

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S K MOHANTY, WHOLE TIME MEMBER

ORDER

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

In respect of:

Sr. No.	NOTICEES	DIN/CIN	PAN
1.	PRITI RANI CHOWDHURY	01717301	AGUPC5065H
2.	AJOY PAUL	06707622	AMPPP5677D
3.	KUNTAL BHATTACHARJEE	06584522	AQMPB2700Q
4.	SUMANTA MODAK	06565449	AMHPM3794L
5.	LITAN SAHA	06826108	CCQPS8194F
6.	TAPAS KUMAR MONDAL	06828781	AUHPM9905D
7.	SHASHI KANT DUBEY	06828777	AGUPD7570Q

In the matter of Bishal Agri-Bio Industries Ltd.

(The aforesaid entities are hereinafter individually referred to by their respective names/Noticee nos. and collectively as "Noticees", unless the context specifies otherwise)

BACKGROUND

1. The genesis of the present proceedings can be traced to a complaint dated September 8, 2014, against Bishal Agri-Bio Industries Limited (hereinafter referred to as "**Bishal /Company**"). In the said complaint, it was alleged *inter alia* that the *Company* is
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mobilizing funds from general public. Securities and Exchange Board of India (hereinafter referred to as “SEBI”), examined the records of the *Company* as filed with Ministry of Corporate Affairs (hereinafter referred to as “MCA”), as accessible through MCA21 Portal.

2. Based on the examination of the said records, it was unearthed that during the Financial Year 2011-12, the *Company* has issued and allotted *Redeemable Preference Shares* (hereinafter referred to as “RPS”), to the public at large, details of which are as under:

ALLOTMENT DETAILS OF REDEEMABLE PREFERENCE SHARES-

TABLE I - DETAILS OF REDEEMABLE PREFERENCE SHARES ISSUED		
FINANCIAL YEAR	NO. OF ALLOTTEES	VALUE OF ALLOTMENT (₹)
2011-12	284	3,00,00,000

3. It was observed during the aforesaid examination that the instruments issued by the *Company* were ‘securities’ in terms of Section 2 (h) of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “SCRA”). The records available further reveal that securities issued in the nature of *RPS* by the *Company* were offered and allotted to more than 49 persons and the offer of such securities to more than 49 persons were against the norms prescribed under Companies Act, 1956, governing the issuance of securities and accordingly were found to be having the character of a public issue. It was thus noticed that the *Company* and its Directors have contravened and violated Section 56, Section 60 read with Section 2(36) and Section 73 of the Companies Act, 1956, as the norms governing issuance of securities to public were not complied with. Accordingly, considering the material available on record, it was thought fit that the matter require urgent intervention in order to protect the interest of investors and therefore SEBI vide *interim* order dated May 06, 2015 (hereinafter

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referred to as “**the 1st interim order**”) issued directions against the *Company* and its Directors viz., Shri Madhab Chandra Purkait, Shri Gautam Kumar Halder, Shri Mohd Kalimullah Baidya, Shri Ram Kumar Sinha, Shri Sushant Kumar, Shri Sachin Kumar Thakur, Shri Sankar Bhattacharjee, Shri Chandan Shah, Shri Ratan Chowdhury and Smt. Shima Chowdhury.

4. Vide the above mentioned *1st interim order*, the *Company* and its Directors were restrained from raising money from the investors and also were called upon to show cause as to why suitable directions including directing them jointly and severally to refund money collected through the offer of *RPS* along with interest, should not be issued against them.
5. The proceedings emanating from the *1st interim order* ultimately culminated into passing of a final order dated May 16, 2016 (hereinafter referred to as “**the final order**”), wherein, *inter alia*, following directions were issued:

- a) *Bishal Agri-Bio Industries Limited, Mr. Madhab Chandra Purkait, Mr. Gautam Kumar Halder, Mr. Mohd Kalimullah Baidya, Mr. Ram Kumar Sinha, Mr. Sushant Kumar, Mr. Sachin Kumar Thakur, Mr. Sankar Bhattacharjee, Mr. Chandan Shah, Mr. Ratan Chowdhury and Smt. Shima Chowdhury*, jointly and severally, shall forthwith refund the money collected by the *Company* through the issuance of Redeemable Preference Shares (which have been found to be issued in contravention of the public issue norms stipulated under the Companies Act, 1956), to the investors including the money collected from investors, till date, pending allotment of securities, if any, with an interest 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) *The repayments to investors shall be effected only in cash through Bank Demand Draft or Pay Order.*

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- c) *The Company/its present management are permitted to sell the assets of the Company only for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalised Bank.*
- d) ***The Company and its directors** shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including details of contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect...."*

6. While conducting the quasi-judicial proceedings that led to the passing of *final order*, it was observed that, apart from the above named Directors of the *Company* as held liable in the *1st interim order*, there were also certain other Directors of the *Company* (*Noticees* in present proceedings), against whom no directions were issued in the *1st interim order* although the said Directors were also *prima facie*, viewed as responsible for the violations of provisions under Section 56, 60, 67 and 73 of the Companies Act, 1956. Accordingly, in the above mentioned *final order*, it was also directed that:

"As the refunds are not made, SEBI is advised to examine the role of the aforesaid persons and initiate appropriate action against them, in accordance with law, including issuance of a show cause notice calling upon them to show cause as to why, suitable directions including the following should not be imposed upon them:

a. directing them jointly and severally to refund the money collected through the issue of RPS (as found to be unauthorisedly issued in this Order), along with interest at 15% per annum from the date when the refunds became due to the investors till the date of repayment;

b. directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;

c. directions restraining them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period;

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d. directing them and other companies in which they are directors/promoters holding substantial or controlling interest, to not access the capital market for an appropriate period.”

7. In compliance with the aforesaid directions issued in the *final order*, SEBI, undertook examination of the role of the *Noticees* (in the present proceedings) so as to determine their liabilities. Based on the outcome of the said examination, another *interim order* dated October 10, 2018 (hereinafter referred to as “**2nd interim order**”) was passed. In the *2nd interim order*, the details of the directorship of the *Noticees* with the *Company* have been recorded as under:

TABLE II						
	NAME OF THE PERSON	CAPACITY	DIN	PAN	DATE OF APPT.	DATE OF CESSATION
1.	PRITI RANI CHOWDHURY	DIRECTOR	01717301	AGUPC5065H	30.06.2008	18.02.2014
2.	AJOY PAUL	DIRECTOR	06707622	AMPPP5677D	9.10.2013	26.03.2014
3.	KUNTAL BHATTACHARJEE	DIRECTOR	06584522	AQMPB2700Q	10.02.2014	26.03.2014
4.	SUMANTA MODAK	DIRECTOR	06565449	AMHPM3794L	10.02.2014	26.03.2014
5.	LITAN SAHA	DIRECTOR	06826108	CCQPS8194F	18.02.2014	26.03.2014
6.	TAPAS KUMAR MONDAL	DIRECTOR	06828781	AUHPM9905D	24.03.2014	10.06.2014
7.	SHASHI KANT DUBEY	DIRECTOR	06828777	AGUPD7570Q	24.03.2014	10.06.2014

8. Further, the *2nd interim order* records the following observations with respect to the role and responsibility of the *Noticees*:

“10. I note that the person at serial no. 1 of Table II was the Directors of Bishal Agri-Bio during the period of money mobilization by the Company. The person at serial nos. 2–7 of Table II were Directors of Bishal Agri-Bio, post the fund-mobilization by the Company. Upon a consideration of paragraph 3 of this Order, I find that the aforementioned entities are responsible for the offer and allotment of Redeemable

Preference Shares made by Bishal Agri-Bio in violation of the Public Issue requirements. I also find that the entity at sr. no. 1 of Table II is liable for refund of money to investors to whom such offer and allotment of Redeemable Preference Shares was made by Bishal Agri-Bio. In the light of the aforesaid, I find this to be a fit case to pass interim directions against the aforesaid Director of Bishal Agri-Bio."

9. The 2nd interim order, based on the aforesaid *prima facie* findings, goes on to issue the following directions under Para 11 of the 2nd interim order:

- i The Directors of Bishal Agri-Bio, viz. Priti Rani Chowdhury, Ajoy Paul, Kuntal Bhattacharjee, Sumanta Modak, Litan Saha, Tapas Kumar Mondal and Shashi Kant Dubey, shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves with any listed company or company intending to raise money from the public;*
- ii Priti Rani Chowdhury shall neither dispose of, alienate or encumber any of her assets nor divert any funds raised from public through the offer and allotment of Redeemable Preference Shares;*
- iii The abovenamed Directors of Bishal Agri-Bio shall co-operate with SEBI and shall furnish all information/documents in connection with the offer and allotment of Redeemable Preference Shares sought vide letter dated December 28, 2017.*

10. The aforesaid directions against the *Noticees* were issued upon consideration of the material available on record. Further, in order to ensure protection of interest of investors as well as to provide opportunity of a fair trial to the *Noticees*, the *Noticees* were also called upon vide the 2nd interim order to show cause as to why suitable directions should not be issued/imposed on them, including the following directions, viz. –

- i. To jointly and severally refund the money collected through the offer and allotment of Redeemable Preference Shares, 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 till the date of actual payment), supported by a Certificate of two independent Chartered Accountants to the satisfaction of SEBI (to be submitted to SEBI within 7 days of completion of the refund); and

ii. To be restrained/prohibited from accessing the securities market and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of effecting the refund as directed above read with the Final Order dated May 16, 2016.

11. I note that the *Noticees* were granted time of 21 days from the date of receipt of the 2nd interim order, to file reply and a time of 90 days to avail opportunity of personal hearing, failing which, the 2nd interim order has recorded that the *prima facie* findings recorded against the *Noticees* in the said 2nd interim order would become final *qua* the *Noticees* without any further orders, and the directions issued therein as reproduced under para 9 and 10 above, shall become absolute.

12. From the records, I note that the copy of the 2nd interim order was served on *Noticee* nos. 2, 4 and 7 by hand delivery whereas the service on remaining *Noticees* viz., *Noticee* nos. 1, 3, 5 and 6 could be effected by way of newspaper publication carried out in The Times of India, The Anandabazar Patrika and Sanmarg, in the editions dated May 02, 2019, as the same could not be served due to the following reasons:

Noticee No.	Details of the Noticee	Remarks
1	Priti Rani Chowdhury 56, Central Road, Kolkata, W.B.-70032	Noticee left the address
5	Litan Saha	Noticee left the address. Current occupant did

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	155, Sarkari Palli, Bansberia Municipality, P.S. – Mogra, Distt.- Hoogly, Kolkata, W.B.- 712502	not allow affixation.
6	Tapas Kumar Mandal Natun Pally Purbo Para Rajpur Sonapur, South 24 Parganas South, W.B.- 700150	Noticee not found at the address

13. I note that despite effecting the service of the said *2nd interim order* on all the *Noticees*, only *Noticee nos. 3, 4 and 7* have filed their written replies, the rest of the *Noticees viz., Noticee nos. 1, 2, 5 and 6* have neither filed any reply nor have they requested for personal hearing before me, hence the directions contemplated to be issued in the *2nd interim order* have now become absolute and final *qua* them (*Noticee nos. 1, 2, 5 and 6*).

14. I further note that *Noticee no. 3 (Kuntal Bhattacharjee)* has filed a written reply dated December 10, 2018 and also has filed a written submission dated February 18, 2020 followed by an amended submission vide email dated September 29, 2020. It has been submitted by the *Noticee no. 3* that:

- i. The allegations made against him are baseless.
- ii. He was appointed as a Project In-Charge in Bishal Distilleries on September 21, 2010. Subsequently, he was appointed as a Director of the *Company* for the limited period of February 10, 2014 to March 26, 2014. Reliance has been placed on the order dated August 09, 2019, passed by Hon'ble Securities Appellate Tribunal (hereinafter referred to as "*SAT*"), in the matter of *Sayanti Sen Vs. SEBI*, to contend that every Director should not be penalized for the acts of the company.
- iii. During the period of his Directorship, no violation has been alleged to have been committed by the *Company* and therefore no liability should be fastened against him.

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- iv. He has not utilized any money belonging to the *Company* for his personal use.
- v. He has repaid some money to the creditors/depositors of the *Company*, out of his own source of funds.
- vi. The liabilities of Bishal Group of Companies were handed over to G.R. Agro Projects Ltd., through a meeting presided over by Shri Shankar Bhattacharjee (Chairman), and it's now the liability of G.R. Agro Projects Ltd., to refund the money.
- vii. Newspaper publications for returning the money to the depositors have been carried out in various newspapers like "The Telegraph Calcutta", on June 13, 2014; "Sangbad Pratidin" on June 18, 2014 by G.R. Agro Projects Ltd. and "Bartaman" on December 20, 2014 by Bishal Group Welfare Trust Limited.
- viii. A public notice dated July 07, 2014 was issued by the *Noticee no. 3* in "Business Standard" and another public notice dated June 06, 2014 was issued in "Dainik Statesman" and "Dainik Lipi", declaring that the *Noticee no. 3* is not connected with companies including Bishal Agri Bio Industries Limited w.e.f. June 05, 2014. It was further stated in the said public notices that G.R. Agro Project Limited may be approached by anyone having interest/claim against the companies including Bishal Agri Bio Industries Limited.
- ix. In terms of the Chakadha P.S. Case no. 627/2014 and 698/2015, one Mr. Madhab Chandra Purakit, while acting as a Director of the *Company*, has sold properties belonging to the *Company*. Further, many vehicles have been seized from Mr. Litan Saha by officials of Chakadha P.S.
- x. As he is not associated with the *Company* anymore, he has no submission to offer regarding the selling off the properties of the *Company* to pay the investors of the *Company*.

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- i. Similarly, *Noticee no. 4 (Sumanta Mondak)* had filed his reply dated December 21, 2018 and then a written submission dated February 18, 2020 followed by another amended written submission vide email dated September 29, 2020. *Noticee no. 4* has made almost identical submissions, as have been made by *Noticee no. 3*, with the one factual variance that he was appointed as an employee in Bishal Group of Companies in the year 2012. Subsequently, he was appointed as Director of the *Company* for the period of February 10, 2014 to March 26, 2014.
15. *Noticee no. 7 (Mr. Shashi Kant Dubey)* in his written reply vide letter dated December 28, 2018 has submitted *inter alia* that:
- i. He was working as an agent of Bishal Group of Companies since January, 2011. He has also made certain investments in different group companies of Bishal Group.
 - ii. He was appointed as Director of the *Company* for the period of March 24, 2014 to June 10, 2014. He is not having any knowledge with respect to responsibilities of a Director nor was he involved in any of the matters of the *Company* except for working as a commission agent during that period.
 - iii. He has not attended any Board Meeting nor has received any salary.
 - iv. The Bishal Group of Companies defaulted on payment of maturity amount due to the investors from December, 2013.
16. Since the aforesaid three *Noticees* have responded to the 2nd *interim* order by making written submissions. *Noticee nos. 3, 4 and 7*, were granted opportunity of personal hearing on January 21, 2020, which was rescheduled to February 07, 2020. On the said date of hearing, the counsel for the *Noticee nos. 3 and 4* appeared before me and requested for adjournment on the ground of non-availability of the arguing counsel. In view of the request made, the personal hearing in the matter was re-fixed on July 21, 2020, but again on that day, a request for adjournment was made on behalf of
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Noticee nos. 3 and 4 on two grounds viz.: that the arguing counsel is suffering from health issues and that an application for obtaining certified copy of certain documents have been filed in the month of February, 2020 have not been received on account of imposition of lockdown owing to Covid-19. It was further submitted that the said documents are essential to counter the allegations made against the *Noticees* in the SCN. The counsel was advised to provide certain details and in the interest of justice, one last opportunity of personal hearing was granted to them and hearing was adjourned to August 16, 2020 with the consent of the said *Noticees*.

