

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

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

In the matter of Merlin Agri Projects India Limited

In re Deemed Public Issue Norms

In respect of:

Sl. No.	Name of the Entity	PAN
1	Mr. Touhid Alam	AGMPA8959J

Background

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) passed a Final Order dated July 18, 2018 in the matter of Merlin Agri Projects India Limited (hereinafter referred to as “Merlin”/ “Company”). In the said Order, it was held that Merlin had engaged in fund mobilizing activity from the public, through the offer of Redeemable Preference Shares (Merlin had made an offer of Redeemable Preference Shares during the financial years 2011-2012 and 2012-2013 and raised at least an amount of ₹ 50,78,000/-) and has contravened the provisions of Sections 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) of the Companies Act, 1956. Since the company and its Directors did not adhere to the norms governing the issue of securities to the public and made repayments as directed under Section 73(2) of the Companies Act, 1956, they were directed to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the company and its Directors and Promoters, to safeguard the interest of the investors

who had subscribed to such Redeemable Preference Shares issued by the company, to safeguard their investments and to further ensure orderly development of securities market, appropriate directions against them were also issued.

2. During the course of the proceedings, Mr. Touhid Alam (hereinafter referred to as “**Noticee**”) had submitted through letters dated July 28,2017 and December 29,2017 that he was shocked that he has been shown as a Promoter of Merlin and that he was not the Promoter of the company. He suspected that persons involved in the business had done it fraudulently and that his signature has been forged in Articles of Association and Form 22A.
3. In view of the submission of the Noticee, the final order made the following observation with respect to his submission:

“76. I find that though Shri Touhid Alam has contended that he is not the promoter of the Company, however, he has not provided proof showing that his signature has been forged, etc. by way of signature verification report by expert in signature verification recognized or registered or accredited by Government of India or State Government etc. I note that Shri Touhid Alam has been listed as subscriber to the MoA, therefore, he is the promoter of the Company and is liable as promoter for the Offer of RPS against the norms of deemed public issue. Therefore, he is liable to be debarred for an appropriate period of time. However, considering his submissions, this order will take effect as final order against Shri Touhid Alam on the expiry of 90 days from the date of service of this order against him, unless he, within such period of 90 days from the date of service of this order provides proof in support of his submissions. If no proof is provided, the Interim order dated June 23, 2017 shall continue against him till the time of said ninety days period, after which this order will come into effect. If proof is filed by him, the Interim order dated June 23, 2017 shall continue qua him till disposal of the said objections qua him and the directions passed herein against Shri Touhid Alam shall be made applicable subject to the determination on the objections.”

4. The said Order, *inter alia*, made the following findings qua the Noticee:

“...88. In view of my findings recorded at paragraph 76, this order will take effect as final order against the said Shri Touhid Alam on the expiry of 90 days from the date of service of this order against him, unless he, within such period of 90 days from the date of service of this order provides proof in support of his submissions...”

5. Pursuant to the aforesaid Final Order, the authorised representative of the Noticee Mr. Rumeli Sarkar, (hereinafter referred to as “**AR**”) vide his letter dated September 17, 2018 submitted additional reply in the matter, *inter alia* making the following submissions:
 - a. The Noticee has never given his consent to be the Promoter of the company and has never signed any documents required for being promoter of the company.
 - b. The signature of the Noticee has been fraudulently obtained.
 - c. The Noticee had approached a handwriting expert and document examiner to cross verify his signature to those found in the documents available with MCA. It is submitted that the report given by the document examiner confirms that the signature of the Noticee has been fraudulently obtained so as to reflect him as the Promoter of the company.

Consideration & Findings

6. I have considered the material available on record including Order dated July 18, 2018 and the submissions of the Noticee.
7. I note from the Order dated July 18, 2018 that Merlin had issued and allotted Redeemable Preference Shares (hereinafter referred to as “**RPS**”) worth ₹ 50,78,000/- to 56 investors during the financial years 2011-12 and 2012 – 2013. I note that the said Order had on the basis of material available on record, found that Merlin had engaged in fund mobilizing activity from the public, through the offer of RPS and has contravened the provisions of Sections 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) of the Companies Act, 1956. However, the said Order dated July 18, 2018 had not become final qua the Noticee, in light of the direction contained in paragraph 88 of the said order wherein the Noticee was advised to file his objection,

if any. Noticee has not contested on the fact of deemed public issue and the legal liability arising out of failure to comply with the deemed public issue norms.

8. The Noticee has submitted vide his letter dated July 28, 2017 stated that he has been made a promoter of the company “not by my signature”. At the time of hearing held on January 02, 2018, he reiterated that he has never signed the Memorandum of Association. The Noticee has submitted vide his letter dated September 17, 2018 that he has never given his consent to become the Promoter of the company. Vide the said letter dated September 17, 2018, he also set up a new case that his signature had been fraudulently obtained. It is noted from Noticee’s submission that it is one thing to say that the Noticee has not given his consent to be the Promoter of the company and it is altogether a different thing to say that his signature was fraudulently obtained. In effect the Noticee is setting up two contradictory cases in respect of his defense. If the signature has been fraudulently obtained, it would mean it is he who has appended his signature though allegedly fraud was played upon for obtaining his signature. The setting up of this case goes against his defense that he has not signed any document required for being promoter of the Company. The Noticee has not either elaborated how the fraud was played upon him so that his signature was obtained or provided any evidence of fraud played upon him. In view of this non production of any proof of fraud played upon him, the initial leg of his case, that signature was obtained from him still stands, though he has not proved the other leg that it was obtained fraudulently. Without prejudice, keeping in mind the direction passed in the final order dated July 18, 2018, I proceed to examine whether the Noticee has adequately proved his alternate case that the his signature was forged as he states that he has not signed any document required for being promoter of the company.
9. In this regard, I note that the Noticee has submitted an Examination Report from a Document Examiner. I further note from paragraph 76 of the final order dated July 18, 2018 that Noticee’s initial submission that his signature has been forged was not accepted as he had not provided proof by way of signature verification report by expert in signature verification recognized or registered or accredited by

Government of India or State Government. It is noted from the material made available on record that the Noticee has not submitted the credentials of the Document Examiner engaged by him. The Document Examiner also in his report has not stated his credentials for e.g., his qualifications, experience, accreditation etc. On a perusal of the website as mentioned in the report, www.jkconsultancy.in, it is noted that the consultancy is claiming to be government registered, certified and ISO 9001: 2015 certified forensic experts in India. However, the said claim is not substantiated with any documentary proof. In the light of specific finding in the final order regarding submission of signature verification by expert recognized or registered or accredited by Government of India or State Government and the absence of documented credentials of the Document Examiner in that respect, I am not inclined to accept the examination report submitted by the Noticee. In view of this I hold that the Noticee has not substantiated his alternative case of his signature have been forged as well.

10. Therefore, it is held that the Noticee has not been able to substantiate that his signature was fraudulently obtained, or, has been able to substantiate his claim that he has never signed any document required for being a promoter. In view of the same, it is held that the Noticee is the Promoter of the company as his name appears as a subscriber to the MoA.
11. Further, at the time of the hearing, the Noticee was given time to collect information from MCA regarding his name appearing in the MoA as Promoter of the company and submit a reply thereon. However, it is noted from records that the Noticee has not submitted any reply in that respect. Moreover, the Noticee has neither shown the corrective steps taken by him to rectify the records of the company which as claimed by him does not reflect the correct picture nor has demonstrated the steps taken by him pursuant to him becoming aware of the alleged fraud or forgery for e.g., complaint against the company, public notice etc.
12. It has already been held in the final order dated July 18, 2018 that the company has made an *Offer of RPS* against the norms of deemed public issue. Noticee, being the

Promoter is liable for the same.

Order

13. It is noted from paragraph 88 of the final order dated July 18, 2018 that directions contained in paragraph 87 (l) qua Mr. Touhid Alam (PAN: AGMPA8959J) shall take effect after determination of his objections. In view of the finding arrived at paragraph 11, the directions contained in paragraph 87 (l) shall come into force with immediate effect with respect to Mr. Touhid Alam.
14. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents 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 upon Mr. Touhid Alam.
16. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

DATE: December 28th , 2018

PLACE: Mumbai

-Sd-

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA