

WTM/AB/ERO/ERO/9380/2020-21

## SECURITIES AND EXCHANGE BOARD OF INDIA FINAL ORDER

UNDER SECTIONS 11, 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH SECTIONS 56, 60 AND 73 OF COMPANIES ACT, 1956

In respect of: -

Sr. No.	Name of the entity	PAN No.
1.	Ms. Sumana Ghosh Roy	AJMPG6892M

(The aforesaid entity is hereinafter referred to as Noticee no. 3)

In the matter of PDS Agro Industries Ltd.

1. SEBI had passed an ex-parte interim order cum show cause notice dated April 26, 2018 (hereinafter referred to as '**the interim order**') against the company – PDS Agro Industries Ltd. (hereinafter referred to as '**PAIL**'/ '**the Company**') and its directors for violation of public issue norms by the Company by issuing *Redeemable Preference Shares* (hereinafter referred to as '**RPS**') to at least 850 investors in the Financial Year 2010-11 and 2011-12, thereby, illegally raising a sum of Rs. 52,82,500/-. The interim order found the Company had *prima facie* violated Sections 56, 60(1) and 73(1) of Companies Act, 1956. For the aforesaid violations, the interim order issued certain interim directions to the Company, its directors and its promoters, which are as under:

- i. *PAIL and its Directors and Promoters, viz. Sunil Kumar Dutta, Sumana Ghosh Roy, Prabir Roy, Dipak Kumar Goswami, Supriti Roy, Alok Kumar Mahato, Dipak Bhattacharya, Ashish Roy, Abhijit Ray, Sanjib Adak, Somenath Sinha, Malay Rajkumar Das, Sudip Kumar Mahato, Santa Chatterjee, Prabir Kumar Chandra, Lakshmi Kanta Mahato, Sudipta Coomar Chanda, Prasanta Kumar Banerjee and Dipak Kumar Das, 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. *PAIL and its Directors, viz. Sunil Kumar Dutta, Sumana Ghosh Roy, Prabir Roy, Dipak Kumar Goswami, Supriti Roy and Alok Kumar Mahato, shall neither dispose of, alienate or encumber any of its /their assets nor*

*divert any funds raised from public through the offer and allotment of Redeemable Preference Shares;*

- iii. PAIL and the above named Directors and Promoters shall co-operate with SEBI and shall furnish all information/documents in connection with the offer and allotment of Redeemable Preference Shares sought vide letters dated February 13, 2017.*
2. The interim order also called upon PAIL and its directors, promoters to show cause as to why suitable directions/ prohibitions under Sections 11, 11(4), and 11B of the SEBI Act, 1992 should not be issued/ imposed, including the following directions, namely:
    - i. PAIL and its Directors, viz. Sunil Kumar Dutta, Sumana Ghosh Roy, Prabir Roy, Dipak Kumar Goswami, Supriti Roy and Alok Kumar Mahato, 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) within a period of 180 days from the date of receipt of this Order, supported by a Certificate of two independent Chartered Accountants to the satisfaction of SEBI; and*
    - ii. The Noticees 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.*
  3. The interim order also provided that in case PAIL, its directors and promoters do not file any reply in 21 days or do not seek opportunity of hearing within 90 days, the *prima facie* findings with respect to violation of public issue norms by the Company would become final and the directions contained in para 2 above would become final and absolute against all the Noticees to the interim order.
  4. I note that none of the Noticees to the interim order, except Noticee no. 3 (Ms. Sumana Ghosh Roy) thereto, either furnished a reply or sought for a personal hearing after receipt of the interim order. Noticee no. 3 to the interim order had filed a reply dated June 20, 2018, which was received by SEBI on June 28, 2018. Noticee no. 3 was granted an opportunity of personal hearing in the

matter on July 27, 2020. Apart from the option of availing the opportunity of hearing at SEBI head office, regional office, or local office, Noticee no. 3 was also given the option to appear through audio-visual web-meeting apps. However, Noticee no. 3, vide her email dated July 15, 2020 had requested for postponement of the hearing on health grounds (due to existing co-morbidities) and had also expressed her inability to attend the personal hearing through audio-visual web-meeting apps. Considering the fact that the ex-parte directions qua Noticee no. 3 vide the interim order were in force for since more than two years and also considering the fact that Noticee no. 3 had expressed here inability to appear through audio-visual web meeting apps as well, hence, in order to avoid further delay in the outcome of the present proceedings, vide letter dated July 20, 2020, Noticee no. 3 was advised to file her reply in the present matter within 15 days i.e. on or before August 5, 2020. In response to same, Noticee no. 3 has filed her reply dated August 4, 2020 by Whatsapp.

5. In her reply dated June 20, 2018, Noticee no. 3 has *inter alia* submitted as under:
  - (i) The subject matter is under Court proceedings, under Hon'ble Justice Sailendra Prasad Talukdar Committee, Kolkata High Court;
  - (ii) On 4<sup>th</sup> June, 2018, she appeared before the Hon'ble Committee and made submissions which were duly recorded by the Committee;
  - (iii) Under the circumstances, I request you to avoid multiplicity of proceedings and keep the passing of order in abeyance till the final order of the Justice S.P. Talukdar Committee is passed.
  
6. In her reply dated August 04, 2020, Noticee no. 3 has reiterated her previous submissions, as made in her reply dated June 20, 2018 and letter dated July 15, 2020 and also furnished copies of minutes of the meetings of Justice S.P. Talukdar Committee held on June 04, 2018, July 30, 2018, November 16, 2018 and February 04, 2019.
  
7. I note that along with her reply dated June 20, 2018, Noticee no. 3 has also enclosed minutes of the meeting of the Justice Sailesh Prasad Talukdar

Committee held on June 04, 2018 wherein *inter alia*, it has been recorded as under:

*“.....Mr. Kaushik Chowdhury appearing as learned Counsel for respondent nos. 24 and 29 files two applications seeking expunging the said two persons from the list of the respondents. Similar prayer was made earlier on behalf of respondent nos. 23, 25 and 28 by learned Advocate, Mr. Soham Bandhopadhyay who earlier appeared for the said respondents. This afternoon Mr. Bandhopadhyay is absent due to indisposition and Mr. Prithwish Kumar Basu appears as learned Counsel for the said respondents. According to learned Counsel Mr. Prithwish Kumar Basu as well as Mr. Kaushik Chowdhury, the said respondents do not have any manner of involvement in the running of the respondent-company and they have nothing to do so as far the present case is concerned. There is no material to the contrary before this Committee. In such circumstances, the plea as made on behalf of the said five respondents be accepted but this does not even remotely suggest that this Committee can expunge their names from the list of respondents in the related writ application. It is, however, open for the said respondents to approach the Hon'ble High Court if they so consider it fit and proper. But so far this committee is concerned, we are not going to initiate any action against the said respondents in absence of any further development.....”*

8. I note that the interim order in the present matter, had already taken note of the Writ Petition No. 626 (W) of 2016 filed before the Hon'ble High Court at Calcutta and accordingly, the interim order had stipulated that:

*“.....Since the matter relating to repayment of investors of PAIL has been taken over by the Committee appointed by the Hon'ble High Court of Calcutta, the directions at paragraphs 4.2 and 4.3 of this Order (reproduced at para 1 and 2 of the present order) shall be subject to the directions of that Hon'ble High Court.....”*

9. I have perused the replies of Noticee no. 3 and also considered the observations of Justice S. P. Talukdar Committee in respect of the role of Noticee no. 3 in the affairs of the Company. These observations have been made by the Committee, in view of the prayer made by the Noticee no. 3 before the Committee and in the absence of anything to the contrary. However, in the present proceedings, as per the material available on record, PAIL was incorporated on April 20, 2010. I note that Noticee no. 3 was a signatory to the

Memorandum of Association of PAIL having subscribed to 4000 shares and was thus a promoter of PAIL. Noticee no. 3 was also the non-executive director in the Company from April 20, 2010 to July 30, 2010. As mentioned above, PAIL had raised Rs. 50,29,300/- during the financial years 2010-11 and Rs. 2,53,200/- during the financial year 2011-12, from the public through issue of RPS, in violation of the provisions of the Companies Act, 1956. Thus, liability of Noticee no. 3 being promoter/director of PAIL, for the violations alleged in the interim order, is liable to be examined.

10. I note that Hon'ble SAT, in its order dated February 14, 2019 passed in the matter of Pritha Bag v. SEBI (Appeal no. 291 of 2017) had observed that liability for refund under Section 73(2) of the Companies Act, 1956, lies on the company alongwith the director who is officer in default as per Section 5 of the Companies Act, 1956. From the records available on MCA 21 Portal, I find that Noticee no. 3 was appointed as non-executive director in PAIL on April 20, 2010 and remained so till July 30, 2010. I also note that during the same period when Noticee no. 3 was the non-executive director, Mr. Prabir Roy (Noticee no. 4 to the interim order) was the Managing Director of PAIL. Thus, I find that Noticee no. 3 was not the 'officer in default' in terms of Section 5 of the Companies Act, 1956. Moreover, as noted in the interim order, refund to the investors of PAIL is being looked into by Justice S. P. Tallukdar Committee. Hence, Noticee no. 3 is not liable for refund in terms of Section 73(2) of the Companies Act, 1956.

11. With respect to the the findings in the interim order on violations of Section 56 and Section 60(1) of the Companies Act, 1956, I find that Noticee no. 3 has not raised any contention or denied her role in that context, as a promoter/director. I also note that Noticee no. 3 was one of the promoters of PAIL and she was the non-executive director in the Company from April 20, 2010 to July 30, 2010. There are findings regarding illegal money mobilisation by the Company, in the interim order which have become final against PAIL and its other directors/promoters. The violations of the provisions of law by the Noticee no. 3, viz: Sections 56 and 60 of the Companies Act, 1956, has prejudicially affected the interest of investors and the securities market. Therefore, I find that

though Noticee no. 3 may not be liable for refund but she is liable for directions under SEBI Act, 1992.

12. In view of the above, I, in exercise of powers conferred upon me under Sections 11 and 11B of the SEBI Act, 1992 read with Section 19 thereof, hereby direct that Ms. Sumana Ghosh Roy (Noticee no. 3 to the interim order) shall be refrained/prohibited from accessing the securities market by issue of prospectus/ offer document/ advertisement or otherwise in any manner whatsoever, and shall be refrained/prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of 3 years. The period of restraint/prohibition already undergone by Noticee no. 3 in terms of the interim order shall be set off against the period of restraint/prohibition imposed by this order.

13. The Order shall come into force with immediate effect.

14. Copy of this Order shall be forwarded to the Noticee no. 3, recognised stock exchanges, depositories and RTA's of all Mutual Funds for information and necessary action.

15. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/ concerned Registrar of Companies, for their information and necessary action with respect to the directions/restraint imposed above against the director of the Company.

Sd/-

**Date: October 07, 2020**  
**Place: Mumbai**

**ANANTA BARUA**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**