggrieved Federal Trade Commission came up with the complaint against Chevalier in the US District Court in July 10, 2015<sup>46</sup>.

With Chevalier nil answered about his illegal actions, agreed to enter into settlement with FTC. Thus the further action led to the preventive order stopping him from misleading consumers in any remote future, also ordered for the refund to the contributors approximately \$111,000 with continual reporting requirement of 18

<sup>40</sup>Section 12 (1) of the SEBI Act.

<sup>41</sup>*Explore Projects Everywhere*, KICKSTARTER, <https://www.kickstarter.com/>, (last seen on Aug. 12, 2015).

<sup>42</sup>*The Pros and Cons of using KickStarter to Fundraise*, IDEA LAB, <http://mediashift.org/idealab/2010/11/the-pros-and-cons-of-using-kickstarter-to-fundraise316/>, (last seen on Aug. 12, 2015).

<sup>43</sup>Writer and filmmaker from Boise, Idaho.

<sup>44</sup>*Seven Things to Know about KickStarter*, KICKSTARTER, <https://www.kickstarter.com/hello>, (last seen on Aug. 12, 2015).

<sup>45</sup>Federal Trade Commission, Press Release, *Crowd Funding Project Creator settles FTC Charges of Deception*, FTC News (June 11, 2015), <https://www.ftc.gov/news-events/press-releases/2015/06/crowdfunding-project-creator-settles-ftc-charges-deception>, (last seen on Aug. 12, 2015).

<sup>46</sup>*Federal Trade Commission V Erik Chavalier, also d/b/a The Forking Path Co.*, <https://www.ftc.gov/system/files/documents/cases/150611chevaliercmpt.pdf>, (last seen on Aug. 12, 2015).

years<sup>47</sup>. Within this short span of time there came up a real big lesson to the greater public as this case sets an example for the grooming investors to take due care and caution before funding.

### Conclusion- Cheer Up

India's position as compared to United States which already has an act<sup>48</sup> with respect to growth of crowd funding is relatively small considering the involvement of online platform. There still exist many provisions which require a revisit to the lacunas to attain perfection. A vibrant and alarming issue in the entire consultation paper is the investor protection which remains unresponsive in the new regimen. If given a law with no proper safeguards, many Chavelier will be fond of using the crowd funding mechanism thus making the entire scheme to plot fraud against investors. With no proper rules, it would have adverse impact on the market economy. The time has come for us to incorporate crowd funding as a law including the proper procedure and due diligence that has to be followed by the start-ups rather being a paper rule. Howsoever, it is worth complimenting that the ulterior motive of the entire consultation paper on crowd funding is to ease the business by morally, economically, physically boosting the start-ups to succeed. In final words, the innovative prosper move where crowd funds for an idea, being made legal through an enactment will be received with full heart and soul provided with corrections which involves, again for the greater good.

*“Crowd funding is the new black requiring few shades of white to it, for being best!”*

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