

WTM/AB/EFD-1/DRA-4/10/ 2018-19

**SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: ANANTA BARUA, WHOLE TIME MEMBER
FINAL ORDER**

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992, in the Matter of Vibgyor Allied Industries Ltd.-

In respect of,

Mr. Tapas Kumar Basu (PAN - ADLPB2640K)

BACKGROUND:

1. Securities and Exchange Board of India ("SEBI") received some complaints against Vibgyor Allied Industries Ltd. (hereinafter referred to as "VAIL"/ "the Company") alleging mobilization of money from public, by the Company, by issuing Secured Redeemable Debentures ("SRDs") and not making refund of the same. As such, the matter was taken up for examination as to whether the relevant provisions of the Companies Act, 1956 read with the provisions of the SEBI Act, 1992 and the rules and regulations made thereunder have been complied with or not in the alleged issuance of SRDs by VAIL.
2. It was noted that VAIL had issued SRDs to four hundred and fifty three persons mobilizing an amount of Rs. 61,67,000/- (sixty one lakhs and sixty seven thousands) from the F.Y. 2006-07 to F.Y. 2012-13 and thereby violated the various provisions of Companies Act, 1956, SEBI Act, 1992 and the Regulations and Guidelines framed thereunder.

INTERIM ORDER-CUM- SHOW CAUSE NOTICE:

3. In view of the above, SEBI passed an Interim Order-cum- Show Cause Notice dated March 09, 2018 (hereinafter referred to as 'Order dated March 09, 2018') in which interim directions were issued against the Company, its six directors and four debenture trustees, including Mr Tapas Kumar Basu ("the Noticee"), *inter alia* prohibiting them from accessing the securities market and from alienating their assets or diverting funds raised from public through SRDs and also directed the Company and its directors to furnish the documents and information sought by SEBI. The findings recorded by SEBI in the said Order dated March 09, 2018 are as under:

- a. The Company was originally incorporated in the name of Satellite Funds & Fiscal Ltd (SFFL) on May 10, 1989 and, subsequently, it changed its name to Vibgyor Allied Industries Ltd w.e.f. March 24, 2008.
- b. Based on Form 10 filed by the Company with the Registrar of Companies (hereinafter referred to as 'RoC') i.e. the document relating to charge created on assets of the company and its enclosures, it was observed that the Company had issued debentures in the name of VAIL and SFFL since 2006-07 and that despite it had changed its name w.e.f. March 24, 2008, the Company was continued to issue SRD certificates in its erstwhile name. Considering the account details provided in the complaints received by SEBI and the attachments to the Form 10 filed with the RoC, the total number of allottees and value of SRDs (debentures) issued were arrived at as below:

F.Y.	No. of Allottee	Amount (Rs.)
2006-07	90	4,38,500

2007-08	134	15,36,000
2008-09	136	29,26,500
2009-10	57	6,28,000
2012-13	36	6,38,000
Total	453	61,67,000

- c. In view of the above, it was observed that the Company had made a public issue of SRDs, however, actual quantum of the funds raised and details of investors were not ascertainable due to non-cooperation of the Company, its directors and also due to non-making of statutory filings with the RoC since 2011.
- d. It was also observed from Form 10 filed with the RoC that the Company had created a charge on August 05, 2009 for an amount of Rs. 32,93,06,200/- for the issue of debentures and Mr. Nikhil Kumar Chakraborty, Mr. Tapas Kumar Basu (Noticee herein) and Mr. Rajat Bera were appointed as debenture trustees on July 27, 2009. All the said trustees had submitted their consent letters to become the trustee for the issuance of SRDs and had signed the debenture trust deed. It was also noted that the charge was modified on April 10, 2010 when Mr. Tapas Kumar Basu resigned from trusteeship and one Mohammad Quddus was appointed as a trustee in his place.
- e. On examination of the requirements of various provisions of the Companies Act, 1956 (since the public issue was made prior to 2013), SEBI Act, 1992 and the Guidelines and Regulations framed thereunder, it was noted that the number of persons to

whom SRDs were offered and allotted were more than 49 persons (except for F.Y. 2012-13) and, therefore, the issuance of SRDs by the Company was observed to be 'public issue' in terms of Section 67(3) of the Companies Act, 1956. As such, in terms of Section 73 of the Companies Act, 1956, the Company was required to make listing application with one or more recognised stock exchanges before making such public issue which was not complied with.

- f. Further, no evidence were noted for compliance with the provisions of Section 56 and 60 of the Companies Act, 1956 which requires issuance of prospectus with specified matters and registration of prospectus with the RoC, respectively. It was also noted that various requirements of disclosure to be made under the provisions of SEBI (Disclosure and Investment Protection) Guidelines, 2000 and the relevant provisions of made under the Company SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ("ILDS Regulations") were also not complied with.
- g. It was also noted that the persons appointed as debenture trustees were neither registered with SEBI, as required under Section 12(1) of the SEBI Act, 1992, nor were eligible to seek registration under the Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 (hereinafter referred to as 'DT Regulations') and, therefore, the four persons including the Noticee herein had contravened the provisions of Section 12(1) of the SEBI Act, 1992 and Regulation 7 of the DT Regulations, 1993. Further, by appointing such unregistered and ineligible persons as debenture trustees, the Company had also violated the provisions of Section 117B of the Companies Act, 1956 which requires for mandatory appointment of debenture trustees with

respect to issue of debentures to the public. Similarly, in the absence of any record of having created 'debenture redemption reserve' which is required under Section 117 C of the Companies Act, 1956, the same was also noted to have been violated by the Company.

4. Vide aforesaid SEBI Order dated March 09, 2018, the Company, its directors and debenture trustees were also called upon to show cause as to why directions/ prohibitions including the following directions under Section 11, 11(4) and 11B of the SEBI Act, 1992 should not be imposed and directed them to file replies if any within 21 days from the date of receipt of the said order, which were mentioned therein, as under:

- a. VAIL and its Directors, viz. Mr. Rabindra Nath Dey, Mr. Raja Bhadra, Mr. Dipak Sarkar, Mr. Sarit Chakraborty, Mr. Rana Bhadra and Mr. Sanatanu Bhattacharyya, to jointly and severally refund the money collected through the offer and allotment of debentures, with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act till the date of actual payment) within a period of 180 days from the date of receipt of this Order, supported by a Certificate of two independent Chartered Accountants to the satisfaction of SEBI; and
- b. VAIL and its above named Directors to be restrained/prohibited from accessing the securities market and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of effecting the refund as directed above.

c. The Debenture Trustees viz. Mr. Nikhil Kumar Chakraborty, Mr. Tapas Kumar Basu, Mr. Rajat Bera and Mohammad Quddus –

- i. to be restrained/prohibited from accessing the securities market and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of this Order.
- ii. to be restrained/prohibited from acting as Debenture Trustee in respect of debentures of VAIL and from taking up any assignment or involve itself in any issue of securities in a similar capacity whatsoever, directly or indirectly, without obtaining registration as a Debenture Trustee under the SEBI Debenture Trustee under the DT Regulations.

5. It was also directed in the said Order dated March 09, 2018 that in case of failure by the respective noticee to comply with the aforesaid directions within a period of 180 days from the date of receipt of this Order, SEBI may initiate appropriate enforcement action under SEBI Act including Recovery proceedings, Adjudication or Prosecution in addition to making a suitable reference to State Government/Local Police.

6. The Company, its directors and debenture trustees were also directed to indicate for availing an opportunity of personal hearing within 90 days of the receipt of said Order dated March 09, 2018. It was also clarified that if they fail to file replies or in making request for an opportunity of personal hearing within the said 90 days, the preliminary findings made therein shall become final and absolute against them automatically, without any further orders and that,

consequently, they would be bound by the directions mentioned therein.

REPLY AND HEARING:

7. The SEBI Order dated March 09, 2018 (which was an interim order-cum-show cause notice) was served upon the Company, its six directors and four person who had acted as debenture trustee including the Noticee herein through various means like Hand Delivery, Speed Post, making affixture on their last known address and by giving public notice in the newspapers. However, only the present Noticee has filed his reply.
8. The reply dated March 22, 2018, filed by the Noticee, was received by SEBI at its Eastern Regional Office ('ERO') based in Kolkata on April 23, 2018. I note that despite the Noticee has not made any request for granting an opportunity of personal hearing, to ensure compliance with the principles of natural justice, opportunity of personal hearing was granted to the Noticee and the matter was scheduled on November 27, 2018 which was communicated to the Noticee by SEBI letter dated November 09, 2018. The Noticee was also advised that, if he desires so, he may attend personal hearing through video IP phony at SEBI's ERO office at Kolkata. However the Noticee vide letter dated November 23, 2018 communicated that he is a senior citizen not keeping good health and not capable to attend SEBI Office personally. He further requested to consider his earlier representation as his submissions in the matter.
9. The submissions made by the Noticee in his reply dated March 22, 2018 and letter dated November 23, 2018 are as under:

- a. The Noticee has admitted that he was appointed as one of the debenture trustees and that he had resigned from the trusteeship on April 06, 2010 and that the charge was modified on April 10, 2010 when one Mohammad Quddus was appointed as trustee in his place.
- b. The noticee himself gradually noted and acquired knowledge of several irregularities and violations on the part of the Company and as a result of which he voluntarily resigned from the trusteeship of the Company.
- c. He had no role to play in any of the illegal activities allegedly committed by the Company nor any role in formation of the Company or appointed as director of the Company at any point of time.
- d. Directing the Noticee for not accessing the securities market is unreasoned since he is no longer associated with the Company in any form and that he has resigned himself as debenture trustee on April 06, 2010.
- e. In respect of show cause issued to Noticee as to why prohibition from accessing the securities market for a period of four years not imposed upon him, the Noticee has submitted that he is a former debenture trustee and after ascertaining the irregularity he voluntarily resigned from the debenture trusteeship of the Company.
- f. With the aforesaid submissions, the Noticee has requested to discharge him from all the charges and not to pass any final order restraining him from accessing the securities market.

CONSIDERATION OF ISSUES AND FINDINGS:

10. On perusal of the findings recorded in the said SEBI Order dated March 09, 2018 and the reply dated March 22, 2018 and November 23, 2018 submitted by the Noticee, the question now arises as to whether the Noticee has violated the provisions of Section 12(1) of the SEBI Act, 1992 and Regulation 7 of DT Regulations, read as under:

SEBI Act, 1992:

Registration of stock brokers, sub-brokers, share transfer agents, etc.

12 (1) *No... trustee of trust deed ... 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: "*

SEBI (Debenture Trustees) Regulations, 1993:

Eligibility for being debenture trustee.

7. *"No person shall be entitled to act as a debenture trustee unless he is either—*

- (a) a scheduled bank carrying on commercial activity; or*
- (b) a public financial institution within the meaning of section 4A of the Companies Act, 1956; or*
- (c) an insurance company; or*
- (d) body corporate.*

11. I note that SEBI in its said Order dated March 09, 2018 (which was also an interim order-cum-show cause notice) found that the Company had made public issue of SRDs without complying with the mandatory requirements of the provisions of Companies Act, 1956, SEBI Act, 1992 and the Regulations and Guidelines framed

thereunder. Further, vide said SEBI Order dated March 09, 2018, in addition to interim directions, eleven entities including the Company, its six directors and the four persons, were called upon to show cause as to why suitable/ appropriate directions, as mentioned therein, should not be issued against them. I, however, note that, despite service of the said SEBI Order dated March 09, 2016 upon all the entities, only the present Noticee has filed his reply. Neither the company nor its directors or the present noticee has denied issuance of SRDs.

12. The Noticee was admittedly appointed as debenture trustee for the charge created by the Company on August 05, 2009 for an amount of Rs. 32,93,06,200/- for the issue of debentures made to public. Further, as per findings recorded in the SEBI Order dated March 09, 2018, the Noticee had submitted his consent letters to become as trustee for the issuance of SRDs and had also signed the trust deed.

13. In terms of Section 12(1) of the SEBI Act, 1992, no person/ entity can act as a trustee without obtaining a certificate of registration from the Board. As such, it is mandatory for any person/ entity to first obtain the certificate of registration from the Board for acting as trustee. Further, SEBI has framed a specific regulations namely the DT Regulations which, among other, prescribes the eligibility for being a debenture trustee, process for obtaining registration for acting as a debenture trustee, responsibilities and obligations of the debenture trustees etc. As referred to in para 10 above, in terms of Regulation 7 of the DT Regulations, no individual person can act as a debenture trustee. The Noticee, while agreeing to act as a trustee, has violated the very substantive provisions of law which requires basic eligibility and requirement for acting as a trustee. Therefore,

the act of the Noticee was in violation of the provisions of Section 12(1) of the SEBI Act, 1992 and Regulation 7 of the DT Regulations.

- 14.** I find that the submission of the Noticee has no merit that after knowing irregularities on the part of the Company, he voluntarily resigned from the trusteeship of the Company or that he was not the director of the Company or not having any role in formation of the Company. Merely resigning from the trusteeship, after noticing irregularities in the Company, is not suffice to absolve the Noticee from its responsibilities. Before his resignation as trustee, the Noticee should have taken necessary steps for the protection of interest of debenture holders in accordance with the terms of trust deed, which was apparently not complied with by him.
- 15.** A debenture trustee is expected to act suitably safeguarding the interest of the debenture holders. It has to ensure on a continuous basis that the property charged to the debentures is available and adequate at all times to discharge the interest and principal amount payable in respect of the debentures and that such property is free from any other encumbrances. It has to enforce the security in the interest of debenture holders at appropriate time.
- 16.** The Noticee has further submitted that he is no longer associated with the Company in any form and that that he is a former debenture trustee and, therefore, the interim directions as well as show cause issued upon him vide said Order dated March 09, 2018 are unreasoned. I note that it is recorded in the SEBI Order dated March 09, 2018 that the Noticee was appointed as trustee on July 27, 2009 and had resigned from the trusteeship on April 06, 2010. It is noted in above para that 14 that the Noticee had failed in taking any necessary steps in the interest of debenture holders and,

therefore, it would not be a valid ground that he had resigned from trusteeship or that presently he is not continued or connected with the Company.

17. As the Noticee was acting as a debenture trustee, the investors might have taken to believe that there were enough security for the SRDs and that the property and assets of the Company are adequately charged. Further, the association of the Noticee in the said capacity might have assisted the Company in mobilization of money from public in contravention of the provisions of Sections 56 and 60 and 73 of the Companies Act, 1956, as mentioned in above paras.

18. In view of the foregoing discussion, I find that the Noticee has violated the provisions of Section 12(1) of the SEBI Act, 1992 and Regulation 7 of the DT Regulations.

DIRECTIONS:

19. In view of the above, in order to protect the interest of the investors in securities market, I, in exercise of the powers conferred on me under Section 19 read with Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 hereby, prohibit/ direct the Noticee; Mr Tapas Kumar Basu from –

- a.** accessing the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, for a period of **four years**. It is, further, clarified that the existing holding of securities of the Noticees, including the units of mutual funds, shall remain frozen during the period of restraint.

- b. acting as Debenture Trustee in respect of debentures of VAIL and from taking up any assignment or involve itself in any issue of securities in a similar capacity whatsoever, directly or indirectly, without obtaining registration as a Debenture Trustee under the DT Regulations.

20. I note that vide said Order dated March 09, 2018, the Noticee was restrained from accessing the securities market and buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever until further orders. Hence, the prohibition already undergone by the Noticee, pursuant to aforementioned SEBI Order dated March 09, 2018 shall be adjusted while computing the period in respect of prohibition imposed vide this Order.

21. I further note that said SEBI Order dated March 09, 2018 has taken note of the fact that the matter relating to repayment of investors of Vibgyor group of companies has been seized off by Hon'ble Justice Sailendra Prasad Talukdar Committee appointed by the Hon'ble High Court of Calcutta, as per its Order dated February 15, 2017 and, therefore, it was recorded that the directions passed in SEBI Order dated March 09, 2018 was to be subject to the directions of the Hon'ble High Court of Calcutta.

22. It is brought to our notice that the proceedings before the Hon'ble Justice Sailendra Prasad Talukdar Committee in respect of repayment of money mobilized by Vibgyor group of companies is still pending. As such, the aforesaid directions passed in above para 19 of this Order shall also be subject to the directions of the Hon'ble High Court of Calcutta.

23. A copy of this Order shall be forwarded to the Noticee, all the recognised stock exchanges, depositories and Registrar and Share Transfer Agents of all Mutual Funds for the necessary compliance with the above directions.

DATE: December 20, 2018

PLACE: Mumbai

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA