

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:

Sl. No.	Noticees	PAN
1	Greenbang Agro Limited	AADCG6933A
	Directors/promoters	
2	Paritosh Panda	AMSP9346A
3	Dhiman Roy	AIOPR6310C
4	Nitish Barman	AHYPB4026G
5	Satyendra Nath Mondal	AJLPM4034A
6	Subhra Jyoti Sardar	AUNPS6233N
7	Sreemon Ghosh	AHXP93771G
8	Taslim Arif Khan	BGNPK7088Q
9	Nilima Ponda	BPSPP5200H
10	Lipika Bhaduri	BBUPB4339M
11	Baidyanath Mandal	AUSPM9775A
	Debenture Trustees of Rural Economic Welfare Trust	
12	Durga Ghosh	Not available
13	Ramendra Nath Mistry	AQGPM3063K

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- 1) Securities and Exchange Board of India (SEBI) passed an ad interim ex-parte order dated June 18, 2015, (hereinafter referred to as “interim order”) against the Noticees in view of the prima facie findings that Greenbang Agro Limited (GAL) and its directors/promoters were engaged in the activity of raising money through offer and issue of Secured Non-Convertible

Redeemable Debentures (NCDs) to the public in contravention of the provisions of sections 56, 60 read with 2(36), 73, 117B and 117C of the Companies Act, 1956 and several provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (ILDS Regulations). It was also prima facie found that Rural Economic Welfare Trust, represented by Durga Ghosh and Ramendra Nath Mistry, had acted as an unregistered Debenture Trustee in contravention of the provisions of section 12(1) of the Securities and Exchange Board of India Act, 1992 (SEBI Act) read with regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 (Debenture Trustees Regulations). In view of this, the interim order, inter alia, restrained the Greenbang Agro and its directors from mobilising funds from the public through offer and issue of NCDs and restrained the Debenture Trustees from continuing with their assignment. The Noticees were also required to show cause as to why appropriate directions, including direction to jointly and severally refund the money collected through the issue of equity shares to the public along with interest, be not passed against them.

- 2) In this matter, prior to passing of the interim order, SEBI conducted an examination into the money mobilisation activity of the company through offer and issue of NCDs on the basis of complaints received from the investors. Letters dated September 10, 2013, December 6, 2013 and January 30, 2014 were sent by SEBI to GAL and its Directors, namely, Paritosh Panda, Dhiman Roy and Nitish Barman, seeking details about the company, its promoters/directors, information in respect of issue of shares/debentures, copy of offer document, number of applications received, list of allottees, amount of money raised, details of application for listing of securities filed with stock exchange, etc. These letters returned undelivered with the remarks 'left', 'addressee moved', etc. Thus, no information was received from the company and its directors. The information/documents obtained from the Ministry of Corporate Affairs' website (*MCA 21 Portal*) and the documents received along with the investor complaints were examined by SEBI. On an examination of these documents it was observed that –

- i. GAL was incorporated on January 14, 2010, with the ROC, Kolkata with CIN as U01400WB2010PLC141054. Its Registered Office is at 57–F, Purna Das Road, Kolkata–700029.
- ii. Paritosh Panda, Dhiman Roy, Nitish Barman, Satyendra Nath Mondal, Subhra Jyoti Sardar, Sreemon Ghosh, Taslim Arif Khan, Nilima Ponda, Lipika Bhaduri and

Baidyanath Mandal are/were directors in GAL during various periods, as detailed hereinafter.

- iii. From the material available on record (documents/debenture certificates received from investors), it is noted that GAL offered and issued *NCDs* during the Financial Years 2011–12, 2012–13 and 2013–14, details of which are provided below –

Year	Type of Security	Amount Raised (₹ in Lakhs)	Number of Allottees
2011 – 12	Non–Convertible Secured Redeemable Debentures	18.30	139
2012 – 13		15.61	71
Total		*33.91	*210
*Number of allottees and amount raised are taken from the documents received with the investor complaints. The actual no. of allottees and amount mobilized are likely to be much more than the indicated figures.			

- 3) The interim order was served upon Sreemon Ghosh, Nitesh Barman, Subhra Jyoti Sardar and Ramendra Nath Mistry by speed post acknowledgement due. The order sent to the other entities by speed post returned undelivered. Therefore, the order was served upon the company and other noticees by affixing a copy of the order at their last known address. Sreemon Ghosh replied vide letter dated July 21, 2015 and Ramendra Nath Mistry replied vide letter dated July 13, 2015. The company and other noticees did not file their reply. In order to proceed further in the matter, an opportunity of hearing was granted to the Noticees on February 21, 2017 at Kolkata and the same was intimated to the Noticees vide notice dated January 31, 2017. Three directors of the company and one debenture trustee appeared for hearing on February 21, 2017. The directors of GAL, Subhra Jyoti Sardar was represented by Shri Sumit Kumar Tarafdar, Chartered Accountant; Sreemon Ghosh was represented by Advocate Chaitali Bhadury and Baidyanath Mandal was represented Jay Narayan Yadav, Authorised Representative. The debenture trustee Ramendra Nath Mistry was represented by Advocate Dipak Kumar Mukhopadhyay. These entities have also filed their written submissions subsequent to the hearing. As most of the entities did not appear for hearing, one more opportunity of hearing was granted to them. The hearing, initially scheduled on May 5, 2017 at Kolkata was later rescheduled to November 13, 2017. The intimation of the date of hearing in the matter was given to the entities vide notice dated October 26, 2017 and by publishing about it in the Kolkata edition of the English daily ‘Times of India’ and the Bengali

daily 'Anand Bazar Patrika' both dated November 5, 2017. None of the entities appeared for hearing. However, Satyendra Nath Mondal filed his submissions vide letter dated November 29, 2017. As sufficient opportunities have been granted to all the noticees to file their replies and appear for hearing, it was considered appropriate to decide the matter on the basis of material available on record.

4) The summary of replies and oral and written submissions made by Subhra Jyoti Sardar, Satyendra Nath Mondal, Sreemon Ghosh, Baidyanath Mandal and Ramendra Nath Mistry are as follows.

a) Subhra Jyoti Sardar (reply dated September 15, 2016 and March 3, 2017)

- He was appointed as director of the company on January 14, 2010 and resigned from the directorship of the company on March 26, 2012.
- He was aware that the money was being collected by the company. He was not directly involved in debenture issue of the company. It was handled by Paritosh Panda, the Managing Director of the company.

b) Satyendranath Mondal (reply dated November 29, 2017)

- He was a director of the company from its inception till December 26, 2012. Paritosh Panda, the present Managing Director of the company, was looking after the affairs of the company since December 2011, i.e. the time when he was appointed as MD in place of Baidyanath Mondal.
- It has been stated that after receipt of a letter from ROC regarding the issue of debentures a dispute grew in the company. Few directors opposed the idea and left the company in March 2012. This led to a major shift in management of the company.
- The issue of debentures and fund mobilization was done by Paritosh Panda. In this connection a copy of the summary of the board resolution dated May 15, 2012 has been relied upon.

c) Sreemon Ghosh (reply dated July 21, 2015 and October 13, 2016)

- He was appointed as a director of GAL on February 15, 2011 to fill casual vacancy. Copy of Form 32 filed by the company showing him as a director appointed in casual vacancy has been filed. It has been stated that he resigned from the directorship of the

company on March 26, 2012. Copy of the resignation letter dated March 26, 2012 received by Paritosh Panda has been submitted.

- He was not a director when board resolution and other processes for issuing NCDs were held. He is not aware of the financial transaction of the company and the details of debenture holders.
- He lodged a complaint with Lake Town Police Station, Kolkata (GDE No. 164 of April 3, 2013) against the managing director of the company and with RoC to prevent any suspected fraudulent activity.
- The judgment of Hon'ble Supreme Court in KK Ahuja vs. VK Arora (2009) SCC 48 has also been relied upon. It has been submitted that as he was a non-executive independent director of the company, he is not liable for the alleged violations.

d) Baidyanath Mandal (reply dated March 4, 2017)

- He has resigned from the post of Managing Director of the company on December 26, 2011. Copy of resignation letter dated December 26, 2011 accepted by the board of the company has been furnished.
- It has been stated that he was not directly involved in issue of debentures by the company and he had not handled the funds of the company.

e) Ramendra Nath Mistry (reply dated July 13, 2015 and February 24, 2017)

- He is M.Sc., Chemistry and is working as a school teacher since 2005.
- It has been stated by Ramendra Nath Mistry that Paritosh Panda was an old family friend and he assured that the younger brother of Ramendra Nath Mistry will be given an employment in Greenbang Agro Ltd. This assurance by Paritosh Panda lured his father and brother to persuade him to sign on the documents given to him by Paritosh Panda.
- The relationship between his family members and Paritosh Panda started deteriorating in or around July 2011. Thereafter, he had orally requested Paritosh Panda to disassociate his name from the Trust.
- He has not participated in any proceedings of the trust and does not know Durga Ghosh.

- He realized that Paritosh Panda was involved in illegal mobilization of money when people of the area invaded his house clamoring that he is a cheat, has misappropriated money received from public, etc.

5) I have considered the documents available on record. The issue that arises for determination in the present case is whether the offer and issue of NCDs by Greenland Agro to 139 persons in financial year 2011-12 and 71 persons during financial year 2012-13 was a public issue. In this regard, it is observed that section 67 of the Companies Act, 1956 dealt with the conditions and circumstances under which an offer of shares/debentures by a company would be construed as one made to the public. The extract of the relevant provisions of section 67 are as under:

"Construction of reference to offering shares or debentures to the public, etc.

67. (1) *Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*

(2) *Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*

(3) *No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-*

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation.

Provided *that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:*

Provided further *that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)."*

6) For ascertaining whether the issuance of NCDs by GAL would fall within the scope of Section 67 of the Companies Act, 1956, the number of persons to whom offer was made by the

company is crucial. In terms of the first proviso to section 67(3), an offer of shares or debentures made to fifty persons or more would constitute an offer to the public. In this regard, it is noted from the investors' complaints received in the matter that GAL has 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. The number of allottees during the financial years 2011-12 and 2012-13 is more than 49. These details of allottees were compiled by SEBI from the documents provided by the investors. The company and its directors have not provided any details despite being asked to do so. In such circumstances, it is possible that the actual number of allottees/investors could be more. Thus, the issuance of NCDs qualifies to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956.

- 7) From the above, it will follow that such a public issue makes it imperative for GAL to comply with the mandate of Section 73 of the Companies Act. 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.

...."

- 8) As the issuances of NCDs by GAL are deemed to be public issues in accordance with the provisions of the Companies Act, 1956, the same will attract the requirement for such NCDs to be dealt on a recognized stock exchange in terms of Section 73 of the Companies Act, 1956, as stated above. It is noted that the noticees have neither furnished any detail of any application made by them with the stock exchange for listing of securities nor they have denied the

allegation that they have not adhered to the provisions of Section 73 of the Companies Act during the issuance of NCDs. Thus, the noticees have failed to comply with the provisions of section 73(2) of the Companies Act, 1956. In terms of Section 73(2), the company and every director who is an officer in default is jointly and severally liable for repayment of the money raised in breach of provisions of section 73(1).

- 9) With regard to the above, the details of directors of GAL, their dates of appointment and dates of resignation, as available on MCA21 portal, are as under:

Sl. No	Name of director of GAL	Designation	Date of appointment	Date of resignation
1	Paritosh Panda	Managing Director (from December 26, 2011)	January 14, 2010	--
2	Dhiman Roy	Director	December 26, 2012	--
3	Nitish Barman	Director	December 26, 2012	--
4	Satyendra Nath Mondal	Director	January 14, 2010	December 26, 2012
5	Subhra Jyoti Sardar	Director	January 14, 2010	March 26, 2012
6	Sreemon Ghosh	Director	February 15, 2011	March 26, 2012
7	Taslim Arif Khan	Director	March 6, 2012	December 26, 2012
8	Nilima Ponda	Director	March 6, 2012	May 5, 2012
9	Lipika Bhaduri	Director	March 6, 2012	May 5, 2012
10	Baidyanath Mandal	Managing Director	January 14, 2010	December 26, 2011

- 10) It is observed that the contravention has taken place during the financial years 2011-12 to 2013-14. Baidyanath Mandal was the managing director of the company from the date of its incorporation till December 26, 2011. 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 exit of Baidyanath Mandal, and continues to be so. Dhiman Roy and Nitish Barman joined the company as director on December 26, 2012 and continues to hold their positions. Subhra Jyoti Sardar, Sreemon Ghosh, Satyendra Nath Mondal, Taslim Arif Khan, Nilima Ponda and Lipika Bhaduri were Directors in GAL during the time when the company offered and issued NCDs to the public and it failed to refund the money to the investors in terms of section 73 of the Companies Act, 1956.

11) With regard to submissions of Sreemon Ghosh that he is not liable as he was an independent director of the company and was not involved in the day to day management of the company. It has been also stated that after he became aware of the irregularities, he lodged complaints with the police and with RoC against the managing director of the company to prevent any suspected fraudulent activity. In this connection, it is noted that though he has stated that he has lodged complaints, no documentary proof has been produced to this effect. I find that he was a director during the relevant period when the mobilization of fund in an unlawful manner took place and he has not produced any document to show that he had raised any objection to the unlawful act and acted promptly and diligently as a director. Thus, he is liable for the alleged issue of securities to the public by GAL and to refund the money due to the investors along with other directors.

12) I observe that the GAL ought to have followed the provisions of regulations 4(2), 4(4), 5(2)(b), 6(1), 6(6) and 19(1) of ILDS Regulations in respect of the issuance of the NCDs by them. There is nothing on record to show that they did so. Further, the noticees have also not denied the charge of violation of the said provisions, as stated in the interim order. In view of the same, I conclude that GAL has violated the abovementioned provisions of the Companies Act and ILDR Regulations. Consequently, the company and Noticees nos. 2 to 11, who are/were the directors of GAL during the relevant time, are accountable for such defaults. These provisions are reproduced below:

4. (1)

(2) No issuer shall make a public issue of debt securities unless following conditions are satisfied, as on the date of filing of draft offer document and final offer document as provided in these regulations

(a) it has made an application to one or more recognized stock exchanges for listing of such securities therein.

Provided that where the application is made to more than one recognized stock exchanges, the issuer shall choose one of them as the designated stock exchange: Provided further that where any of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange; Explanation: For any subsequent public issue, the issuer may choose a different stock exchange as a designated stock exchange subject to the requirements of this regulation;

(b) it has obtained in-principle approval for listing of its debt securities on the recognized stock exchanges where the application for listing has been made;

(c) credit rating has been obtained from at least one credit rating agency registered with the Board and is disclosed in the offer document: Provided that where credit ratings are obtained from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document; (d) it has entered into an arrangement with a depository registered with the Board for dematerialization of the debt securities that are proposed to be issued to the public, in accordance with the Depositories Act, 1996 and regulations made thereunder.

(3) The issuer shall appoint one or more merchant bankers registered with the Board at least one of whom shall be a lead merchant banker.

(4) The issuer shall appoint one or more debenture trustees in accordance with the provisions of Section 117B of the Companies Act, 1956 (1 of 1956) and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.

6. (1) No issuer shall make a public issue of debt securities unless a draft offer document has been filed with the designated stock exchange through the lead merchant banker.

(6) A copy of draft and final offer document shall also be forwarded to the Board for its records, [along with regulatory fees as specified in Schedule V] simultaneously with filing of these documents with designated stock exchange.

19. (1) An issuer desirous of making an offer of debt securities to the public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) of section 73 of the Companies Act, 1956 (1 of 1956).

- 13) Having decided as above, I now proceed to decide the next issue which pertains to refund of the money mobilized by GAL from investors. I observe that as per the provisions of Section 73 (2) of the Companies Act, in case of company not having applied for permission for listing of shares or debentures on a stock exchange, the amount mobilized from the applicants for issuance of such shares or debentures has to be refunded to the applicants within eight days. Further, the said clause provides that in case of any delay in refund beyond eight days, 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 being 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. Thus, I hold that in terms of the provisions of Section 73(2), the company and its directors

(Noticee nos. 1-11) are jointly and severally liable to refund the principal amount along with 15% interest per annum calculated from the date of deposit with company till the date of refund to holders of NCDs.

- 14) The interim order also mentions that GAL created a charge of ₹30 Crore on the moveable and immovable assets of the company on December 30, 2010 and appointed Rural Economic Welfare Trust, represented by Durga Ghosh and Ramendra Nath Mistry, as Debenture Trustee for the offer and issue of NCDs by the company, without having registration from SEBI in contravention of the provisions of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustees Regulations, 1993. Regulation 7 of the Debenture Trustees Regulations specifically provides that a person shall not act as a debenture trustee unless it is either a scheduled commercial bank or a public financial institution within the meaning of section 4A of the Companies Act, 1956; or an insurance company; or a body corporate. Rural Economic Welfare Trust does not belong to any of these categories and is not registered with SEBI. Ramendra Nath Mistry has stated that he was persuaded to sign the documents related to formation of trust by his family members as they were lured by the prospect of job offered by Paritosh Panda. In this regard, it is noted that he was well educated and in the circumstances in which he was, it cannot be accepted that he was not aware about the consequences of his actions. I thus find that Rural Economic Welfare Trust, represented by Durga Ghosh and Ramendra Nath Mistry, have violated the provisions of Section 12(1) of the SEBI Act by acting as a debenture trustee without holding a valid certificate of registration as such.

Directions:

- 15) In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992, hereby issue, with immediate effect, the following directions:-
- (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;

- (b) The refund as directed hereinabove shall be made through banking channels such as demand draft or electronic mode of transfer and a trail of such refunds shall be maintained by GAL and its directors for verification, if necessitated at a later date;
 - (c) Within seven days of completion of refund as directed hereinabove, GAL shall file a certificate of such completion with SEBI from two independent Chartered Accountants after proper verification of the details of all such refunds from records including bank accounts and after being satisfied that the refund to all the debenture holders has actually been made.
 - (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.
- 17) The debenture trustees, Durga Ghosh and Ramendra Nath Mistry, shall refrain from acting as a debenture trustee of Rural Economic Welfare Trust and shall not take up any new assignment in a similar capacity, involving issues of securities, in future. Further, Durga Ghosh and Ramendra Nath Mistry 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 herself, with any listed public company or any public company which intends to raise money from the public,
for a period of one year from the date of this order.

18) This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.

19) Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order may also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on the companies and directors.

Place: Mumbai

Date: June 15, 2018

G. MAHALINGAM

WHOLE TIME MEMBER