

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 Soumen Ghosh (PAN: AHGPG1610B) 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, Kaushik Roy, Indushekhhar Chakraborty, Madumita Adhikary, Somnath Adhikary, Gopal Chandra Adhikary, Sarbani Adhikary, Astick Kumar Roy, Debika Adhikary and Soumen Ghosh. 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. SIL failed to comply with the conditions set out in the order, therefore SEBI moved a Miscellaneous Application for modification of the SAT 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 Soumen Ghosh. 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 filed by the company.

3. Subsequently, Soumen Ghosh filed an appeal (Appeal No. 313 of 2017) before Hon'ble SAT against the aforesaid SEBI order on the ground that the order has been passed against him without affording him an opportunity of hearing. Hon'ble SAT vide order dated December 18, 2017 quashed and set aside the order dated July 9, 2013 qua the appellant with a direction to SEBI to pass fresh order on merits and in accordance with law.
4. Consequent upon SAT direction, Soumen Ghosh was granted an opportunity of hearing on June 13, 2018 through video conferencing facility from Eastern Regional Office of SEBI at Kolkata. Soumen Ghosh appeared for hearing along with his representative Mr. Nitindra Mohan Mukherjee, Advocate. He filed the reply dated June 13, 2018 and made oral submissions. The summary of reply and submissions made by the entity are as under.
 - Soumen Ghosh is an Advocate by profession and apart from degree in law he is also having degree/diploma in the field of commerce, management, computer application and education.
 - He came in contact with the Subrata Adhikary, the managing director of SIL in 2003, who was having a battery factory then. Soumen Ghosh used to give legal advice to Subrata Adhikary on taxation matters. However, as his professional fees were not paid, the relationship between them deteriorated gradually.
 - Subsequently, in 2011 he again met Subrata Adhikary, who showed him his new office at a prime location in Kolkata and requested him to visit the office for work related issue. In

due course, he started representing Mr. Subrata Adhikary and his companies in various courts, tribunals and departments.

- Subrata Adhikary also offered him the post of directorship in the company on honorary basis till the next annual general meeting of the company. In this connection, a copy of the resolution passed by the Board of Directors of SIL in the meeting held on May 11, 2012 has been furnished. It has been also stated that he was neither involved in the management and day to day affairs of the company nor paid any remuneration as director of the company.
- It has been also stated that Mr. Adhikary's behavior towards Mr. Ghosh became rude and the payment of his professional fees and expenses were also stopped. He severed his ties with Mr. Adhikary and his company. He resigned from the post of directorship of the company on April 24, 2013.
- He was not instrumental in publishing any advertisement issued by SIL on September 11, 2012 whereby funds were mobilized from the public under potato purchase scheme. There must be something more than mentioning of his name in the category of directors to make him liable for the violations.

5. During the course of hearing, several questions were asked from Soumen Ghosh. The questions and its replies are as follows:

Q.1. When you were aware that Subrata Adhikary was a bad pay master, why did you undertake to join Sumangal Industries as a director? What motivated you to accept the position of directorship of SIL?

Ans. I am a practicing advocate. To induce me to join the company as a director, I was allowed to use the premises of the company in prime location at Kolkata as office for my work. This made me join the company as honorary director.

Q.2. Being a practicing advocate, how did you accept the position of directorship of the company?

Ans. I was not a salaried employee of the company. I was merely a non-executive director

appointed on honorary basis, i.e., I was not involved in the management of the company and I was not getting any pecuniary benefit/sitting fee from the company.

Q.3. As a director of SIL, you must have been receiving notices of board meeting, agenda items etc. Therefore, you must be aware of the illegal money mobilization activity which was going on in the company. What did you do to prevent it?

Ans. I was told by the managing director not to look into all these things, so I did not interfere.

Q.4. The company had issued advertisement about the potato scheme offered by the company when you were one of the directors in Sumangal and sitting in the same office premises. What was your response?

Ans. I was not instrumental in issuing the advertisement. While in the premises/office space of the company, I used to be involved in my work and not in the work of the company.

Q.5. Why did you resign from the company?

Ans. There were several cases of cheque bouncing which I was handling. Apart from this, the managing director of the company was running the company like a proprietary concern and the directors were only for namesake, so I resigned.

6. 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.

7. The submission of Soumen Ghosh, in short, is that he was appointed on honorary basis and he was not involved in the management and policy decisions of the company and therefore he is not liable for the violations committed by the company. With regard to the above contentions, it is observed that Soumen Ghosh was a director of the company from May 23, 2012 to April 27, 2013. It was stated during the hearing that he was not getting any sitting fee to act as director of the company and that the only benefit he was getting from the company was that he was able to use the premises of the company as office space for his practice, as a lawyer. Thus, admittedly, he was using the premises of the company and cannot contend that he was totally unaware of the money mobilization schemes of the company. As a professional practicing law, it is incomprehensible as to why one would lend his name to be part of the board of director of any company about which he has little knowledge. Soumen Ghosh, having been part of the board of the company as a director, cannot now distance himself from the affairs of the company and disown his responsibility. I am therefore of the view that Soumen Ghosh was responsible for the affairs of the company and its failure to make refunds to the subscribers of the scheme.
8. 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. Soumen Ghosh 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. The noticee 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.
9. In case of failure to comply with the aforesaid directions, on the expiry of the three months period from the date of this order, SEBI shall recover such amounts in accordance with law and may initiate any other proceedings as per law.

Date: July 26, 2018

Place: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER