

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

SETTLEMENT ORDER

On Settlement Application Nos. 3712/2018 and 3835/2019

Filed by Mr. M.N. Ahmed [PAN: ABLPA9796K]

In the matter of ABG Shipyard Limited

1. Mr. M.N. Ahmed ('applicant') had filed settlement applications in terms of the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 repealed and replaced with the SEBI (Settlement Proceedings) Regulations, 2018 (w.e.f. January 01, 2019), without admitting the findings of fact and conclusions of law, proposing to settle, through settlement order, the pending proceedings under Section 11, 11B and 11(1)(4) of the SEBI Act, 1992, initiated vide show cause notice dated April 12, 2018 and pending adjudication proceedings, initiated vide show cause notice dated November 28, 2018.
2. The said show cause notices were with regard to an investigation conducted by the Securities and Exchange Board of India ('SEBI') for the period of 2008 to 2014, in relation to diversion of about ₹101 crore from ABG Shipyard Limited ('ABG') to Second Land Developers Pvt. Limited (presently known as ABG Resources Private Limited) for making investments, which resulted in undue benefit to the companies controlled by its promoter. The investigation had *inter alia* revealed that ABG had obtained purchase bills from certain entities without actual movement of goods and it had misstated the accounts/ profits and disclosures as per the Accounting Standards were avoided. Investigation further revealed that one Nisar & Kumar, Chartered Accountants was the statutory auditors of ABG during the financial years of 2008-16 and Mr. M.N. Ahmed ('applicant') (partner of the said firm) had signed the audit report of ABG and the auditor's certificate on Corporate Governance during the period of 2008 to 2016. The same audit firm was also acting as the statutory auditors of Second Land Developers Pvt. Limited during the financial years 2009-13 and its audit report for the financial year 2009-10 and financial years 2011-13 were signed by Mr. M.N. Ahmed and Ms. Rachna Agarwal, respectively. It was also revealed that Nisar & Kumar, Chartered Accountants had issued unmodified audit report as well as unqualified certificate of corporate governance during the financial years 2008-09 and 2013-14, which has been alleged to be concealment of the true state of affairs of ABG to its stakeholders.

3. The said default was *prima facie* found to be in violation of Section 12A(a), (b), (c) of the SEBI Act, 1992 read with Regulation 3(c), (d) and 4(1), 4(2)(e), (k) and (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003. It was also observed that Mr. M.N. Ahmed during investigation had failed to appear before the Investigation Authority and failed to provide the documents/ informations requisitioned in violation of Section 11C(3) and 11C(5) of the SEBI Act, 1992. The applicant in the settlement application had *inter alia* submitted that the alleged default had no market wide impact, no illegal gain/ benefit was derived by him and in the past there had been no other instance of similar or other allegations against him in relation to compliance with the securities laws. The applicant also submitted that he is ceased to be a citizen of India and has taken retirement from the profession.
4. The applicant had a meeting with the Internal Committee of SEBI on February 26, 2019, wherein the settlement terms were deliberated. Thereafter, the applicant vide letter dated February 26, 2019, proposed the revised settlement terms to settle the default mentioned above.
5. The High Powered Advisory Committee ('HPAC') in its meeting held on March 04, 2019, considered the settlement terms proposed and recommended the case for settlement upon payment of ₹27,54,000 (Rupees Twenty Seven Lakh Fifty Four Thousand only) towards the settlement charges and compliance with the non-monetary settlement terms viz. not to issue directly or indirectly any certificate of audit of listed companies, compliance of obligations of listed companies and intermediaries registered with SEBI and the requirements under the SEBI Act, 1992, the SCRA 1956, the Depositories Act, 1996, provisions of the Companies Act 2013 administered by SEBI under Section 24 thereof, the Rules, Regulations and Guidelines made under Acts administered by SEBI for a period of one year.
6. The Panel of Whole Time Members of SEBI accepted the said recommendation of the HPAC and the same was communicated to the applicant vide e-mail dated April 05, 2019. The applicant vide e-mail dated April 18, 2019, has submitted the details of remittance of ₹27,54,000 (Rupees Twenty Seven Lakh Fifty Four Thousand only) vide UTR no. CNRBR52019041800724626 towards the settlement charges.

7. In view of the above, in exercise of the powers conferred under Section 15JB of the Securities and Exchange Board of India Act, 1992 and in terms of Regulations 23 and 28 read with Regulation 34 of the SEBI (Settlement Proceedings) Regulations, 2018, it is hereby ordered that:
- i. The applicant shall not issue any certificate of audit of listed companies, compliance of obligations of listed companies and intermediaries registered with SEBI and the requirements under the SEBI Act, 1992, the SCRA 1956, the Depositories Act, 1996, provisions of the Companies Act 2013 administered by SEBI under Section 24 thereof, the Rules, Regulations and Guidelines made under Acts administered by SEBI for a period of one year from the date of this order, as undertaken vide letter dated April 18, 2019.
 - ii. the pending proceedings against the applicant under Section 11, 11B and 11(1)(4) of the SEBI Act, 1992 and the adjudication proceedings for the defaults as discussed in paragraph 2 and 3 above, are settled *qua* the applicant as per the above terms,
 - iii. this order disposes of the said pending proceedings in respect of the applicant for the default as mentioned above and;
 - iv. passing of this order is without prejudice to the right of SEBI to take enforcement actions including commencing proceedings against the applicant, if SEBI finds that:
 - a. any representation made by the applicant in the present settlement proceedings is subsequently discovered to be untrue;
 - b. the applicant has breached any of the clauses/ conditions of undertakings/ waivers filed during the present settlement proceedings.
8. This settlement order is passed on this 8th day of May, 2019 and shall come into force with immediate effect.
9. In terms of Regulation 25 of the SEBI (Settlement Proceedings) Regulations, 2018, a copy of this Order shall be sent to the applicant and shall also be published on the website of SEBI. A copy of this Order shall also be served on the Stock Exchanges and the Depositories to ensure the necessary compliance.

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S. K. MOHANTY
WHOLE TIME MEMBER

-Sd-

ANANTA BARUA
WHOLE TIME MEMBER