

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of SBS Investments

In respect of:

1. SBS Investments (PAN: ACLFS5789F).
2. Mr. Srinivasa Thanga Durai (PAN: BBDPS1849E).
3. Ms. P. Soundaravalli (PAN: FLJPS3301B).

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1. Securities and Exchange Board of India ("SEBI") received complaints wherein it was stated that SBS Investments ("SBS Investments" or 'the firm') was allegedly engaged in unauthorized trading and collected Deposits from public.
 2. Pursuant to the same, SEBI conducted a preliminary examination of the activities of SBS Investments with a view to ascertain possible violations of the Securities and Exchange Board of India Act, 1992 ("SEBI Act, 1992") and the Securities and Exchange Board of India (Portfolio Manager) Regulations, 1993 ("PMS Regulations").
 3. *Prima facie findings/allegations:* Pursuant to the examination, SEBI passed an interim order dated July 18, 2016, against SBS Investments, its Partners Mr. Srinivasa Thanga Durai (Managing Partner) and Ms. P. Soundaravalli, (Partner) (hereinafter referred to as Noticees) wherein the following *prima facie* findings/allegations were recorded:
 - 3.1 SBS Investments (hereinafter referred to as "SBS Investments" or "Firm") is registered as a Partnership Firm under Indian Partnership Act, 1932 with registration number - 2214 of 2013 having its registered office at 135/45, M.S.P. Complex, 2nd Floor, Medavakkam Main Road, Ullagaram, Chennai -600091.
 - 3.2 Mr. Srinivasa Thanga Durai (PAN- BBDPS1849E) is the Managing Partner of the firm

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holding 80% capital in the firm and Ms. P.Soundaravalli (PAN-FLJPS3301B) holds 20% of the capital in the firm. As per their Partnership Deed dated November 1, 2013, the nature of the business is to – “to receive money in deposit at interest or otherwise for fixed period...to manage investment pools, mutual funds’, syndicates in shares, stocks and securities”

- 3.3 From the documents submitted by the company such as copy of the agreement entered into by SBS Investments (“Asset Management Company (AMC)”) with its investors, copy of the Pamphlets, it is observed that SBS Investments is soliciting money from the investors and investing them in securities and promises to share the profits received. Investors are generally passive investors as the shares are bought based on the sole advice of the managing partner of SBS Investments. No fees were charged from the investors. Investors are assured of a monthly return of 2.5% or 30% per annum. The minimum lock-in period for investment is 3 months.
- 3.4 Through its website viz., “<http://www.sbsinvestments.in>.” SBS Investments offered Portfolio Management Services and various short term and long term investment services to the investors.
- 3.5 SBS Investments was collecting funds from the investors and manages their funds by investing in Equity market.
- 3.6 SBS Investments and its Partners Mr. Srinivasa Thanga Durai (Managing Partner) and Ms. P. Soundaravalli, (Partner) were not registered as a portfolio manager with SEBI as per regulation 3 of the PMS Regulations.
- 3.7 Due to the above activities, the Noticees have violated section 12(1) of the SEBI Act, 1992 read with Regulation 3 of PMS Regulations.
4. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated July 18, 2016 with immediate effect:
- a. “to cease and desist from acting as a portfolio manager and not to solicit or undertake such activity or any other unregistered activities in the securities market, directly or indirectly, in any matter whatsoever;

