

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 IN THE MATTER OF GREENBANG AGRO LIMITED

In respect of:

S. No.	Name of the Entity	PAN
1.	Taslim Arif Khan	BGNPK7088Q

In the matter of Greenbang Agro Limited

A. BACKGROUND:

- Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had passed an ad interim ex parte Order dated June 18, 2015 against Greenbang Agro Limited (hereinafter referred to as “**GAL**”) and its directors/promoters, for raising money through offer and issue of Secured Non-Convertible Redeemable Debentures (hereinafter referred to as “**NCDs**”) to public, in contravention of the provisions of Sections 56, 60 read with Sections 2(36), 73, 117B and 117C of the Companies Act, 1956 and the relevant provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as “**ILDS Regulations**”). Pursuant thereto, Final Order dated June 15, 2018 (hereinafter referred to as “**Order**”) was also passed against GAL and its promoters/directors including Mr. Taslim Arif Khan (hereinafter referred to as “**Noticee**”). It was, *inter alia*, observed in the said Order that the Noticee was one of the directors of GAL during the time when the company offered and issued NCDs to the public.
- Vide the said Order, *inter alia*, the following directions were issued *qua* the Noticee:

15 (a) Greenbang Agro Limited and its directors, namely Paritosh Panda, Dhiman Roy, Nitish Barman, Baidyanath Mondal, Subhra Jyoti Sardar, Satyanendra Nath

Maondal, Sreemon Ghosh, Taslim Arif Khan, Nilima Ponda, Lipika Bhaduri, shall jointly and severally refund the money collected through the offer and allotment of NCDs by the GAL to the holders of NCDs, 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, 1956 till the date of actual payment) within a period of 90 days from the date of receipt of this Order;

...

...

(d) Till the refund, as directed above, is complete, the company and its above named directors are hereby–

(a) restrained from accessing the securities market;

(b) prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and

(c) restrained from associating themselves, with any listed public company or any public company which intends to raise money from the public.

16) For a period of four years from the date of completion of the refund, as directed above, the company and its above named directors are hereby–

(a) restrained from accessing the securities market;

(b) prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and

(c) restrained from associating themselves, with any listed public company or any public company which intends to raise money from the public.

3. The Noticee preferred an appeal before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") against the said Order, *inter alia*, submitting that the impugned Order was not served upon the Noticee. It was also contended that appellant is a daily wage earning labourer working in the fields in Baruipur, West Bengal on 'no work-no pay' basis. He further contended that he was inducted as a non-executive director by the Chairman of the company by misrepresentation and had no ability to take an active role in the management of the company.

4. Hon'ble SAT, vide its order dated November 08, 2024 allowed the appeal and the impugned order dated June 15, 2018 was set aside *qua* the Noticee. The matter was remitted to SEBI for reconsideration and to pass a fresh order in accordance with the law after granting an opportunity of hearing to the Noticee.

B. HEARING AND SUBMISSIONS OF THE NOTICEE:

5. In compliance with the Order of Hon'ble SAT, vide email dated November 29, 2024, the Noticee was granted an opportunity of hearing on December 02, 2024. However, vide email dated November 29, 2024, the Authorized Representative (AR) of the Noticee sought an adjournment citing the reason that his client is out of Calcutta (where the AR was located) and his signature is required for filling the Vakalatnama. The request made by the AR of the Noticee was acceded to and hearing in the matter was adjourned to December 19, 2024.
6. On the scheduled date of hearing, the AR of the Noticee appeared through WEBEX platform and made oral submissions. The hearing in the matter was concluded and as requested, the Noticee was granted 14 days' time to file his written submissions.
7. Thereafter, vide email dated January 06, 2025 the AR of the Noticee filed written submissions, *inter alia*, submitting the following:
 - 7.1. The Noticee never met the Chairman and Managing Director of the Company. He has no financial stake in the company.
 - 7.2. He has not attended any Board Meeting and has not signed any attendance register. He has not received any sitting fee as a director.
 - 7.3. As a peon, he lost his job on 26th December, 2012 but it appears from the Form 32 that the same date was shown as his cession from the Post of Independent Director.
 - 7.4. He has no knowledge of mobilization of money since he was not engaged in any of the operations of the company. He was fraudulently roped in as Non-Executive director. He had no control over the activities of the company.
 - 7.5. Even otherwise, he was merely included in the Board of Directors of the Company as a non-executive director and was not involved in the day to day

affairs of the Company and was not even a shareholder of the Company as is reflected from the records available on the MCA Portal.

7.6. Under the provisions of the Companies Act, 1956 and under the Memorandum of the Company, the Managing Director is the person who takes the final decision for the Company and its management and at no point of time, the Noticee was consulted over any issue of the Company and as such he would not be held liable for the offence committed by the Managing Director and the Company. The same is also evident from the Memorandum of Association and Articles of Association of the Company.

7.7. The Noticee worked as a peon in the company for a limited period from 6th March 2012 to 26th December, 2012 only on no work and no pay basis. His service was not permanent and he never received any ESI benefit, gratuity and provident fund. He used to serve drinking water to the visitors of the company and to help in outside office job as and when required.

7.8. SEBI must consider the fact that Mr. Paritosh Panda (the Managing Director), who was in-charge of the business of the Company, was the mastermind behind issuing the NCDs. The Noticee was merely a peon but recorded as non-executive director of the Company and not responsible for the business or finances of the Company and nor for the day-to-day execution activities.

7.9. SEBI failed to appreciate the role of the Noticee in the company merely like an Independent Director, without any shareholding, with no powers as such to grant or avail any loans or funds, he was inducted as Non-Executive director. Noticee was neither functioning in the executive capacity nor had any occasion to comprehend and dissent from the decisions directly taken by the Managing Director.

7.10. Noticee was not a beneficiary of the wrongful gains. SEBI ought to have considered the surrounding circumstances before levelling the grave allegations of not refunding the money to the depositors.

7.11. SEBI has grossly erred in not appreciating the fact that there was no mala fide on part of the Noticee to defraud the investors or to become a beneficiary to any wrongful gains.

7.12. SEBI should consider that the Company had a Managing Director and as per the memorandum, and also under the provisions of Section 209(5), 209(6) of

the Companies Act 1956, the Managing Director shall be responsible in respect of any violation/contravention.

7.13. The Noticee has no shareholding and gained no benefit from the Company and yet SEBI arrayed him as delinquent director and passed the impugned order along with Mr. Paritosh Panda who is actually responsible for statutory compliance under sections 211 and 212 and being the head of the Company under sections 209(5) and 209(6) of the Companies Act.

7.14. The Noticee is not an 'Officer in default' under the provisions of 209(5) of the Companies Act and under the provisions of the SEBI Act and SEBI failed to appreciate that the position of Noticee is neither an authoritative position nor a strategic position in the Company.

7.15. The Noticee relied on various Judgments¹ of the Hon'ble SAT.

C. CONSIDERATION OF ISSUES AND FINDINGS:

8. I note that it was, *inter alia*, observed by SEBI in the Order dated June 15, 2018 that GAL had allotted NCDs to at least 210 individuals/investors during the financial years 2011-12 to 2013-14 and mobilized funds amounting to ₹36.97 Lakh. Vide the said Order, the Noticee was found to be one of the past directors of GAL and was held liable for the fund mobilization activities undertaken by GAL during the period of his directorship. Therefore, *inter alia*, directions for refund of monies collected and restraint from dealing in securities were issued in respect of the Noticee and other entities *vide* the aforesaid Order.

9. With regard to the directorship of the Noticee, I note that as per the said Order, the Noticee was appointed as a director of GAL with effect from March 06, 2012 and that he ceased to be a director with effect from December 26, 2012. Based on a perusal of the material available on record, I note that the evidentiary basis for the findings against the Noticee in the Order was '*MCA21 Portal*'. Considering that

¹ *Pritha Bag vs SEBI (Appeal No. 291 of 2017)*
Sayanti Sen vs SEBI (Appeal No. 163 of 2018)
Subhra Jyoti Sardar vs SEBI (470 of 2018)
Lipika Bhaduri Vs SEBI (225 of 2024)

Hon'ble SAT, *vide* Order dated November 08, 2024 has remitted the matter to SEBI, the role of the Noticee as Director in the fund mobilization activities undertaken by GAL is required to be examined in the present proceedings.

10. As per the said Order, the Noticee had been appointed as director of GAL on March 06, 2012, and since the NCDs were issued by GAL during the year when the Noticee was a director of the company, the Noticee was held liable for the non-compliance(s) by the Company. However, in this regard, the Noticee has *inter alia* submitted that he worked as a peon in the company for a limited period from 6th March 2012 to 26th December, 2012 on no work and no pay basis. He further submitted that his service was not permanent and he never received any ESI benefit, gratuity and provident fund. Further, he never met the CMD of the Company, has no financial stake in the company, has not attended any Board meeting, has not signed any attendance register and has not received any sitting fee as a director. Furthermore, as argued, he had no knowledge of mobilization of money since he was not engaged in any of the operations of the company and was fraudulently roped in as Non-Executive director and had no control over the activities of the company.

11. While the Noticee has argued (without any substantiating / corroborating document) that he did not knowingly become a director of GAL and was fraudulently roped in as a non-executive director, he has not disputed the records of his directorship available on MCA. As per the said records, he was a director of GAL from March 06, 2012 to December 26, 2012. Thus, I shall deal with the other arguments of the Noticee in light of the undisputed fact that Noticee was a director of GAL for the above mentioned period.

12. In this backdrop, the issue before me for consideration is whether the Noticee is liable for the contraventions committed by the Company during his directorship.

13. As noted earlier, the Order was passed in respect of GAL and its directors/promoters, for raising money through offer and issue of **NCDs** to public in contravention of the provisions of Sections 56, 60 read with 2(36), 73, 117B and 117C of the Companies Act, 1956 and relevant provisions of the SEBI (Issue and

Listing of Debt Securities) Regulations, 2008. In this context, the relevant extract of Section 73 of the Companies Act, 1956 is reproduced as under:

"Allotment of shares and debentures to be dealt in on stock exchange.

73. (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

(1A) ...

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money."

14. From a perusal of Section 73(2) of the Companies Act, it is clear that where the company, which intends to offer shares to the public for subscription, has not done it by issue of a prospectus or where permission has not been sought from the stock exchange, the company and other directors of the company who are officers in default shall be jointly and severally liable to repay the money collected from applicants, along with interest at such rate as may be prescribed. From the aforesaid, it is clear that the liability to repay the amount is upon that director of the company who is an officer in default. "Officer who is in default" has been defined under Section 5 of the Companies Act, 1956 which reads as follows.

“5. Meaning of "officer who is in default".

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely :

- (a) the managing director or managing directors;*
- (b) the whole-time director or whole-time directors;*
- (c) the manager;*
- (d) the secretary;*
- (e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;*
- (f) any person charged by the Board with the responsibility of complying with that provision:*

Provided that the person so charged has given his consent in this behalf to the Board;

- (g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:*

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.”

15. A perusal of the aforesaid provision indicates that the expression “officer who is in default” would mean the managing director or managing directors, whole time director or whole time directors, the manager, the secretary or any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act and would also include any person charged by the Board with the responsibility of complying with the provisions of the Companies Act. Section 5(g) of the Companies Act further stipulates that where the company does not have any of these officers specified in clauses (a) to (c), all the directors would be deemed to be a officers in default.

16. In light of the aforesaid provisions, the Noticee has submitted that Mr. Paritosh Panda was the Managing Director, who was in-charge of the business of the Company and the mastermind behind the issuance of the NCDs and SEBI should consider that the Company was having Managing Director, who shall be responsible in respect of any violation(s) committed by the Company. It is further submitted that the Noticee is not an ‘Officer in default’ under the provisions of the Companies Act, 1956.

17. It is noted that the Order has recorded that the contravention had taken place during the financial years 2011-12 to 2013-14 and Mr. Baidyanath Mandal was the managing director of the company from the date of its incorporation till December 26, 2011 and Mr. Paritosh Panda was a director of the company since the date of its incorporation and he became Managing Director of the company from December 26, 2011, after the exit of Mr. Baidyanath Mandal, and continued to be so. Thus, there is no doubt that the Company had a designated Managing Director during the time of the contraventions.

18. It is also pertinent to note that against the said Order dated June 15, 2018, a person named Mr. Subhra Jyoti Sardar, who was also one of the Directors of GAL and was made vicariously liable for the contravention by GAL, had preferred an appeal before Hon'ble SAT. Hon'ble SAT had quashed the said Order *qua* Subhra Jyoti Sardar and allowed the appeal and observed as under:

"7. In our view the controversy involved in the present appeal is squarely covered by the decision of this Tribunal in Pritha Bag vs Securities and Exchange Board of India (Appeal No. 291 of 2017 decided on February 14, 2019) and in Sayanti Sen vs Securities and Exchange Board of India (Appeal No. 163 of 2018 decided on August 8, 2019).

8. In Pritha Bag this Tribunal held:-

"10. A perusal of the aforesaid provision indicates that the expression "officer who is in default" would mean the following officers, namely, the managing director or managing directors, whole time director or whole time directors, the manager, the secretary or any person in accordance with whose directions or instructions the Board of Directors of the company accustomed to act and would also include any person charged by the Board of responsibility of compliance with the provisions of Act. Section 5(g) of the Act further stipulates that where the company does not have any of these officers specified in clauses (a) to (c) in which case all the directors would be deemed to be an officer in default."

9. In *Sayanti Sen* this Tribunal held:-

"26. In the light of the aforesaid the WTM has held that the Company has violated provisions of Section 73(2) of the Companies Act and has therefore in the same breadth has booked all the Directors to be responsible for the day today affairs of the Company. This approach as stated earlier was wholly incorrect. Section 73(2) of the Companies Act makes it apparently clear that if in the first instance it was the Company which was liable to repay the monies received from the investors and if the Company failed to repay the amount then the amount would be recovered jointly and severally from every Director of the Company as an officer in default. Therefore, where the Company is the offender vicarious liability of the Directors cannot be imputed automatically."

10. In view of the aforesaid and in the absence of any finding that the appellant was involved in the day-to-day affairs of the management of the Company or was involved in the collection of the NCDs coupled with the fact that there is a managing director in the Company who is overall responsible and is an officer in default under Section 5 of the Companies Act, we are of the opinion that the impugned order cannot be sustained insofar as it relates to the appellant."

19. I note that in the Order there is no finding that the Noticee was the Managing Director or Whole Time Director or was a person charged by the Board with the responsibility of complying with the provisions of the Companies Act and, consequently, could not be made responsible for refunding the amount under Section 73(2) of the Companies Act, 1956. Without any finding that the Noticee is an officer in default, the liability imposed under Section 73(2) cannot be invoked on him. Consequently, the question of violations by the Noticee of Sections 56, 60 read with Sections 2(36), Sections 117B and 117C of the Companies Act, 1956 and the relevant provisions of the ILDS Regulations which *inter alia* pertain to registration of Prospectus and its contents, appointment of debenture trustee, liability to create security and debenture redemption reserve, etc. and all such procedural aspects of raising money from public through NCDs, does not arise. Thus, the present proceedings against the Noticee are liable to be disposed of.

D. ORDER:

20. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11 (1), 11(4), 11A and 11B (1) read with Section 19 of the SEBI Act, hereby dispose of the instant proceedings against the Noticee without issuance of any direction.

Sd/-

AMARJEET SINGH

DATE: APRIL 9, 2025

WHOLE TIME MEMBER

PLACE: MUMBAI

SECURITIES AND EXCHANGE BOARD OF INDIA