

WTM/AB/IMD /DoF - 1/18928/2022-23

**SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER**

Under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992.

In Respect of:

Sr. No.	Name of the Entity	PAN
1	Sugyani Charan Nanda	ACKPN6525B

In the matter of Dynamic Asset Management Limited

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1. The present proceedings emanate from an order dated December 22, 2021 passed by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") in Appeal No.184/2021, filed by one Shri Sugyani Charan Nanda (hereinafter also referred to as "**the Noticee**") impugning the order dated April 20, 2016 passed by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") in the matter of **Dynamic Asset Management Limited** (hereinafter also referred to as "**Dynamic**"/ "**the Company**"), whereby the Hon'ble SAT *inter alia* directed as under:

"...5. For the reasons stated in the application, the delay is condoned. The application is allowed. For the same reasons, the impugned order cannot be sustained and is quashed. The appeal is allowed. The matter is remitted to the WTM to pass a fresh order in accordance with law after giving an opportunity of hearing."

2. By the said order dated December 22, 2021, the Hon'ble SAT allowed the appeal filed by the Noticee and set aside the SEBI's order dated April 20, 2016, wherein it was found that Dynamic had engaged in fund mobilizing activity from the public, through the offer of Redeemable Preference Shares (hereinafter referred to as "**Offer of RPS**"), *qua* the Noticee.

3. After passing of order dated December 22, 2021 as mentioned in para 1 above, the matter was placed before me on December 31, 2021. A hearing was scheduled on February 09, 2022. The Noticee filed its reply dated February 07, 2022. On the scheduled date of personal hearing, the AR of the Noticee appeared before me and reiterated the submissions made in the reply. The Noticee was granted 10 days' time to file written submissions, if any. Accordingly, hearing was concluded qua the Noticee. Thereafter, vide email dated February 18, 2022, written submissions were filed by the Noticee.
4. The Noticee vide its reply dated February 07, 2022 and written submissions dated February 18, 2022 has *inter alia* made the following submissions:
 - i. SEBI exercised powers in excess of jurisdiction prescribed under Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"). The Noticee has stated that there is neither any allegation nor any finding on violation of the provisions of the SEBI Regulations or the SEBI Act. In respect of the alleged violations of Section 56, 60, 67 and 73 of the Companies Act 1956 the fine / liability is required to be determined by the competent court. In terms of Section 621 of the Companies Act 1956, SEBI has been empowered to file complaint with the competent court in respect of offences relating to issue and transfer of securities and non-payment of dividend. In view of the above provisions of law, SEBI ought to have filed complaint with the competent court for determination of the alleged violations instead of issuing an SCN and passing the present Interim Order u/s 11, 11(4), 11A and 11 B of the SEBI Act.
 - ii. The directors of a company cannot be made vicariously liable by SEBI for violations of provisions other than those provided under the SEBI Act or any rule, regulations, directions or order made thereunder. Further, till the amendment of Section 27 of SEBI Act on March 08, 2019 the directors of a company could be held liable for offenses leading to criminal proceedings before the competent court. The alleged violations took place much before the said amendment of the SEBI Act, and hence the Noticee cannot be held vicariously liable for acts of the Company.

Merely because a person is a Director would not make him liable for actions of the company if such a director was not in a position of authority of making decisions. In this regard, the Noticee has relied upon judgments including *Sayanti Sen Vs SEBI* (Appeal no. 163 of 2018), decided by Hon'ble SAT, decisions of Hon'ble Supreme Court in *SEBI vs. Gaurav Varshney* (2016) 14 SCC 430, *Agritech Hatcheries & Food Ltd. vs Valuable Steels India Pvt. Ltd* (1999) 96 Com Cases 534 (Mad), *Smt. G. Vijaylakshmi & Ors. vs. SEBI* (2000) 12 100 Comp Cases 726 (AP) J, *Sunil Bharti Mittal vs. Central Bureau of Investigation & Ors.* in Criminal Appeal No. 35 of 2015, *Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Ors.* - (1983) 1 SCC 1.

- iii. The Noticee has submitted that Mr. Saroj Kumar Sahoo being in-charge of Dynamic and also being the Compliance Officer, was mainly responsible for managing the affairs of Dynamic and was therefore solely liable for the alleged violations.
- iv. The Noticee has stated that immediately after the Noticee's resignation as a director of Dynamic, he was abducted and made to sign various blank papers, one non-judicial stamp paper and 6 blank cheques of IDBI Bank bearing nos.054727 to 054732 on February 14, 2012 for which Noticee has filed a criminal complaint.
- v. The Noticee has submitted that prior to his resignation from Dynamic he had observed certain issues with regard to the accounting procedure, issuance of dividends, bonds and post-dated cheques to the customers. Noticee immediately raised objections upon observing such irregularities. The top management of Dynamic took strong objection to the issues raised by Noticee and he was forced to resign with immediate effect.
- vi. Pursuant to finding out about SEBI's Interim Order, and freezing of his bank accounts, the Noticee commenced the process of gathering information regarding the proceedings and documents from MCA. It was revealed that despite the Noticee providing the requisite personal details for generating the Director Identification Number, Dynamic and its management, deliberately provided incorrect personal information of the

Noticee to the MCA and Registrar of Companies to ensure that no intimation and/ or notification would reach the Noticee.

- vii. The Noticee has further submitted that, on request made to SEBI on February 08 2022, he received Extracts of Board Resolutions and was shocked to observe that the same have been certified as true copies under his signature as a director of Dynamic. It is submitted that the alleged certification of extracts of Board resolutions does not mean that the Noticee had also attended the Board meeting at which the said resolutions were passed. SEBI has not produced minutes of any Board Meetings which may show the names of Directors who passed the alleged resolutions. Hence, it is submitted that the said documents cannot be interpreted to construe that the Noticee had attended the meeting at which the said resolutions were passed.

Consideration of the submissions and findings:

5. I have perused the allegation against the Noticee in the Interim Order dated January 09, 2015 (hereinafter referred to as “**the interim order**”) passed by SEBI, the reply dated February 07, 2022 and written submissions dated February 18, 2022 filed by the Noticee. The limited issue before me is the liability of the Noticee for violation of Sections 56, 60, 67 and 73 of the Companies Act, 1956, as committed by the Company and found in SEBI’s order dated April 20, 2016.
6. At the outset, I note that the Noticee has raised an issue regarding the jurisdiction of SEBI in the present matter. The Noticee has contended that the alleged violations are of Sections 56, 60, 67 and 73 of the Companies Act, 1956 (since repealed) and that there is neither any allegation nor any finding on violation of the provisions of SEBI Act or regulations made thereunder. Hence, SEBI exceeded its jurisdiction by issuing an interim order under section 11, 11(4), 11A and 11 B of the SEBI Act and the same is not sustainable in law.
7. I note that the directions in the interim order were passed under Section 11 and 11B of the SEBI Act. These provisions give discretion to SEBI to issue such directions, as it thinks fit, for the purpose stated thereunder. Any directions for

protection of investors and development of the securities market can be issued under these provisions. Hence, SEBI is empowered to exercise its jurisdiction under Section 11 and 11B of the SEBI Act, if the ingredients of these sections are satisfied irrespective of the fact that the facts of the case results in violation of some other Acts also. Thus, the contention of the Noticee regarding jurisdiction of SEBI is misplaced and devoid of any merit.

8. I note that Section 73 of the Companies Act, 1956 imposes liability to make refund on the company and every director of the company who is an officer in default for the violation of Section 73 of the Companies Act, 1956. Therefore, it has to be seen whether the Noticee can be termed as officer in default. In this regard, reference is drawn to Section 5 of the Companies Act, 1956, which defines an *Officer in Default*. The said Section 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.

9. I note that the Hon'ble SAT, in the matter of *Pritha Bag Vs. SEBI* (Appeal No.291 of 2017, order dated February 14, 2019) *inter alia* held as follows:

“12...Unless and until a finding is given that the appellant is an officer in default, the mandate provided under Section 73(2) cannot be invoked against the appellant. In the instant case, the appellant has annexed documents to indicate that the company had a managing director, namely, Mr. Indranath Daw and, therefore, as per the provisions of Section 5 the managing director would be an officer in default. We also find that there is no finding given by the WTM that the appellant was the managing director or whole time director or was a person charged by the Board 8 with the responsibility of compliance with the provisions of the Companies Act and, consequently, could not be made responsible for refunding the amount under Section 73(2)...”

10. I note that there is no allegation in the interim order that the Noticee was the managing director or whole time director or was a person charged by the board of the Company with the responsibility of compliance with the provisions of the Companies Act, 1956 (since repealed). The Noticee has also submitted that Mr. Saroj Kumar Sahoo was the Managing Director as well as the Compliance Officer of the Company, and thus was in charge of the Company. I also note from Annual Return filed by the Company with MCA for the year 2010-2011 and 2011-12 that, the Noticee is shown a director only, and not as a whole-time director. Further, Mr. Saroj Kumar Sahoo has been shown as Managing Director and for the year 2011-2012, Mr. Pradip Kumar Mohapatra has been shown as Managing Director. Thus, the Noticee cannot be held liable for making refund under Section 73(2) of the Companies Act, 1956 (since repealed) in the matter.

11. The next question that remains to be examined is whether the Noticee is liable for direction of debarment under Section 11B of the SEBI Act, being a director of Dynamic. In this regard, I note that in the matter of *Amit Misra Vs. SEBI (SAT Appeal No. 410 of 2019, order dated March 9, 2021)*, the Hon'ble SAT observed as under:

“7...In the instant case, there is no finding that the appellant had attended any board meeting or was responsible for the issuance of redeemable cumulative preferential shares or that he was part of any resolution of the board of directors in this regard.

8. Consequently, for the reasons stated aforesaid the impugned order in so far as it relates to the appellant cannot be sustained and is quashed...”

Further, in the matter of Chandrasen Ganpatrao Bhise Vs. SEBI (SAT Appeal No. 424 of 2020, order dated March 2, 2022), the Hon'ble SAT observed as follows:

“21...The responsibility to prove the charge is upon the prosecution, namely, upon SEBI. It is for the respondent to prove that the appellant was an officer in default or that he attended the meeting when a scheme was launched...”

12. In the present case, it is noted that the material available on record shows that the Noticee was a director in Dynamic from May 20, 2011 to February 14, 2012. However, the material available on record does not indicate that the Noticee, during his tenure, had attended any meeting of the board of the Company wherein resolution concerning the said Offer of RPS was passed. Nor is there material to show that he signed any minutes of any such meeting. Hence, I am inclined to give the benefit of doubt to the Noticee.

Order

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

14. This Order comes into force with immediate effect.

15. A copy of this Order shall be forwarded to the Noticee, recognized stock exchanges, depositories and Registrars and Transfer Agents (RTA) of mutual funds for information and necessary action.

Date: September 1, 2022

Place: Mumbai

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA