

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ANANTH NARAYAN G., WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India

Act, 1992

In respect of:

Sr. No.	Name of the Entity	PAN
1	Mangol Bhattacharjee	ADUPB6256C

In the matter of Sunheaven Agro India Limited

BACKGROUND:

1. Sunheaven Agro India Limited (hereinafter referred to as "**SAIL**" / "**The Company**") had issued Redeemable Preference Shares (hereinafter referred to as "**RPS**") to 7,772 investors during the Financial Years 2009-10 to 2012-13 and raised funds amounting to approximately INR 11.54 Crores [10.99 Crores (amount collected through allotment under the Offer of RPS) + 0.55 Crores (share application money)]. Mr. Mangol Bhattacharjee (hereinafter referred to as "**Noticee**") was allegedly a director of SAIL during the period September 15, 2014 to August 17, 2015 i.e. subsequent to the period of issuance of RPS.
2. An Interim Order dated November 20, 2014 bearing reference no. WTM/SR/ERO/84/11/2014 (hereinafter referred to as "**Interim Order**") was passed by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") against

SAIL and 9 of its directors excluding the Noticee, for non-compliance with deemed public issue provisions under the Companies Act, 1956 (hereinafter referred to as “**Companies Act**”) including Sections 56, 60 read with 2(36) and 73.

3. Thereafter, a Final Order dated October 08, 2015 bearing reference no. WTM/PS/62/ERO/IMD/OCT/2015 (hereinafter referred to as “**Final Order**”) was passed by SEBI against SAIL and its directors including the Noticee, amongst others wherein it was held that SAIL had failed to comply with section 67(3) of the Companies Act. Accordingly, RPS issued by SAIL was deemed to be a public issue. The Final Order also found that consequently SAIL had violated Sections 56, 60, read with 2(36) and 73 of the Companies Act.
4. The said order recorded that the Noticee was appointed as director of SAIL on September 15, 2014 i.e. after the impugned issues and directed SAIL and its directors including the Noticee *inter alia* to jointly and severally refund the money collected by SAIL through the issuance of RPS for contravention of aforesaid provisions of the Companies Act. Further, through the said order, SEBI was advised to issue a show cause notice to the Noticee for passing of any further direction that would be appropriate in case SAIL and its directors failed to refund the amounts collected from the investors against the offer and/ or allotment of RPS.
5. Since the aforesaid order was not complied with, SEBI had initiated recovery proceedings against SAIL and its directors including the Noticee vide the Recovery Certificate No. 894 of 2016 dated March 31, 2016. Pursuant to the issuance of the recovery certificate, bank accounts and demat accounts of SAIL and its directors including those of the Noticee were frozen vide Notices of attachment no. 2511 of 2016 and 2512 of 2016 dated March 31, 2016.
6. Subsequently, the Noticee filed an appeal before Hon’ble Securities Appellate Tribunal (hereinafter referred to as “**SAT**”) against the aforesaid final order dated

October 08, 2015 and recovery certificate / notices of attachment. Hon'ble SAT vide order dated June 08, 2018 had quashed and set aside SEBI order dated October 08, 2015 qua the Noticee with a direction to SEBI to issue Show Cause Notice to the Noticee and pass a fresh order on merits. Hon'ble SAT further held that attachment levied in implementation of the impugned order dated 08.10.2015 does not survive and is vacated.

SHOW CAUSE NOTICE:

7. Pursuant to the direction of Hon'ble SAT, a Show Cause Notice dated November 11, 2022 (hereinafter referred to as "**SCN**") was issued to the Noticee. The said SCN made following allegations against the Noticee:

- 7.1. The company had mobilized about Rs. 11.54 crore from atleast 7,772 persons under the offer and issue of RPS during the financial years 2009-10, 2010-11, 2011-12 and 2012-13, without complying with 'public issue' norms as stipulated under Sections 56, 60 read with Section 2(36) and 73 of the Companies Act, 1956 and in doing so it has failed to comply with the provisions of the Companies Act, 1956.
- 7.2. The Noticee, being director of the company at the time of operation of the interim order, did not exercise necessary diligence after becoming director of the Company to comply with the directions given in the interim order.
- 7.3. The very inaction by Noticee to comply with the order even after receipt of the interim order, indicate possible collusion with the Company and its management. The Noticee has also not taken any steps to remedy the violations committed by the company.
- 7.4. The Noticee being one of the persons in-charge of and responsible for affairs / conduct of the business of the company and is therefore liable for the contraventions found against the Company and for the consequences of such violations.

REPLY:

8. The Authorized Representative (hereinafter referred to as "**AR**") of the Noticee vide letters dated February 06, 2023, March 27, 2023 and April 13, 2023 had submitted Noticee's reply to the aforesaid SCN. Noticee's submissions in brief are as under:
- 8.1. The actual name of the Noticee is '**Mangol Bhattacharjee**'. However, Form-DIR-12, filed with Registrar of Companies (RoC), West Bengal, shows that the Noticee was appointed as director of SAIL, whereas, the extract of the Board Resolution of the company dated September 15, 2014 as attached to said e-Form recorded the Noticee's name as '**Mr. Mangol Bhattacharya**' and recorded his appointment as Additional Director of SAIL on September 15, 2014.
- 8.2. The signature in the letter for recording his consent for being appointed as director of SAIL was not that of Noticee's. The Noticee's name in the consent letter was recorded as '**Mangol Bhattacharya**'.
- 8.3. The '**name and signature**' was recorded in consent letter is different from what is seen in the Noticee's PAN card. The e-Form DIR-12 was fraudulently filed by the company for reasons best known to the company.
- 8.4. The alleged allotment of RPS was last made on 22.08.2012 and the fraudulent appointment of the Noticee was in the year 2014-15 i.e. subsequent to the allotment. The Noticee has no involvement in the alleged issue of RPS.
- 8.5. When the Noticee became aware about his fraudulent and illegal appointment as director, the Noticee requested the company to file requisite e-Form DIR-12, showing Noticee's resignation. Accordingly, the Company filed the said DIR-12 on 17.08.2015.
- 8.6. The appointment of Noticee to the Board of Directors of the said company was unlawful and without the knowledge of the Noticee.

HEARING:

9. An opportunity of personal hearing was granted to the Noticee on April 19, 2023 through video conferencing. The AR appeared online from Eastern Regional Office of SEBI on April 19, 2023 and reiterated the submissions made vide Noticee's replies dated February 06, 2023, March 27, 2023 and April 13, 2023. The AR of the Noticee further stated as follows".... *the Noticee was a casual worker and did printing job for the Company. During the course of his job, the management of company had collected his documents and he has provided the same in good faith. The company had fraudulently used these documents for his appointment as director in the Company. While the consent letter for his appointment as director was done fraudulently by the company and the signature in the consent letter does not belong to him, however, upon becoming aware of his directorship in the company, he consistently requested the company for his resignation and the signature in the resignation letter validly belongs to him.*"

CONSIDERATION OF ISSUES AND FINDINGS:

10. I have perused the Interim Order, Final Order, SAT Order, SCN, replies and other material available on record. On perusal of the same, the following issues arise for consideration. Each issue is dealt with separately under different headings:

- 10.1. **Issue No. 1:** *Whether the offer of RPS made by the Company is in violation of provisions of Sections 56, 60 read with Sections 2(36) and 73 of the Companies Act, 1956?*
- 10.2. **Issue No. 2:** *Whether the Noticee was a director of SAIL during the relevant period in time?*
- 10.3. **Issue No.3:** *Whether the Noticee is jointly and severally liable for making refund in accordance with Section 73(2) of the Companies Act, 1956 or is liable for any other direction for the contraventions by SAIL?*

Issue No. 1: Whether the offer of RPS made by the Company is in violation of provisions of Sections 56, 60 read with Sections 2(36) and 73 of the Companies Act, 1956?

11. I note that the Final Order dated October 08, 2015 held that SAIL had come out with an Offer of RPS and allotted the shares and mobilized funds amounting to approximately INR 11.54 Crores [10.99 Crores (amount collected through allotment under the Offer of RPS) + 0.55 Crores (share application money)] from 7,772 investors during the Financial Years (FYs) 2009-10, 2010-11, 2011-12 and 2012-13 in violation of provisions of Sections 56, 60 read with Sections 2(36) and 73 of the Companies Act, 1956. I also note that for the non-compliance of Final order, the Recovery Certificate No. 894 of 2016 dated March 31, 2016 and Notices of attachment no. 2511 of 2016 and 2512 of 2016 dated March 31, 2016 were issued to SAIL and its directors as well as the Noticee. I note that the Final Order as well as Recovery Certificate / attachment notices has become final against SAIL and other directors but set aside only qua the Noticee vide SAT order dated June 08, 2018. The allegation made in SCN with respect to violation of provision of Companies Act, 1956 by SAIL does not require any further consideration in this order since the issue has already being decided conclusively in Final Order dated October 08, 2015

Issue No. 2: Whether the Noticee was a director of SAIL during the relevant period in time?

12. I note that Final Order held that the Noticee was appointed as director of SAIL on September 15, 2014 i.e. after the issues of RPS and was liable for not exercising necessary diligence after becoming director of SAIL and had not taken any steps to remedy the violations committed by SAIL. Noticee was also held responsible for the affairs of the Company and hence liable for the contraventions found against the Company. Therefore, *inter alia*, directions for refund of monies collected were issued in respect of the Noticee vide Final order dated October 08, 2015. The Noticee has

repeatedly contended in his submissions that he was fraudulently appointed as director of SAIL on the basis of a signature in the consent letter which does not belong to him. In any case, his fraudulent appointment as director of SAIL was subsequent to the issue of RPS.

13. In this regard, I note that though the Noticee was not party to the interim order dated November 20, 2014, he was made party to the Final Order dated October 08, 2015 on the ground that the Noticee was a director of SAIL from September 15, 2014 to August 17, 2015.

14. I note that Noticee submitted that he was fraudulently appointed as director of SAIL. His submissions in this regard are summarized at paragraph 8 above. Noticee further submitted that he was a casual worker and did printing jobs for the Company. During the course of his job, the management of company had collected his documents and he had provided the same in good faith. The company purportedly fraudulently used these documents for the Noticee's appointment as director in the Company. He also claimed that while that his resignation letter accurately capture his signature and is genuine, the consent letter with respect to his appointment as director was fraudulent.

15. In this regard, I note that in respect of the Noticee, final order does not specifically mention the documents relied upon to hold the Noticee as a Director in SAIL. In addition to the documents submitted by the Noticee, I have also perused the relevant document available on the publicly accessible MCA website. With respect to the Noticee's appointment as director of SAIL, only copy of e-Form – DIR-12, consent letter and board resolution is available on MCA website and with respect to his resignation, only copy of Form – DIR-32, resignation letter and board resolution is available on MCA website.

16. Considering the contention of the Noticee regarding the discrepancies in MCA records, I have perused the said records. From the said records, I observe the following:

- 16.1. In e-form – DIR-12, the name of the Noticee has been mentioned as “Mangol **Bhattacharjee**” whereas in consent letter and Extract of Board Resolution, the name of the Noticee has been mentioned as “Mangol **Bhattacharya**”. The Noticee’s correct name as per his PAN is “Mangol **Bhattacharjee**”.
- 16.2. In e-form – DIR-12, Noticee’s appointment was categorized as “**promoter**”. However there is no document seen on record which suggests that Noticee was promoter of SAIL or even a large shareholder of SAIL.
- 16.3. In the extract of the Board Resolution dated September 15, 2014, Noticee’s designation has been mentioned as “**Additional Director**”, whereas, in consent letter and e-Form – DIR- 12, Noticee’s designation has been mentioned as “**Director**”.
- 16.4. In consent letter and in resignation letter, the Noticee’s signature appears to be different.
- 16.5. The consent letter does not bear any date.
- 16.6. In the Noticee’s resignation letter, seal and sign of SAIL director acknowledging receipt is visible. However, in consent letter, there is no such acknowledgement by the Company.

17. I have also perused other documents of SAIL which are available on the publicly accessible MCA website. I note that during the purported period of Noticee’s directorship (September 15, 2014 to August 17, 2015), there are no documents which shows that Noticee had either attended any board meeting of SAIL or was signatory to any board resolution of SAIL. The aforesaid facts lead to the strong inference that the e-Form –DIR 12 purportedly shown as proof of appointment of the Noticee cannot be relied upon to sufficiently prove the appointment of the Noticee as a director in SAIL.

Issue No.3: Whether the Noticee is jointly and severally liable for making refund in accordance with Section 73(2) of the Companies Act, 1956 or is liable for any other direction for the contraventions by SAIL?

18. As stated in the preceding paragraph, there is no material before me that leads to the conclusion that Noticee was a director of SAIL during the period September 15, 2014 to August 17, 2015 in the first place. Under Section 73(2) of the Companies Act, 1956, liability of refund is cast on a director who is an officer in default in a company. In this regard, it would be relevant to note that liability of directors of companies which have made public issue of securities in violation of the mandate of Section 67(3) of the Companies Act and without complying with Section 73(1) of the Companies Act, have been the subject of several decisions of the Hon'ble SAT in the Appeals of (a) **Manoj Agarwal vs. SEBI (Appeal no. 66 of 2016)**, decision dated July 14, 2017; (b) **Pritha Bag vs. SEBI (Appeal no. 291 of 2017)**, decision dated February 14, 2019; and (c) **Sayanti Sen vs. SEBI (Appeal no. 163 of 2018)**, decision dated August 09, 2019.

19. The following points emerge from the said decisions of the Hon'ble SAT:

- 19.1. In order to find a person to be jointly and severally liable to refund monies collected, in accordance with section 73(2) of the Companies Act, he/she must not only have been a director of the company during the relevant period when the impugned public issue had taken place, but also he/she must have been an "officer in default", as defined in section 5 of the Companies Act.
- 19.2. In accordance with the provisions of section 5, it needs to be first ascertained as to whether the issuer company had a managing director. If there is a managing director in the company, then he would be an "officer in default".
- 19.3. In the absence of any managing director, if the board has specified any particular director or manager or any other person as an "officer in default", only that specified director, manager etc., as the case may be, would be an officer in default.

19.4. Apart from the directors, if any officer has played some role in bringing about the default or he might have performed the duties assigned to him then he could be penalized as an “*officer in default*”.

19.5. In the absence of all of the above, by deeming fiction, all directors of the company would be regarded as “*officers in default*”.

20. In the instant matter, I note that there are no documents / evidence to suggest that Noticee was a director of SAIL. Consequently it is not possible to hold the Noticee as an officer in default of SAIL *during the FYs 2009-10 to 2012-13* when SAIL had made issue of RPS. It necessarily therefore follows, that the Noticee cannot be held liable for making refund under Section 73(2) of the Companies Act, 1956.

21. Furthermore, I note that SEBI had initiated recovery proceedings against SAIL and its directors, pursuant to which, bank accounts and demat accounts of SAIL and its directors were frozen and recovery proceedings are ongoing. Therefore, the statutory remedy for refund of monies illegally collected by the company, is already in progress. Even the purported period of directorship of the Noticee was barely for a period of 1 year. Considering all these facts, I am of the view that Noticee cannot be held liable either for refund or be liable for any other direction in the context of contravention of provisions of Companies Act, 1956 by SAIL.

ORDER:

22. In view of the aforesaid observations and findings, 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 Show Cause Notice dated November 11, 2022 issued to the Noticee without any direction.

23. A copy of this order shall be served upon the Noticee.

24. A copy of this order shall also be forwarded to concerned Registrar of Companies, Stock Exchanges, Registrar and Transfer Agents and Depositories for their information and necessary action.

-Sd-

DATE: MAY 04, 2023

ANANTH NARAYAN G.

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA