

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 in respect of Shri Pinku Kumar Das (DIN: 03183384; PAN: AIQPD0779D) in the matter of Newland Agro Industries Limited.

1. Securities and Exchange Board of India ("SEBI") passed an order dated October 19, 2015 (Ref. No. WTM/PS/74/ERO/IMD/OCT/2015) against Newland Agro Industries Limited (Newland Agro) and its eight directors, namely, Mr. Gopal Hazra, Mr. Dipankar De, Mr. Sanatan Paul, Mr. Kartick Charan, Mr. Himadri Bag, Mr. Kaushik Roy, Mr. Abhik Hajra and Mr. Pinku Kumar Das. It has been held in the order that the company mobilized funds from more than 48,000 investors under its offer and issue of Redeemable Preference Shares (RPS) during the financial years 2009-2010 to 2012-2013 and in doing so, the company and its directors failed to comply with the various provisions of the Companies Act, 1956 and the Securities and Exchange Board of India Act, 1992 (SEBI Act). The order, *interalia*, directed the company and its directors to, jointly and severally, refund the money collected by the company through issuance of RPS to the investors with an interest at the rate of 15% per annum compounded at half yearly intervals.
2. Pinku Kumar Das filed an appeal against the aforesaid order before Securities Appellate Tribunal (Appeal No. 2 of 2016). SAT vide order dated August 9, 2016 set aside the SEBI order dated October 19, 2015 qua the appellant and restored the matter to file of WTM for passing a fresh order on merits and in accordance with law. Relevant paragraphs of the SAT order are as under:

"2. Grievance of the appellant is that, inspite of recording the submission of the appellant in para 6 of the impugned order, the WTM has not dealt with the said submissions in the impugned order. Apart from the above, it is submitted for the first time before this Tribunal that the appellant had erroneously stated before the WTM that the appellant had resigned as an independent director of the company with effect from April 1,

2013 when in fact, the appellant had resigned on September 21, 2011. In support of the above contention appellant has annexed certain documents to the memo of appeal.

3. Since the above documents were not placed before the WTM of SEBI and since WTM has not considered the plea that the appellant had never attended any Board meetings of the company, we deem it proper to set aside the impugned order dated October 19, 2015 qua the appellant.

4. Accordingly, the impugned order”

3. Pursuant to the aforesaid SAT order, Shri Pinku Kumar Das filed additional documents vide his reply dated August 18, 2016. The summary of his replies are as under:
- i. That he was appointed as an Additional Director of Newland Agro Industries Limited (Newland Agro) on December 20, 2010.
 - ii. That there were ten board meetings of the company during the period from December 20, 2010 to March 31, 2011 wherein notices were sent to him in capacity of a director of the company. However, he did not attend any of the board meetings of the company, hence, by virtue of section 283(1)(g) of the Companies Act, 1956, the office of director held by him stand vacated.
 - iii. That while checking MCA Website sometime around February 2013, he found that though he had tendered his resignation to the company on September 21, 2011, the company had not filed Form 32 in this regard. Therefore, as an abundant caution, he again tendered his resignation to the company vide letter dated February 26, 2013.
 - iv. That in April 2013 he again noticed from the MCA Website, that his name was appearing as a director of Newland Agro. Therefore, he immediately tendered another resignation vide letter dated April 01, 2013. In this regard, it has been also submitted that Mr. Dipanker De, Managing Director of the company had fraudulently re-inducted him as director of the company by filing another Form 32 on March 30, 2013.
 - v. It has been submitted that it is settled law that a director can tender his resignation to the company without filing Form 32 and without sending notice to the ROC as filing of the Form with ROC and giving due intimation is the duty of the company secretary or authorized signatory and not of an individual director. In this regard, reliance has been placed upon para 6 of the judgement of Hon'ble Bombay High Court in the case of *Saumil*

Dilip Mehta vs. State of Maharashtra & Ors. (AIR 2002 Bom 194).

- vi. That after his appointment as director of the company, he had never attended any Board Meeting of the company.
 - vii. Along with the reply, he has submitted (a) copy of the resignation letter dated September 21, 2011, (b) copy of Form 32 showing resignation on February 26, 2013 and (c) copy of Compliance Certificate dated August 29, 2011 issued by K K Sangneria and Associates, Company Secretary, for the financial year ending on March 31, 2011.
4. Subsequent to filing of the reply, Pinku Kumar Das was granted an opportunity of hearing on January 5, 2017. However, vide letter dated January 3, 2017, he informed that his physical condition is not good, therefore, he may be given an opportunity of hearing at Kolkata. Acceding to his request he was granted an opportunity of hearing at Eastern Regional Office of SEBI at Kolkata on February 17, 2017. Though, the hearing notice was served upon the entity by speed post, he did not appear for hearing. I note that despite sufficient opportunities of hearing granted to the entity, he has failed to avail the same. I am, thus, constrained to proceed further in the matter on the basis of documents available on record.
5. It is observed that the order dated October 19, 2015 has attained finality against Newland Agro Industries Limited and its directors, except against Pinku Kumar Das. In the order, it has been held that Newland Agro had commenced the offer and issuance of RPS from 2009-2010 and it continued with this money mobilisation activity till the financial year 2012-2013 (the last date of allotment being June 07, 2012 as per document filed by the company with ROC) and in the process it mobilised an amount of approximately Rs.37.64 crore from about 48,886 investors, without complying with the 'public issue' norms stipulated under sections 56, 60 and 73 of the Companies Act, 1956 (since repealed). It has been held that as the company raised money from the public without following public issue norms and it failed to make refund to the investors within the stipulated time, in terms of section 73(2) of the Companies Act, 1956, the company and its every director, who were an officer in default, are jointly and severally liable to refund the money raised through issue of RPS to the investors with interest.
6. The submission of Pinku Kumar Das, in short, is that he is not liable for the violations committed

by the company as he was director of the company only during the period from December 20, 2010 to September 21, 2011 and even during this period he did not attend any board meeting of the company, hence by virtue of section 283(1)(g) of the Companies Act, 1956, the office of directorship held by him stand vacated.

7. With regard to period of directorship of the entity in the company, it is noted that he has admitted that he was a Director of Newland Agro during the period from December 20, 2010 to September 21, 2011. In so as his being shown as director of the company beyond September 21, 2011 is concerned, it has been submitted by him that though he resigned from directorship of the company vide letter dated September 21, 2011, the company failed to file Form 32 with ROC and hence he is not liable. Relying upon judgement of Bombay High Court in the case of *Saumil Dilip Mehta vs. State of Maharashtra & Ors.* it has been submitted that the obligation to give due intimation to ROC about resignation of a director by filing Form 32 was the responsibility of the company secretary or authorised signatory and not of an individual director. Thus, his tendering of resignation was sufficient. However, as his name was appearing as director of Newland Agro, as an abundant caution, he again tendered his resignation vide letter dated February 26, 2013.
8. In order to determine whether Mr. Das continued to be a director of Newland Agro even subsequent to September 21, 2011, it is pertinent to refer to the contents of the letter of resignation dated September 21, 2011. The letter is reproduced hereunder:

"Pinku Kumar Das

... ..

*To,
The Board of Directors,
Newland Agro Industries Limited,*

... ..

Sub: Resignation as Additional Director of the company.

Dear Sir,

Due to some unavoidable circumstances, I hereby tender my resignation from the Board of Directors of your company with immediate effect.

I shall be highly obliged if the Board of Directors of the company considers my resignation at the earliest.

You are requested to please arrange for filing of Form -32 with the Registrar of Companies to that effect and give information to all the concerned departments as soon as possible and give a copy of the same to me for my reference and record.

Thanking You

Sd.

Pinku Kumar Das

Accepted

Stamp- For Newland Agro Industries Limited

Sd.

Director

9. It is noted from above that the receipt of the letter has been acknowledged by one of the Directors of the company by putting company's stamp and writing on it "accepted". The resignation letter was addressed to the Board of Directors of the company for their consideration. From the extract of the minutes of the meeting of the Board held on September 30, 2011 (downloaded from MCA21 portal) it is clear that the Board deliberated on the issue of directorship of Mr. Das and upon receipt of notice to reappoint him as a director and requisite fee from a member, the Board reappointed him as a Director of the Company. Pursuant to the resolution passed by the Board of Directors of the company on September 30, 2011, Form 32 was filed by the company with ROC to the effect that from October 1, 2011 the designation of Mr. Das in the company was that of a Director. It is also noted that though in the reply dated August 18, 2016, it has been submitted by the entity that he was surprised to find his name in the category of directors of Newland Agro and he again tendered his resignation to the company vide letter dated February 26, 2013. However, it is observed from this resignation letter (downloaded from MCA21 Portal) that nowhere in the letter Mr. Das has raised any grievance with the company or mentioned about his resignation tendered on September 21, 2011. He has simply stated that "due to unavoidable circumstances, I hereby tender my resignation from the Board of Directors of your company with immediate effect..." Pursuant to this resignation letter, the company filed Form 32 with ROC intimating cession of Directorship of Pinku Kumar Das with effect from February 26, 2013. It does not appear from the conduct of Mr. Das that he was reappointed and shown as director of the company against his wishes. Therefore, I am of the view that he continued to be a director of the company up to February 26, 2013.

10. With regard to the reliance placed by Mr. Pinku Kumar Das on the judgement of Bombay High Court in the case of *Saumil Dilip Mehta vs. State of Maharashtra & Ors.*, it is noted that the company has filed Form 32 at every stage, appointment, change in designation and resignation, therefore, it is of no help to him.
11. With regard to his appointment as Additional Director of the company on March 30, 2013 and resignation on April 1, 2013, it has been submitted that he was not aware of his appointment as director of the company and when he came to know about it he immediately tendered his resignation vide letter dated April 1, 2013. It has been also submitted that Mr. Dipankar De, MD of the company had forged his signature and re-introduced him as director of the company. With regard to this, it is noted from the consent letter of Mr. Das dated March 30, 2013 (downloaded from MCA21 Portal) to act as Director of the company, that the signature is prima facie similar to his signature on other letters which has been admitted by him. Further, in the resignation letter dated April 1, 2013, he has nowhere raised any concern about the forgery and he is also not seen to have taken any step for the alleged forgery and fraud. In view of my observations in this para and the para above, it appears that the story being presented now before me is an afterthought.
12. With regard to the submission of Mr. Das that inspite of service of notice of meetings of the Board of Director of the company he never attended any of the board meetings of the company and hence, by virtue, of section 283 (1)(g) of the Companies Act, 1956, the office of director held by him stand vacated it would be pertinent to refer to the provisions of section 283(1)(g) of the Companies Act, 1956. The provisions are as under:

“283. Vacation of Office by Directors.

(1) The office of a director shall become vacant if –

... ..

(g) he absents himself from three consecutive meetings of the Board of directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board;

... ..”

13. It is noted that section 283(1)(g) stipulates that the director's position shall fall vacant if the director does not attend three consecutive Meetings of the Board of Directors of the company without

taking leave of the company. In the present case, no material has been furnished to show that he did not attend any or three consecutive meetings of the Board of Directors of the company and that such absence was without the leave of the company. In such circumstances, it cannot be said that this provision will apply in his case.

14. In view of the findings that Mr. Pinku Kumar Das was one of the directors of Newland Agro when the offer and allotment of RPS was made in violation of sections 56, 60 and 73 of the Companies Act, 1956, it needs to be stated that Mr. Das as a director was entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs. Registrar of Companies* (2002 108 Comp Cas 1 Mad):

"13. A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.

14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956."

15. In view of findings above, I hold that Pinku Kumar Das was responsible for the affairs of the company and its failure to make refunds to the subscribers of RPS. It is also noted that SEBI has initiated recovery proceedings against Newland Agro and its other directors in order to refund the investors and the liability of the company and directors to repay under section 73(2) of the Companies Act, 1956 is joint and several and would remain until the whole of the subscription amount along with interest is refunded to the allottees/investors.
16. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11 and 11B of the SEBI Act, 1992, hereby direct Pinku Kumar Das [PAN: AIQPD0779D] as follows:

- a. He along with Newland Agro Industries Ltd. and other directors, as mentioned on order dated October 19, 2015, shall jointly and severally, refund the money collected by the Company through the issuance of RPS, which have been found to be issued in contravention of the public issue norms, to the investors including the money collected from investors, till date, pending allotment of RPS, if any, with an interest at the rate of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (in terms of Section 73(2) of the Companies Act, 1956) to the investors till the date of actual payment.
- b. He should provide the updated detailed inventory of all assets and properties and details of all bank accounts, demat accounts and holdings of shares/ securities, if held in physical form.
- c. He should not to access the securities market and is further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, with immediate effect. He is also restrained from associating himself with any listed public company and any public company which intends to raise money from the public, with immediate effect. This restraint shall continue to be in force for a further period of four years on completion of the repayments as mentioned on order dated October 19, 2015.
- d. In case of failure to comply with the aforesaid directions SEBI, on the expiry of the three months period from the date of this order, shall recover such amounts in accordance with law and may initiate any other proceedings as per law.

17. The above directions shall come into force with immediate effect.

-Sd.-

Date: June 02, 2017

Place: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER