

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with regulation 65 and 73 of the SEBI (Collective Investment Schemes) Regulations, 1999 in respect of Kaushik Roy (PAN: AANPR5592F) in the matter of Sumangal Industries Limited.

1. Securities and Exchange Board of India ("SEBI") passed a final order dated July 9, 2013 against Sumangal Industries Ltd. (SIL) and its directors/promoters, namely, Subrata Adhikary, Sajal Bhattacharya, Indushekhar Chakraborty, Soumen Ghosh, Madumita Adhikary, Somnath Adhikary, Gopal Chandra Adhikary, Sarbani Adhikary, Astick Kumar Roy, Debika Adhikary and Kaushik Roy. It has been held in the order that the company and its directors/promoters were engaged in illegal mobilization of funds from the public through schemes in the nature of Collective Investment Schemes ("CIS") without obtaining certificate of registration from SEBI and thus contravened section 12(1B) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") read with Section 11AA of the SEBI Act and regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (CIS Regulations). The order, interalia, directed the Company and its Directors/Promoters to wind up the scheme and refund the money due to the investors within a period of three months.
2. SIL filed an appeal (Appeal No. 210 of 2013) before the Hon'ble Securities Appellate Tribunal (SAT) against the aforesaid order and sought an extension of time to refund the investors. SAT vide its order dated February 3, 2014 extended the time to implement the order till January 31, 2015, subject to the conditions set out therein. As SIL failed to comply with the conditions set out in the order, SEBI approached the Hon'ble Securities Appellate Tribunal seeking suitable modification of its order dated February 3, 2014. SAT vide its order dated September 12, 2014

recalled its order dated February 3, 2014 and permitted SEBI to take such steps as it deems fit and proper so as to enforce the order. Accordingly, recovery proceedings were initiated against SIL & its Directors, including Kaushik Roy. After initiation of recovery, SIL, Subrata Adhikary and others filed an appeal (Appeal No. 75 of 2016) before SAT challenging the amount quantified in the recovery certificate issued by the recovery officer. SAT did not find any fault with the recovery certificate issued by SEBI; therefore vide order dated April 21, 2016 they dismissed the appeal.

3. Subsequently, Kaushik Roy filed an appeal (Appeal No. 290 of 2016) before the Hon'ble Securities Appellate Tribunal (SAT) against the SEBI order dated July 09, 2013 on the ground that the order has been passed without giving him an opportunity of hearing in violation of the principles of natural justice. Hon'ble SAT, vide order dated January 9, 2017, quashed and set aside the impugned order dated July 09, 2013 qua the appellant with direction to SEBI to pass fresh orders on merits and in accordance with law.
4. Kaushik Roy was granted an opportunity of hearing on April 28, 2017. However, vide letter dated April 6, 2017, he requested to postpone the date of hearing due to marriage of one of the family members. Acceding to his request, he was granted an opportunity of hearing at Eastern Regional Office of SEBI at Kolkata on May 5, 2017, which was later rescheduled to November 13, 2017. Kaushik Roy appeared for hearing and made oral submissions. He was also granted time to file his written submissions. The written submissions were filed on December 5, 2017. The summary of reply and submissions made by the entity are as under.
 - Kaushik Roy worked with United Bank of India during the period 1973 to 2010. He retired from the bank in 2010. During the latter part of 2010, Subrata Adhikary (Managing Director of SIL), who was also a customer of the bank, approached him and requested him to look after his various businesses. He accepted the offer as the amount of pension which he was getting was not adequate for his needs. Subrata Adhikary induced him to sign various documents of the company as a director.

- It has been stated by Kaushik Roy that he invested more than Rs.1,00,000/- in SIL on the representation made by Subrata Adhikary that it would fetch high returns.
 - It has been stated that after passage of time, the company was unable to pay him for the services rendered by him and there were also several complaints from investors about non-receipt of maturity amount/ expected return. On being questioned, Subrata Adhikary could not give any satisfactory answer and behaved rudely with him. He stopped visiting the company office from March 31, 2013 and subsequently resigned from the company.
 - During the time when he was a director in the company, he was not the person in-charge or responsible for the conduct of business of the company. It has been stated that he had no say in the policy matters of the company and acted as per instructions of Subrata Adhikary.
 - With respect to the newspaper advertisement issued by Sumangal Industries Ltd. on September 11, 2012 about the potato purchase scheme, it has been stated that he was not instrumental in publishing the same. With respect to SEBI letter dated October 11, 2012, and the interim order dated April 10, 2012, he has submitted that he was not aware of the same.
5. It is noted that the order dated July 9, 2013 has become final against the company and the recovery proceedings under section 28A of the SEBI Act, 1992 are in progress against the company and most of its directors. It has been observed in the order that the company issued an advertisement in the newspaper 'Anand Bazar Patrika' on September 11, 2012 soliciting funds from the public under potato purchase scheme promising huge returns. Under the scheme, SIL used to collect money from the investors and issue invoices to them against their investments. Investors used to give authority to SIL for storing and selling the potatoes. SIL used to purchase potatoes in its own name and store them on behalf of the investors in cold storages spread across India. The potatoes of a customer, as mentioned in the purchase order, could not be identified with a customer. It has been observed in the order that contributions from investors were pooled and managed by SIL and the investors had invested their money in the potato scheme offered by the company with a view to receive profit and that the investors were not having any control over the management

and operations of the scheme. Thus, it has been held that SIL was running a scheme which was in the nature of collective investment scheme and the scheme was not registered with SEBI. As the company and its directors/promoters were engaged in illegal mobilization of funds from the public, they were directed to refund the money due to the investors.

6. The submission of Kaushik Roy, in short, is that during the time when he was a director in the company, he was not the person in-charge or responsible for the conduct of business of the company. It has been stated that he had no say in the policy matters of the company and acted as per instructions of Subrata Adhikary. As a director in a company, Kaushik Roy was a part of the policy making body and hence bears responsibility for all the major decisions taken by the Board. It is inconceivable that the Board of which Kaushik Roy was a part of, did not drive the decisions regarding money mobilisation programmes through potato schemes. Having been a member of the Board, particularly at the time of money mobilisation, Kaushik Roy cannot shrug off his responsibility for certain major decisions. I am therefore of the view that Kaushik Roy was responsible for the affairs of the company and its failure to make refunds to the subscribers of the scheme.
7. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11 and 11B of the SEBI Act, 1992 read with regulation 65 and 73 of the SEBI (CIS) regulations, 1999, hereby direct as follows:
 - a. Kaushik Roy along with Sumangal Industries Ltd. and other directors, shall wind up the existing collective investment scheme offered by SIL and refund the money collected by the said company under the schemes with returns which are due to the investors as directed vide order dated July 9, 2013.
 - b. Kaushik Roy shall not access the securities market, directly or indirectly, and is further 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 completion of refund.

8. In case of failure to comply with the aforesaid directions SEBI, on the expiry of the three months period from the date of this order, shall recover such amounts in accordance with law and may initiate any other proceedings as per law.

Date: July 25, 2018

Place: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER