

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**

**ORDER**

Under sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 and regulation 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 and in continuation of the Interim Order cum Show Cause Notice dated July 10, 2013 and Final Order dated November 15, 2017.

In respect of – **Abhijit Dutta (DIN- 00233374)**

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1. Securities and Exchange Board of India (“SEBI”), vide Order dated November 15, 2017 (final order) held that **Rose Valley Hotels and Entertainment Limited** (RVHEL / Company) and its directors namely, Gautam Kundu, Ashok Kumar Saha, Shibamoy Dutta, Abir Kundu, Ram Lal Goswami and Abhijit Dutta were liable for launching and operating unregistered Collective Investment Scheme (CIS), in violation of section 12(1B) of the Securities and Exchange Board of India Act, 1992 (“the SEBI Act”), and Regulation 3 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (“the CIS Regulations”). In view of the same, RVHEL, Gautam Kundu, Ashok Kumar Saha, Shibamoy Dutta and Abir Kundu were directed to wind up the Holiday Membership schemes / plans, floated by them and refund the monies collected from the investors with returns as per the terms of offer within a period of three months from the date of this order. In the aforesaid final order, Abhijit Dutta was restrained from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities market, directly or indirectly, for a period of four years and he was disqualified from holding or assuming position as directors or key managerial personnel of any listed company for a period of 4 years from the date of the Order.
  2. Abhijit Dutta filed Appeal No. 324 of 2017 against the said order of SEBI before the Hon’ble Securities Appellate Tribunal (SAT) and Hon’ble SAT stayed the SEBI order qua the appellant in

so far as it relates to disqualifying of the appellant from holding position as director or key managerial personnel of any listed company. Hon'ble SAT also made it clear that the appellant shall not seek any fresh appointment as director or key managerial personnel of any company till the disposal of the appeal. Hon'ble SAT granted liberty to the appellant to make a representation to SEBI seeking liquidation of his securities during the pendency of the appeal and further directed SEBI to consider the said application and pass appropriate order as expeditiously as possible. Accordingly, Abhijit Dutta (Applicant) vide application dated January 19, 2018 filed an application wherein he has *inter alia* submitted :-

- a) That permission may be granted to liquidate all Securities and Mutual Funds held by applicant as on the date of the letter;
- b) That no amount is recoverable from applicant, hence no purpose will be served by unnecessarily restraining him from accessing his own savings and monies, which admittedly have no connection with proceedings initiated against him.
- c) That applicant's entire life-long savings have been invested in the securities market and due to the operation of the Impugned Order, he is being prevented from accessing the same thereby curtailing his ability to meet his genuine expenses.
- d) The precedent in the form of order of Hon'ble SAT in the matter of Rajesh Pavithran v. SEBI (Appeal no. 272/ 2017), dated October 30, 2017 has been also cited by the Applicant wherein the Hon'ble SAT had permitted the Appellant to liquidate his holdings and it is requested that SEBI should follow the aforesaid case in this matter.

3. I have considered the final order dated November 15, 2017 and the representation filed by the Applicant. In the final order there are broadly three types of directions issued against the noticees :-

- i. Direction to wind up the schemes and refund the investors as per the terms of offer;
- ii. Direction to restrain the directors from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities market, directly or indirectly, for a period of four years;

- iii. Direction to disqualify the directors from holding or assuming position as directors or key managerial personnel of any listed company for a period of 4 years from the date of the Order.
4. After carefully considering the facts of the case and the submissions of the applicant, the directions of restraining the applicant from accessing the securities market and dealing in securities market for a period of 4 years and disqualification from assuming position of director or key managerial personnel of any listed company for a period of 4 years were imposed against him. The directions were imposed against the applicant was after carefully weighing applicant's role as the Chief Executive Officer and Director of the company which resorted to illegal mobilization of money and therefore, I find no tenable ground in the aforesaid representation of the applicant to alter / interfere with the earlier directions.
5. The applicant has also quoted as precedent the order of Hon'ble SAT in the matter of *Rajesh Pavithran v. SEBI* (Order dated October 30, 2017) wherein Hon'ble SAT had permitted the Appellant to liquidate his holdings after a similar restraining direction was passed against him. In this regard, I have noted that SEBI has preferred an Appeal against the order of Hon'ble SAT in the matter of Rajesh Pavithran and the Hon'ble Supreme Court vide its order dated January 22, 2018 has stayed the order of Hon'ble SAT dated October 30, 2017, restraining the Board's direction.
6. In view of the above the request for liquidation of holdings by applicant is rejected and the representation is accordingly disposed of.

**Date: May 15, 2018**

**Place: Mumbai**

**G. MAHALINGAM**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**