- b. immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, website, etc. in relation to their portfolio management activities or any unregistered activity in the securities market;*
- c. not to divert any funds raised from the investors.*
- d. to furnish all the information/details sought by SEBI vide letters dated November 04, 2015 and December 22, 2015 within 21 days from the date of receipt of this order.”*
5. In the interim order, it was stated that SBS Investments and its partners viz., Mr. Srinivasa Thanga Durai (Managing Partner) and Ms. P. Soundaravalli, (Partner) would be afforded 21 days, from the date of receipt of the interim order, to file their replies, if any, and to seek an opportunity of personal hearing, if they so desired.
6. *Service of interim order:* The interim order dated July 18, 2016 was sent to the Noticees vide letter dated July 18, 2016 which got delivered to SBS Investments and its Partners. SEBI also issued a Press Release of the interim order on July 19, 2016 which was hosted on its website.
7. *Replies:* SBS Investments vide e-mail dated July 20, 2016 stated that they are in the process of unwinding their business. Further, vide letter dated August 09, 2016, the Noticees stated that they were unaware that they were running a PMS and were under the impression that they fall under Collective Investment Schemes (CIS). The Noticees also stated that they will wind up their firm within six months and requested SEBI to activate their trading account, which was their only source of income. The Noticees also provided the details sought by SEBI vide its interim order. Further, vide their letter dated August 06, 2016 (received on August 10, 2016), the Noticees stated that they are sending a letter to their investors stating that the investment made in their firm will be refunded within a minimum period of three months and to a maximum period of six months.
8. *Hearing and Submissions:* Vide notification dated October 15, 2017 published in the newspaper ‘*The Hindu*’, and notification dated October 15, 2017 published in the newspaper ‘*Thanthi, Tamilnadu*’, the Noticees were notified by SEBI that they will be given an opportunity of being heard on November 28, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they fail to appear for the personal hearing

before SEBI on the aforesaid date, then the matter would be proceeded ex-parte on the basis of material available on record. The hearing notice was also served to the Noticees vide e-mail dated November 22, 2017.

9. Mr. Srinivasa Thanga Durai (Managing Partner) appeared in person for SBS Investments and made the following submissions:
 - i. SBS Investments collected deposits and that he was under the assumption that their activities come under the category of CIS;
 - ii. SBS Investments had about 47 clients and owes about Rs. 65 lakh to its investors. It has also submitted that they had repaid Rs.8 lakh to 12 investors.
10. The Noticee was advised to submit the following in addition to his written submissions, on or before December 15, 2017:
 - i. Master list of investors, with the total amount of investments, interest paid, settlement amount decided, settlement amount paid and the outstanding amount along with Bank account statements and other relevant documentary evidence for the aforesaid transactions.
11. Ms. P. Soundaravalli did not avail the opportunity of personal hearing held on November 28, 2017.
12. I have considered the allegations and materials available on record such as information received by SEBI, correspondence exchanged between SEBI and the Noticees along with the documents contained therein and other information/materials available from the website and those on record. On perusal of the same, the following issues arise for consideration. Each question is dealt with separately under different headings.
 - (1) *Whether the Noticees were providing unregistered Portfolio Management services as stated in the interim order.*
 - (2) *If so, whether the Noticees have violated section 12(1) of the SEBI Act and regulation 3 of the PMS Regulations.*
 - (3) *If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?*

ISSUE No. 1- Whether the Noticees were providing unregistered Portfolio Management services as stated in the interim order.

13. I have perused the interim order dated July 18, 2016 for the allegation of unregistered Portfolio Management services. I have also perused the documents/ information obtained from the website of SBS Investments and other documents available on records.
14. I note that the Noticees vide e-mail dated July 20, 2016 contended that they were unaware of the fact that they were running a PMS and were under the impression that they fall under Collective Investment Schemes (CIS). I have perused the contents of the website of SBS Investments viz., <http://www.sbsinvestments.in>. and find that SBS Investments was offering Portfolio Management Services which is clear from the following:

PORTFOLIO MANAGEMENT SERVICES [PMS]:

- i. *“We [SBS INVESTMENTS] have started catering to the needs of High value customers otherwise known as High Networth Individuals. [HNIs].*
- ii. *The minimum investment under this category is 25 Lakhs [twenty five lakhs only]. The investors will be paid annualised returns only-which varies between 40 to 60% p.a.*
- iii. *[The returns are just a rough projection and not guaranteed-according to SEBI Guidelines].*
- iv. *The investors can periodically go through the portfolio and view the current position of shares held by the firm, though the investor can’t interfere in the day to day activities i.e. buying and selling of shares by the firm.*
- v. *The investor can also view the audited results of the firm, at the end of every financial year. [Pl note: SEBI approval yet to be received.]”*

In view of the above, I am not inclined to accept the contention of the Noticees that they were unaware of the fact that they were offering Portfolio Management Services.

15. I find from the material available on record, the SBS Investments made frequent trades through ICICI Direct (Demat Account with ICICI Bank – NSDL - DP ID- IN303028 58630821, ICICI broking Account with number 5550000170) and Angel Broking Private Limited (CDSL DP ID- 1203320008667209). I also find that there were frequent deposits of money in the bank accounts of SBS Investments (Current Accounts with ICICI Bank – A/c no. 103905002059 and Axis Bank – A/c no. 913020048973554).

16. From the records available i.e. copy of Pamphlets, I find that funds were mobilised from investors on instalment basis (Rs.2,500/- per month for ten months) on the promise of interest @2.5% per month (30% per annum). Further, from the copy of agreement entered into by SBS Investments with its investors, the following terms and conditions of the agreement entered into with its investors are noted:
- “The firm (i.e. SBS Investments) would strictly invest the deposited amount in Equities/Bonds/Mutual Funds/other financial instruments.*
 - The investor agrees that he would not interfere in the day to day activities of the firm (i.e. buying and selling of Shares, bonds, etc.).*
 - The invested amount has a lock-in period of 3 months. If there is a withdrawal request before 3 months, a fine of 5% will be charged on the invested amount.*
 - If there is a refund request after 3 months, no fine would be imposed.*
 - For every financial year (eg- 2014 April 2015 March) profits would be declared.*
 - If the profits declared as 10%, then the investor would be paid bonus of 10%. (i.e., for Rs. 25,000/- investment 10% bonus works out to be Rs.2500/-.)”*
17. Though the pamphlets indicate interest on the money received on installment basis, the perusal of terms and conditions indicates that the investor has agreed that the money will be invested only in different financial instruments such as Shares, Bonds and Mutual Funds. This further indicates that the investment is made on behalf of the clients pursuant to the contract. After the investment, the said investment in different portfolios are managed on behalf of the clients. Further, the return on the investment is agreed to be linked to the profits made on the investments. From the perusal of the website of SBS investments, I note that it has also given the right to the clients to periodically view the portfolio of securities held by SBS Investments. The said features bring the activities of SBS Investments within the definition of PMS as defined in regulation 2(cb) of the PMS Regulations. As per the same, a Portfolio Manager means “any person who pursuant to a contract or arrangement with a client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or

administration of a portfolio of securities or the funds of the clients, as the case may be.”

Though the Noticees claimed that they never provided any advice to the investors, I note that administration of a portfolio of securities or funds on behalf of the clients pursuant to the contract is also defined as portfolio management services. Since the activity is found to be PMS, the argument that the Noticee was under the impression that they were receiving deposits under the category of CIS cannot be accepted. Further, the website of SBS Investments itself provided that it is offering Portfolio Management Services.

18. From the aforesaid documents and also from the admission of the Noticees, I note that SBS Investments has solicited money from at least 47 clients and invested them in securities and promised to share the profits received while doing its portfolio management service. Admittedly, SBS Investments owes around Rs.65 lakh to its investors. In view of the above, I find that there is material available on record to conclude that SBS Investment has provided Portfolio Management services to at least 47 clients.

ISSUE No. 2- If so, whether the Noticees have violated section 12(1) of the SEBI Act and regulation 3 of the PMS Regulations.

19. I note that as a measure of investor protection, it is imperative on any person providing Portfolio Management services, to obtain registration and conduct its activities in accordance with the provisions of the SEBI Act and the PMS Regulations. I have perused of Section 12(1) of the SEBI Act which states that

*“No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, **portfolio manager**, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act.”*

Further, I note that as per regulation 3 of the PMS Regulations, “*No person shall act as a portfolio manager unless he holds a certificate granted by the Board under these regulations.*”

20. The Noticees admittedly do not have the registration as a portfolio manager with SEBI. The proviso to regulation 3 of the PMS Regulations states that “*a merchant banker acting as a portfolio manager immediately before commencement of the Securities and Exchange Board of India (Portfolio Managers) (Second Amendment) Regulations, 2006 may continue to do so for a period of six months from such commencement or, if he has made an application for registration under these regulations within the said period of six months, till the disposal of such application.*” There is nothing on record to show that Noticees were merchant bankers. Therefore, I find that SBS Investments does not fall in the scenario envisaged in the proviso to regulation 3 of the PMS Regulations. Therefore, SBS Investments ought to have provided Portfolio Management services only after obtaining the certificate of registration from SEBI.
21. In the instant matter, I find that SBS Investments had about 47 clients. Further, it owes around Rs.65 lakh to its investors. However, from the records, I find that SBS Investments was offering Portfolio Management services to its clients without obtaining certificate of registration from SEBI. In view of the above, I find that the Noticees have violated section 12(1) of the SEBI Act and regulation 3 of the PMS Regulations.

ISSUE No. 3- If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?

22. From the documents available on record, I find that the Mr. Srinivasa Thanga Durai is the Managing Partner holding 80% of the capital in the firm and Ms. P. Soundaravalli is holding 20% of the capital in the firm. By virtue of the same, I find that Mr. Srinivasa Thanga Durai and Ms. P. Soundaravalli are jointly and severally liable with SBS Investments, for the violation of section 12(1) of the SEBI Act and regulation 3 of the PMS Regulations committed by SBS Investments.
23. I note from the interim order that SBS Investments had collected Rs.53.70 lakh from 34

clients. During the personal hearing, the Noticees admitted that they owe around Rs.65 lakh to its investors. Further, the Noticees acted as unregistered Portfolio Manager to at least 47 clients. The Noticees also claimed that they had repaid Rs.8 lakh to 12 investors. The Noticees were granted time to submit the list of investors with details of the total amount of investments, interest paid, settlement amount decided, settlement amount paid and the outstanding amount along with Bank account statements and other relevant documentary evidence for the aforesaid transactions. In response, SBS Investments vide e-mail dated December 19, 2017 and December 21, 2017 submitted copies of Agreement entered into with several investors along with the acknowledgment from them for the receipt of the settlement amount. The Noticees failed to submit the complete information sought during the personal hearing. I have also perused the settlement agreements submitted by SBS Investments and noted certain discrepancies. For instance, two copies of the agreement dated March 17, 2014 entered in favour of Ms. Geetha S. was submitted by SBS Investments for the same amount of Rs.2,50,000/-. However, the signature of the said investor is different in both the documents. In another case, in respect of agreement relating to the initial investment of Rs. 10,000/- by one Mr. R. Ragunath, it is noted that the said agreement does not carry the signature of authorized signatory of SBS Investments. In the copy of settlement agreement dated January 13, 2017 between SBS Investments and Mr. R. Ragunath, it is stated that the settlement amount of Rs. 75,000/- is agreed to be paid within 3 to 6 months. However, no such proof of entire payment to Mr.R. Ragunath was given by SBS Investments even though almost a year has passed from the date of the said agreement. Though the Noticees claimed that they have repaid 12 investors, they failed to substantiate their claim with sufficient documentary evidence. In view of the same, I find that funds collected in any name are liable to be returned to the clients. If the notices have actually made the repayment as claimed, an appropriate direction to this effect has been incorporated in the directions portion of this order.

24. In view of the discussion above, appropriate action in accordance with law needs to be initiated against SBS Investments and its Partners viz., Mr. Srinivasa Thanga Durai and

Ms. P. Soundaravalli. The interim order has contemplated issuance of directions against the Noticees, including prohibiting them from buying, selling or otherwise dealing in securities market, and directing them to refund any money collected to the concerned clients. Though the partners are jointly and severally liable for the acts of the firm, in this case, Mr. Srinivasa Thanga Durai is shown to be the authorized signatory of the bank account and all the agreement with clients and the “agreements deed for settlement” have been entered into by him. In view of this, though both are jointly and severally liable for the refund, and if there is a failure to refund, it would be appropriate that the recovery may be considered against the assets of the firm, at first, if there are sufficient partnership assets and thereafter against the assets in the name of Mr. Srinivasa Thanga Durai and at last recovery officer may consider proceeding against Ms. P. Soundaravalli. Appropriate directions in this regard is issued in this order.

25. Section 11 of SEBI Act casts a duty on the Board to protect the interests of investors in securities and to promote the development of and to regulate the securities market. For achieving such object, it has been authorised to take such measures as it thinks fit. Thus, power to take all measures necessary to discharge its duty under the statute which is a reflection of the objective disclosed in the preamble has been conferred in widest amplitude.
26. Section 11B and Section 11(4) of SEBI Act are functional tools in the hands of the Board. In effect, Section 11B and Section 11(4) SEBI Act are some of the executive measures available to SEBI to enforce its prime duty of investor protection. SEBI is empowered to issue directions in the interests of investors to any person or class of persons referred to in Section 12 of the SEBI Act or associated with the securities market.
27. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4) and 11B of the SEBI Act, hereby issue the following directions:

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- a) SBS Investments, Mr. Srinivasa Thanga Durai and Ms. P. Soundaravalli shall forthwith refund the money received from the clients in respect of the unregistered Portfolio Management Services activities, along with the promised returns and submit a certificate from a peer reviewed Chartered Accountant who is in the panel of any public authority or public institution, within a period of 3 months. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI") holding such certificate.
- b) The repayments to the clients shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as "Non-Transferable" or through any other appropriate banking channels with clearly identified beneficiaries.
- c) If SBS Investments had repaid some of their investors as submitted in its replies, the above directions in (a) and (b) shall be applicable as modified herein, for the amounts claimed to have been returned to the investors.
 - i. Such prior repayments should have been made by the Company as per the requirements laid down in paragraph 27(b) above and the same shall be certified by peer reviewed Chartered Accountants, as directed in paragraph 27 (a) above, or
 - ii. The Company shall produce a peer reviewed Chartered Accountant's certificate, for the repayments claimed to have been made by the company, certifying repayment on verification of the original contract/agreement/arrangement bearing signature of the clients, payment receipt/voucher issued by SBS Investments to the clients bearing signature of the client, (in the absence of payment receipt/voucher an Affidavit of receipt of payment with full description of the client's identity, address and amount received by them) and corresponding proof of debit from the Bank Account of the Company with an original document of proof of identity, address and signature issued by the State/Central Government to the clients bearing their signature and a statement in Chartered Accountant's certificate to the effect that he has made the above said verification enclosing

copies of verified documents.

- d) SBS Investments and its Partners viz., Mr. Srinivasa Thanga Durai and Ms. P. Soundaravalli are directed not to, divert any funds raised from investors, kept in bank account(s) and/or in their custody, except for the purpose of refunds to the clients.
- e) SBS Investments and its Partners viz., Mr. Srinivasa Thanga Durai and Ms. P. Soundaravalli are directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- f) SBS Investments and its Partners viz., Mr. Srinivasa Thanga Durai and Ms. P. Soundaravalli are prevented from selling any of their personal and/or partnership firm's assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.
- g) SBS Investments and its Partners viz., Mr. Srinivasa Thanga Durai and Ms. P. Soundaravalli are directed not to, directly or indirectly, access the securities market, and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, till the expiry of 4 years from the date of refund of the money as directed in paragraph 27(a) above. Mr. Srinivasa Thanga Durai and Ms. P. Soundaravalli are also restrained from associating with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI till the expiry of 4 years from the date of refund of the money as directed in paragraph 27(a) above.
- h) SBS Investments and its Partners viz., Mr. Srinivasa Thanga Durai and Ms. P. Soundaravalli shall not undertake, either directly or indirectly, portfolio management services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws after the expiry of period of debarment as mentioned in paragraph 27(g).

- i) In case of failure of SBS Investments and its Partners viz., Mr. Srinivasa Thanga Durai and Ms. P. Soundaravalli to comply with the aforesaid direction at paragraph 27(a), SEBI, on expiry of three months period from the date of this Order may recover such amounts, in accordance with section 28A of the SEBI Act, including such other provisions contained in securities laws. The recovery officer may consider proceeding against the assets of the firm, at first, if there are details of sufficient partnership assets and thereafter against the assets in the name of Mr. Srinivasa Thanga Durai and at last recovery officer may consider proceeding against Ms. P. Soundaravalli.

28. The above directions shall come into force with immediate effect.

29. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.

DATE: January 09, 2018

PLACE: Mumbai

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**