IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15351 of 2016

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Ravi Bhattacharya Son of Late Bishwanath Bhattacharya Resident of Somesh Babu Lane, Bangali Tola, P.O.- Champa Nagar, P.S.- Nath Nagar, District-Bhagalpur.

... ... Petitioner/s

Versus

1. The Union of India through Chief Secretary, Finance, Government of India, New Delhi.
2. The Regional Officer, Reserve Bank of India, Patna.
3. The Registrar of Company, Kolkata.
4. The Security and Exchange Board of India, Mumbai.
5. The Security and Exchange Board of India, Kolkata.
6. The State of Bihar through Principal Secretary, Finance Department.
7. The District Magistrate, Bhagalpur.
8. The Superintendent of Police, Bhagalpur.
9. Falkon Industries India Limited, F/27 G.H.S. Road (Katju Nagar) Kolkata-700032, West Bengal.
10. Manirul Islam, C.M.D. (F.I.I.L.)
11. Inddraj Singh Jat, Chairman (F.I.I.L.) Both respondent no. 10 & 11 address- Falkon Group of Companies 148 Jessore Road, Kolkata- 700074.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Basant Kumar Mishra Advocate
For the RBI	:	Mr. Kaushal Kumar Jha Advocate
For the SEBI	:	Mr. Pradeep Kumar Advocate Mr. Rajiv Ranjan Jha Advocate Mr. Sanjay Kumar Sinha Advocate
For the State of Bihar	:	Mr. Ajay Kumar Rastogi A.A.G. - 10 Mr. Parijat Saurav AC to A.A.G. - 10

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

3 30-11-2018 Heard the learned counsel for the parties.

The petitioner has approached this Court for direction to the respondents–authorities for taking steps to ensure the return of the deposits made by him and other investors with one Falkon Industries India Limited, Kolkata as also for taking action against the Directors and the Executive Officers of the aforesaid company for their acts and omissions, which was committed de hors the authority of them to accept investments from public at large.

It appears that Falkon Industries India Limited, Kolkata is a private company, which has been accepting investments from investors on false assurance.

Mr. Kaushal Kumar Jha, learned Advocate appearing on behalf of RBI has stated that the clearance which is required for any company to accept funds by way of investments from public has never been given to the aforesaid Falkon Industries India Limited, Kolkata.

Mr. Pradeep Kumar, learned Advocate appearing for SEBI, on the strength of the counter affidavit, has stated that the SEBI has passed an order against the Falkon Industries India Limited, Kolkata in the following terms:

> ***"10.1 In view of the foregoing, the natural consequence of***

not adhering to the norms governing the issue of securities to the public and making repayments as directed under Section 73(2) of the Companies Act, 1956, is to direct the Company, its Directors Shri Manirul Islam, Shri Indraj Singh Jat, Shri Afzal Miah, Shri Biswajit Bhattacharya, Shri Dilwar Hossain, Shri Taslim Ansary, Shri Laxmanbhai Sitarambhai Bhoya, Shri Manglubhai Chilyabhai Dhum and Shri Budhan Chandra Kundu, to refund the monies collected, with interest to such investors. In view of the violations committed by the Company and its Directors, to safeguard the interest of the investors who had subscribed to such preference shares issued by the Company ad to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the directors.

a) Falkon Industries India Limited and its directors, namely Shri Manirul Islam, Shri Indraj Singh Jat, Shri Afzal Miah, Shri Biswajit Bhattacharya, Shri Dilwar Hossain, Shri Taslim Ansary, Shri Laxmanbhai Sitarambhai Bhoya, Shri Manglubhai Chilyabhai Dhum and Shri Budhan Chandra Kundu, shall forthwith

refund the money collected by the Company through the issuance of RPS, including the money collected from investors, till date, pending allotment of securities, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due to the investors till the date of actual payment.

b) The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order.

c) Falkon Industries Limited and its present management is permitted to sell the assets of the Company only for the sole purpose of making the repayments including interest, as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank.

d) Falkon Industries India Limited and its directors, namely, Shri Manirul Islam, Shri Indraj Singh Jat, Shri Afzal Miah, Shri Biswajit Bhattacharya, Shri Dilwar Hossain, Shri Taslim Ansary, Shri Laxmanbhai Sitarambhai Bhoya, Shri Manglubhai Chilyabhai Dhum and Shri Budhan Chandra Kundu, shall issue public

notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily (in Bengali) with wide circulation, detailing the modalities for refund, including details of contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect.

e) After completing the aforesaid repayments Falkon Industries India Limited and its directos, namely, Shri Manirul Islam, Shri Indraj Singh Jat, Shri Afzal Miah, Shri Biswajit Bhattacharya, Shri Dilwar Hossain, Shri Taslim Ansary, Shri Laxmanbhai Sitarambhai Bhoya, Shri Manglubhai Chilyabhai Dhum and Shri Budhan Chandra Kundu, shall file a report of such completion of repayment with SEBI, within three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountant of India ("ICAI").

f) Falkon Industries India Limited and its directors, namely, Shri Manirul Islam, Shri Indraj Singh Jat, Shri Afzal Miah, Shri Biswajit Bhattacharya, Shri Dilwar Hossain, Shri Taslim Ansary, Shri Laxmanbhai Sitarambhai Bhoya, Shri Manglubhai Chilyabhai Dhum and Shri Budhan Chandra Kundu, are directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.

g) Falkon Industries India Limited shall, within 21 days from the date of receipt of this Order, provide SEBI with all relevant and necessary information including details of debentures issued by it, as sought vide SEBI letters dated July 9, 2013, September 30, 2013.

h) In case of failure of Falkon Industries India Limited and its directors, namely, Shri Manirul Islam, Shri Indraj Singh Jat, Shri Afzal Miah, Shri Biswajit Bhattacharya, Shri Dilwar Hossain, Shri Taslim Ansary, Shri Laxmanbhai Sitarambhai Bhoya, Shri Manglubhai Chilyabhai Dhum and Shri Budhan

Chandra Kundu, to comply with the aforesaid directions, SEBI, on the expiry of the three month's period from the date of this order.-

i. shall recover such amounts in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

ii. may initiate appropriate action against the Company, its promoters/directors and the persons/officers who are in default, including adjudication proceedings against them, in accordance with law.

iii. Would make a reference to the State Government / Local Police to register a civil / criminal case against the Company, its promoters, directors its managers / persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and

iv) would also make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the Company.

I) Falkon Industries India Limited and its directors, namely, Shri Manirul Islam, Shri Indraj Singh Jat, Shri Afzal Miah, are directed not

to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are 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 expiry of 4 years from the date of completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this order till the expiry of 4 years from the date of completion of refunds to investors.

j) This Order is without prejudice to any action, including adjudication and prosecution proceedings that might be taken by SEBI in respect of the above violations committed by the Company, its promoters, directors and other key persons.

10.2 Copy of this Order shall be forwarded to the recognized

stock exchanges and depositories for information and necessary action.

10.3 A copy of this Order shall also be forwarded to the Ministry Corporate Affairs / concerned Registrar of Companies, for their information and necessary action with respect to the directions / restraint imposed above against the Company and the individuals.

10.4 This order may also be considered as appropriate proceedings against Falkon Industries India Limited and its directors as sought by the Petitioners, quo SEBI, in Writ Petition No. 4863 (W) of 2015 Amal Kumar Saha & Others vs. Union of India & Others, before the Hon'ble Calcutta High Court."

The aforesaid facts are admitted by the learned counsel for the petitioner.

Under such circumstances, no further order is required to be passed in the present writ petition.

The petitioner, if so advised, may approach the competent authority under the Bihar Protection of Interests (Financial Establishment) Act, 2002 for the necessary reliefs.

The writ petition stands disposed off with the aforesaid observation/direction.

(Ashutosh Kumar, J)

skm/-

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