17. Accordingly, on August 16, 2020, the Authorized Representatives (AR) of the *Noticee nos. 3 and 4* appeared before me through Video Conferencing and made oral submissions on the lines of the replies already filed on behalf of the aforesaid *Noticees*. During the said hearing, the AR also referred to certain documents, claimed to be pertaining to attachment of vehicles belonging to the *Company*. Based on the submissions made by the AR during the course of personal hearing, certain queries were raised and the AR was also advised to file certain documents viz., the resignation letter as Director(s) from the Board of the *Company* & copy of relevant MCA records; details of mode of acquisition of liabilities of the *Company* by G. R. Agro and other documents like copy of agreements, balance sheets, valuation reports etc. Subsequently thereafter, the AR, vide his email dated August 31, 2020, sought time to file the documents stating that the *Noticees* are yet to provide him the requisite documents. Later on, vide email dated September 14, 2020, the aforesaid *Noticees* were once again advised to provide the requisite documents as called for during their personal hearing. In response thereto, vide email dated September 29, 2020, the Authorized Representative filed amended written submissions on behalf of the said *Noticees*.

18. From the perusal of the said amended written submissions, it is noted that apart from providing certain additional information regarding seizing of vehicles, they are conspicuously silent on various other items of information which were specifically called from the *Notices* and to furnish those documents, the *Notices* were granted adjournment of personal hearing scheduled on July 21, 2020, as they had submitted that the required documents are not available for which they needed some more time. Nevertheless, I have to proceed on to conclude my observations based on the materials available to me from the records and by the *Notices* during the course of proceedings.

CONSIDERATION OF ISSUES AND FINDINGS:

19. In the present proceedings, the limited issue that arises for my consideration is to determine the liabilities of the *Notices* herein towards the violations committed by the *Company* which have been recorded in the *final order* dated May 16, 2016-. The said findings are reproduced hereunder for ready reference: “...*In view of the above observations, I conclude that the Company made a public offer and issued RPS during FY 2011-12 without complying with the provisions of sections 56, 60 and 73 of the Companies Act, 1956 and mobilized funds to the tune of Rs.3 crore...*”

20. Before me, nothing has been produced to suggest that any challenge/appeal has been made by any of the *Notices* who were named in the *final order* dated May 16, 2016 and on the basis of which 2nd *interim order cum SCN* was passed, against the present *Notices*. In view thereof, the findings of the said *final order* have attained finality. Therefore, the limited scope of the instant proceedings is to examine the role

and liability of the above named three *Noticees*, who have responded to the allegations made in the 2nd *interim* order cum SCN.

21. As noted earlier, it was stipulated in the 2nd *interim* order that if the *Noticees* do not make out their case by filing replies and/or availing opportunities of personal hearing, the directions as contemplated under the 2nd *interim* order shall become final and absolute. It has been noted above that *Noticee nos. 1, 2, 5 and 6* have failed to file any reply and therefore the directions issued to them in the 2nd *interim* order which have been reproduced at para 10 above, have now become final and absolute against them, in terms of the mandate of 2nd *interim* order.
22. However, only *Noticee nos. 3, 4 and 7* have filed their respective replies to the allegations made under the 2nd *interim* order and only *Noticee no. 3 and 4* availed the opportunity of personal hearing to present their case, I proceed to deal with the submissions made and arguments advanced by the said *Noticees*, in their defense.
23. I find that the only question that merits consideration before me is whether *Noticee nos. 3, 4 and 7* in the present proceedings in their respective role as Directors of the *Company* are liable for issuance of directions against them as contemplated at para 12 of the 2nd *interim* order and have also been reproduced at para 10 above in this order.
24. The available records on MCA 21 Portal show that these three *Noticees* before me were Additional Directors of the *Company* during the FY 2013-14 and 2014-15, whereas the *RPS* issue was made by the *Company* in the FY 2011-12. Their directorship on the Board of the *Company* including tenure thereof has already been elucidated in the 1st *interim* order and none of these Directors has disputed the same. The main submissions made on behalf of *Noticee no. 3 and Noticee no. 4* are that they were employed with the Bishal group of Companies in different functional areas/job

profiles as employees, whereas *Noticee no. 7* has claimed to be agent of the *Company*, and were not holding the post of Director at the relevant time of issuance of *RPS* by the *Company*. It has also been argued that though they held the post of Directorship of the *Company*, the same was for a very brief period of a few months only and during the said periods, they did not participate in any Board processes which were related to the violations alleged against the *Company*, so as to be held personally liable for the same. It has been further argued that Mr. Ratan Chowdhary (*Noticee no. 10 to the final Order*), was the Managing Director of the *Company* and was the sole in-charge of the *RPS* issue and the above *Noticees* had no say in the management of affairs of the *Company*. The *Noticees* have submitted that even though they were holding the post of Directors, they were not associated with the conducting and managing the affairs of the *Company* in any manner. In any case, the *Noticee nos. 3, 4 and 7* have undisputedly held the post of Directors of the *Company* only during the period of post issuance of *RPS*, as has already been stated in the preceding part of this order.

25. It is also noted that vide *final order* dated May 16, 2016, the *Company* and other *Noticees* have been found to have indulged in activities in violations of Section 56, 60, 67(3), 73(1) and 73(3) of Companies Act, 1956. The said *final order* also held categorically that the *Company* has issued *RPS* to 284 persons and raised money amounting to INR 3.00 Crore during F.Y. 2011-12. I find that the said findings have not been assailed before any court of law and have attained finality. I further note that even the *Noticees* before me have not denied or disputed the issuance of *RPS* and mobilization of funds as mentioned above. I note that the public issue of *RPS* by the *Company* falls squarely within the scope of Section 67 of the Companies Act, 1956 since, 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 and in this case, undisputedly the *Company* has on record issued RPS to 284 persons.

26. As stated above, the *Company* till date has not preferred to file any appeal against the findings recorded against it in the final order which remains un-assailed. The submissions of the *Notices* in the present proceedings center around the contentions that they were neither holding the post of Directors nor were involved in the management and other business affairs of the *Company* during the relevant point of time when the *RPS* were issued hence, they should not be held accountable for the alleged violations committed by the *Company* while mobilizing funds through issuance of *RPS*. Against the aforesaid background, the limited issue that remain for consideration here is the determination of liability of the said *Notices*, in their respective capacity of Directors of the *Company*, for a period of few months during the post *RPS* issuance period.
27. From a conjoint reading of the provisions of law prescribed under Sections 56, 60, 67 and 73 of the Companies Act, 18956, it is noted that in case of public offer, the provisions relating to public issue such as filing of prospectus, listing of securities and consequence of failure to get the securities listed on the Stock Exchange etc., as provided under Section 73 of the Companies Act, 1956 come into play. Section 73 provides that where the permission has not been applied for, or such permission having been applied for has not been granted, a company shall forthwith repay without interest all the moneys received from the applicants (of securities) 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, become jointly and severally liable to repay that money with interest.

28. Having considered the above facts and the provisions of relevant law governing public issues of securities under the Companies Act, 1956 I find it appropriate to seek guidance from the judicial decisions in order to determine the liability of a person holding the responsible post of Director in the Company. As the issue in hand pertains to mobilization of fund in contraventions of provisions of law as stated above, as a consequence, the matter deserves consideration from the point of view of refund of the funds so mobilized, and the relevant provisions of law dealing with the same are provided under Section 73 (2) read with Section 5 of the Companies Act, 1956. In this regard, it is relevant to mention here that the issue of liability of 'Officer in Default' as provided under Section 5 of the Companies Act, 1956 also came up for consideration before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") in the matter of *Pritha Bag v. SEBI* [Appeal no. 291/2017 – DoD February 14, 2019] wherein it has been held that, "*....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. ...Reliance on the judgment of this Court by the respondent in the case of Manoj Agarwal vs. SEBI in Appeal No. 66 of 2016 decided on July 14, 2017 is not applicable and is distinguishable. The Tribunal in the case of Manoj Agarwal found that there was no material to show that any of the officers set out in clauses (a) to (c) of Section 5 or any specified director of the said company was entrusted to discharge the application contained in Section 73 of the Companies Act. In the instant case, there is sufficient material on record to show that there was a managing director and in the absence of any finding that the appellant was entrusted to discharge the application contained in Section 73 of the Companies Act, the direction to refund the amount along with interest from the appellant is wholly illegal....*"
29. I find that in the instant matter, the aforesaid Noticees, have submitted that Mr. Ratan Chowdhary, who was a Director of the Company during the period June 30, 2008 to

February 18, 2014 was acting as the Managing Director, and later on Mr. Chandan Shah became the Managing Director. Though, Noticees have not furnished any document in support of the above claim, however, it is noted from the records that it was Mr. Chandan Shah (Noticee no. 9 to the *final order*), was appointed as Managing Director of the *Company* on December 31, 2012 and he remained as Managing Director as such, till June 10, 2014. It is further noted from the *final order* that subsequently, Mr. Madhab Chandra Purkait (Noticee no. 2 to the *final order*), who was appointed as Director on October 10, 2014, became the Managing Director of the *Company* thereafter. Insofar as the liability of Noticee nos. 3, 4 and 7 is concerned, I note that the Noticee no. 3 and 4 were Directors of the *Company* for a very brief period of February 10, 2014 to March 26, 2014, whereas Noticee no. 7 was Director of the *Company* for another small period of March 24, 2014 to June 10, 2014. As noted above, Mr. Chandan Shah (Noticee no. 9 to the *final order*) was undeniably acting as a Managing Director throughout the period of directorship of Noticee nos. 3, 4 and 7. Therefore, it is clear that the *Company* did have a Managing Director at the time of directorship of the Noticee nos. 3, 4 and 7 with the *Company*. Moreover, it is also a fact that these Noticees were not associated with the Board of the *Company* at the time of mobilization of fund.

30. The factual observations as aforesaid bring clarity to the fact that the Noticee nos. 3, 4 and 7 were not the Directors of the *Company* during the period of issuance and allotment of *RPS* nor were the Directors of the *Company* at the time when orders were passed by SEBI. Without prejudice to the above, it is stated here that they can't be fastened with any liability for refund of money to the *RPS* subscriber by following the ratio laid down by Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of *Pritha Bag v. SEBI* [Appeal no. 291/2017 – DoD February 14, 2019] wherein it has been held that: "...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. "

31. It is also observed that even the law laid down in the case of *Manoj Agarwal vs. SEBI in Appeal No. 66 of 2016 decided on July 14, 2017*, would not be applicable to them as unlike the facts in *Manoj Agarwal* where the company concerned did not have a Managing Director in position, in this case, there was a Managing Director in the Company and admittedly no amount was mobilized during their limited tenure as directors of the Company.
32. Keeping in view the foregoing discussions, I find that the three *Noticees* were admittedly not associated with the *Company* at the time of issuance, allotment or raising of fund by the *Company*, and have joined the Board of the *Company* only in the year 2014 for a brief period. They occupied the post of Director for a period of 2-3 months and have resigned in the year 2014 itself, which is much after the impugned issue of *RPS*. It is also noted that the *1st interim order* was passed in May 2015, and *final order* was passed on May 16, 2016 and by that time, these *Noticees* had resigned from the post of Director of the *Company*. The records before me further don't indicate that any of the three *Noticees* were associated with the management or governance of the *Company* in any manner whatsoever during relevant period. The aforesaid observations of Hon'ble SAT and considering the fact that *Noticee nos. 3, 4, and 7* in the present proceedings were not enjoying association with the *Company* as Directors during the period of unauthorized mobilization of funds from public through *RPS*, nor were holding any post when the orders by SEBI were passed, as they became Directors and further resigned from the Directorship in the year 2014 itself and lastly, considering the fact that these three *Noticees* already are under restraint and prohibited from accessing the securities market by virtue of the 2nd

interim order, I find that it would be sufficient to meet the end of justice that the present proceedings are disposed of without any further directions of debarment *qua* the *Noticee no. 3, 4 and 7* in the matter.

33. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, hereby revoke the directions issued *qua Noticee nos. 3, 4 and 7* vide interim order dated October 10, 2018 and the present proceeding is accordingly disposed of *qua Noticee nos. 3, 4 and 7*.

34. As regards *Noticee nos. 1, 2, 5 and 6*, it has already been held in para 13 of this order that directions issued vide the 2nd *interim* order dated October 10, 2018 cum SCN have become absolute and binding *qua* these *Noticees*.

35. This Order comes into force with immediate effect.

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

-Sd-

S.K. MOHANTY

WHOLE TIME MEMBER

DATE: November 27 , 2020

PLACE: MUMBAI

SECURITIES AND EXCHANGE BOARD OF INDIA

Order in the matter of Bishal Agri-Bio Industries Ltd.