

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - IN THE MATTER OF SHRI SASWAT SAHOO (PAN: BAYPS1071C), PROMOTER & DIRECTOR OF AM FUND MANAGERS LIMITED AND IN CONTINUATION OF THE INTERIM ORDER DATED FEBRUARY 20, 2015 & FINAL ORDER DATED DECEMBER 10, 2015.

1. Securities and Exchange Board of India (“hereinafter referred to as SEBI”) vide final order dated December 10, 2015, *inter alia* issued the following directions against AM Fund Managers Limited (AMF/ company) and its Directors & Promoters, including Shri Saswat Sahoo (hereinafter referred to as “the Noticee”) who was one amongst the promoters of the company:-
 - a) AMF and its Directors & Promoters shall refund the money collected with an interest of 15%,
 - b) AMF shall file a report of such completion of repayment with SEBI, within a period of three months,
 - c) In case of failure of AMF and its Directors to comply with the aforesaid directions, SEBI, on the expiry of the three months period from the date of this order,-
 - i. shall recover such amounts in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
 - ii. may initiate appropriate action against the Company, its promoters/directors and the persons/officers who are in default, including adjudication proceedings against them, in accordance with law.
 - iii. 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; and

iv. would also make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the Company.

d) AMF and its Directors & Promoters are restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 years from the date of completion of refunds to investors as directed above.

2. Subsequently, the noticee herein challenged the abovementioned order dated December 10, 2015 before the Hon'ble SAT in Appeal No. 84 of 2016, alleging that he was not the promoter of AMF at any point of time and he was only a salaried employee. He further submitted that since the notice was sent to a wrong address, the appellant could not be heard in the matter and therefore, no order could be passed against the appellant.

3. After considering the arguments / defences of the noticee, Hon'ble SAT vide order dated July 16, 2016 set aside the SEBI order dated December 10, 2015 qua the appellant and restored the matter to SEBI for passing order on merits.

4. In compliance with the directions of the Hon'ble SAT, a show cause notice (SCN) was issued to the noticee on October 3, 2016, *inter alia* alleging the following:-

- SEBI received complaints dated November 03, 2014 and November 10, 2014 from investors alleging non-payment of their invested money by AMF. In order to restrict the damage, an interim order-cum-SCN was issued by SEBI, in which prima facie it was held that AMF made an offer of Redeemable Preference Shares (RPS) and collected money to the extent of ₹. 1,21,35,000 from the public.
- The copy of the said interim order was sent to Shri Saswat Sahoo by registered post and the same was delivered. Further, vide letter dated May 15, 2015, all the persons against whom the above said interim order was passed, were intimated that they shall be given an opportunity of personal hearing on June 26, 2015. The letter sent to Shri Saswat Sahoo was delivered.
- SEBI did not receive any information from AMF and its directors. However, on SEBI's request, Registrar of Companies (RoC) , Cuttack vide letter dated December 31, 2014

stated that the company has filed Form-2 with their office for issue of 36% Redeemable Preference Shares ('RPS'). RoC, Cuttack also provided copies of Form-2 and list of allottees filed by the company with their office.

- From the material available on record, it was observed and charged that—
 - i. Shri Saswat Sahoo was earlier Director in AMF and had since resigned.
 - ii. Promoters of AMF are Shri Bibekananda Behera, Shri Saswat Sahoo, Shri Satrunjaya Sahoo and Shri Kailash Chandra Nayak.
 - iii. It is observed from Form 2 and the lists of allottees available on MCA portal and the information provided by RoC, Cuttack that AMF issued Redeemable Preference Shares (“RPS”) of face value ₹.10/- each amounting to ₹. 1,21,35,000/- to 222 investors during the Financial Years 2009-10 and 2010-11.
- Further, it was observed that noticee was a signatory to the Memorandum and Articles of Association dated March 16, 2010, and was the promoter of the Company and in terms of Section 62 of the Companies Act, every person who is a director of the company at the time of the issue of the prospectus and every person who is a promoter of the company, is liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein.
- Therefore, noticee being a promoter, by not issuing Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, is also liable to the shareholders. Accordingly, the noticee was called upon to show cause as to why appropriate directions under Sections 11 and 11B of the SEBI Act should not be issued against him for the aforesaid violations of AMF.

5. In reply to the SCN, noticee vide letter dated October 23, 2016, *inter alia* submitted :

- That he is presently under the employment of Punjab National Bank (PNB) at Kolkata;
- That the interim order was never served upon him as alleged in the final order;
- That he was only a salaried employee with the said Company and that too for a very brief period;
- That he joined the Company in early 2010 in their Equity and Commodity Broking division and had left the services of the Company in or about February 2011;
- In December 2010, he cleared the written examination for Punjab National Bank

and was subsequently offered a job with PNB which he accepted and left the employment of the said Company. In April 2011, he joined the services of PNB;

- He submitted a copy of the Passbook of his Bank Account evidencing his remuneration during the entire tenure of his employment with the company;
- That he had not signed any document as promoter / director of the Company, as alleged;
- That he was not aware as to how his signatures had appeared on the said documents;
- Since he was not able to peruse the said documents, he could not take any action in law against the officers of the Company for forging/misusing his signature on incorporation documents of the Company.
- He had no knowledge about the Interim Order until he received a communication dated 14th March 2015 from NSDL suspending his DEMAT account;
- He responded to the said notice of SEBI by his reply dated 25th March 2015, wherein he had categorically denied the findings in the Interim Order that he was a Promoter / director of the Company;
- That SEBI had addressed the letter dated 15th May 2015 at his erstwhile/incorrect address;
- Subsequently, while going through SEBI's website, he came to learn about the Impugned Order dated 10th December 2015.
- That he did not officially receive the Impugned Order dated 10th December 2015 from SEBI till filing of the SAT Appeal.
- That during the SAT Appeal, he was able to peruse a copy of the MoA and AoA of the said Company whereby was shown as a Promoter;
- Immediately thereafter, he lodged a written Complaint dated 25th April 2016 with the Inspector-in-Charge, Khandagiri Police Station for forgery and misuse of his signature;
- Since no action was being taken by the concerned Police Authorities, he moved an Application under Section 156(3) of the CrPC before the Hon'ble Secondary Division Judicial Magistrate (SDJM), Cuttack, Odisha in I.C.C. No. 390/2016 seeking registration of FIR against the officials of AMF;
- Vide an order dated 11th July 2016, the Hon'ble SDJM, Cuttack was pleased to pass an order, directing the Lalbag Police Station, Cuttack to

lodge an FIR;

- That he denied each and every allegation, suggestion and averment set forth in the SCN.

6. After considering the reply filed by the noticee, an opportunity of personal hearing was granted to the noticee on February 9, 2017 and the Noticee through Shri Prateik Parija, Advocate, appeared in the matter. Further, the noticee was given another opportunity to appear in person on February 21, 2017 at SEBI ERO, Kolkata. During the personal hearing, the noticee submitted that :-

- he joined AMF on the basis of his previous experience in the equity segment with India Infoline Ltd and Geojit Financial Services Ltd.
- after resigning from Geojit Financial Services Ltd., he was appearing for exams of Public Sector Banks. During the preparation for the exams, he was looking out for a part-time job with decent remuneration. He got an offer from AMF and he joined them. No formal appointment letter was given to him.
- He noticed that the main focus of the company was money mobilization and not equity. He further submitted that he was never involved in money mobilization schemes and his signatures on Memorandum of Association and Articles of Associations were forged.
- He had neither received any share certificate of the company nor he has he given money for subscription of shares. During the personal hearing, the noticee submitted the appointment letter of Geojit Financial Services Ltd & PNB and Statement of accounts (PNB depository) during the relevant period.

Consideration of issues and findings

7. I have considered the interim order dated February 20, 2015, final order dated December 10, 2015, SCN dated October 3, 2016, reply dated October 23, 2016 submitted by the noticee and submissions made by the noticee during the occasions of personal hearings. The two issues that arise for consideration are:-

- Whether the noticee was connected with the company in any manner, either as a past director or promoter, as alleged in the Interim order dated February 20, 2015 and the SCN dated October 3, 2015.
- If yes, whether the noticee is liable for the violation of Section 56(1), 56(3), Section 60, Sections 73(1), (2) and (3) read with section 62 of the Companies Act, 1956 and

therefore liable for directions as proposed in the Interim order dated February 20, 2015 and SCN dated October 3, 2015.

8. In the SCN dated October 3, 2016 it is alleged that:-

“ The material available on record i.e. information/ documents obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal'; information/ documents obtained from RoC, Cuttack; complaints received and the documents enclosed along with have been perused. On an examination of the same, it is observed that—

- iv. Shri Suvash Chandra Behera, Shri Dipak Kumar Behera, Shri Bibekananda Behera, Shri Saswat Sahoo, Shri Satrunjaya Sahoo and Shri Kailash Chandra Nayak who were earlier Directors in AMF have since resigned.*
- v. Promoters of AMF are Shri Bibekananda Behera, Shri Saswat Sahoo, Shri Satrunjaya Sahoo and Shri Kailash Chandra Nayak.”*

9. From the Memorandum of Association (MoA) and Articles of Association (AoA), it was alleged in the SCN that the noticee is one of the initial subscribers of shares and noticee was *interalia* liable to refund the money collected with an interest of 15 %. No other document is available on record to show that the noticee was a director of AMF besides the MoA and AoA. MoA contains the name of the noticee as one among the first seven subscribers of shares of the company and AoA of AMF contains the signature of the noticee and by virtue of being one among the first seven subscribers of MoA, the noticee is a “deemed director” for the purpose of section 254 of Companies Act, 1956. The said provision reads as follows:-

“Section 254 Subscribers of memorandum deemed to be directors

In default of and subject to any regulations in the articles of a company, subscribers of the memorandum who are individuals, shall be deemed to be the directors of the company, until the directors are duly appointed in accordance with section 255.”

10. Apart from the MoA and AoA, there is no other document to prove that the noticee was a past director of the company. I have considered the documents on records specially letter from RoC, Cuttack dated December 31, 2014. In the said letter, the AoA attached at page 30 clearly inscribes the names of first three directors of the company as Ashok Kumar Behera, Dipak Kumar Behera and Suvash Chandra Behera. This also confirms the view that the noticee cannot be styled

as the director of AMF. RoC document also does not show the noticee to be a director of the company. Thus, it cannot be held that the noticee was a director of the company.

11. I have also noted that in the final order against AMF dated December 10, 2015, the noticee has been shown as a promoter and not a director of the company. In response to the allegation, that the noticee is one of the promoters of the company, noticee vide letter dated March 25, 2015 denied that he was a promoter of the company and argued that the signature on the MoA and AoA was not his signature and the same was forged by the company.
12. From the MoA and AoA of the company forwarded by RoC, it is noted that the noticee is one of the initial subscribers of shares of the company. I note that as per the records of the RoC, noticee holds 10 shares out of 50,000 shares which is a minuscule 0.02 % shares of AMF. The signature on AoA is apparently matching with the admitted signature of the noticee. I have taken note of the fact that the noticee filed a criminal case for forgery against the company and that he had taken steps to move to the SDJM court for registering an FIR against the company. I have also perused a copy of the affidavit given by the noticee as part of the judicial proceedings. From all the attendant circumstances, the preponderance of probability indicates that the noticee has not affixed his signature on the AoA on his own, but his signature may have been forged on the AoA.
13. I have also considered the previous experience, employment and antecedents of the noticee, which he submitted during the personal hearing. I have also considered the fact that the noticee was employed as a Regional Manager with Geojit Financial Services at a remuneration of more than ₹. 5 lakhs between 11th August 2008 till 8th December, 2009 i.e. before joining AMF. I have also considered the fact that on October 24, 2010, the noticee appeared for PNB exam for Scale III officer and he was offered an appointment on February 28, 2011.

14. I have perused the bank statement of the noticee for the relevant period, submitted by the noticee during the SAT hearing. From the bank statement, it is noted that on September 8, 2010 the noticee received an amount of ₹. 50,000 as salary in his account, from the account no.538976288. I have also noted that almost on every month there is a credit of ₹. 25, 000 from the same account to the account of the noticee till September, 2010. In view of all the above facts, I am inclined to accept the defence submitted by noticee that he was only a salaried employee of the AMF and was not associated with AMF as a director or promoter.
15. In view of the above, the following directions passed against Shri Saswat Sahoo in the earlier orders February 20, 2015 and December 10, 2015 stand revoked, viz;
- i. Direction to refund the money collected by AMF with an interest of 15% and,
 - ii. Direction not to buy, sell or otherwise deal in the securities market, directly or indirectly in whatsoever manner, for a period of 4 years, from the date of completion of refund to investors as directed above.
16. Accordingly, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11 and 11B thereof, do hereby dispose of the proceedings against Shri Saswat Sahoo (PAN: BAYPS1071C), initiated vide SCN dated October 3, 2016.
17. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action.

DATE: April 12 , 2017

PLACE: MUMBAI

G. MAHALINGAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA