# BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

**Date of Decision: 17.10.2017**

**Appeal No. 280 of 2016**

Mr. Basir Uddin Khan
C/O Mr. Bahar Ali Khan Ghoshpur,
Khanakul, Hooghly,
West Bengal- 712 613 …Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai -400 051 …Respondent

Mr. Shailesh Kumar, Advocate for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Nishant Upadhyay, Advocate i/b K. Ashar & Co. for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
Dr. C.K.G. Nair, Member

Per: Justice J.P. Devadhar (Oral)

1. This appeal is filed to challenge the order passed by the Whole Time Member ("WTM" for short) of the Securities and Exchange Board of India ("SEBI" for short) on May 10, 2016. By the said order Bharat Krishi Samridhi Industries Limited ("the company" for short) and its directors including the appellant are jointly and severally directed to refund the money collected by the company through the offer and

issuance of Redeemable Preference Shares and Non-Convertible Debentures, to the investors with interest at the rate of 15% compounded as more particularly set out in the said order. By the said order appellant is also restrained from the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly whatsoever in any manner, with effect from May 10, 2016 and the said restraint order shall continue to be in force from May 10, 2016 till the expiry of 4 years from the date of completion of refunds to investors.

2. Appellant was initially working as a supervisor with the company. Appellant became director of the company on June 30, 2011 and continued as director till he resigned from the company on March 01, 2013.

3. It is not in dispute that in the light of the judgement of the Apex Court in the case of Sahara India Real Estate v/s SEBI reported in (2013) 1 SCC Pg 1 issuance of Non-Convertible Debentures/ Redeemable Preference Shares to more than 50 entities without following the public issue norms constitutes violation of the Companies Act, 1956 and also Section 27 of the SEBI Act. Admittedly, the company and its directors have not complied with the public issue norms while issuing the Non-Convertible Debentures/ Redeemable Preference Shares. This Tribunal in the case of Manoj Agarwal v/s SEBI (Appeal No. 66 of 2016 decided on 14.07.2017) has held that where a company fails to follow the public issue norms before issuing Redeemable Preference Shares to more than

50 entities, then all directors of the company are 'officers in default' and in such a case, the company and its directors are liable to refund the amount with interest as per the terms of offer.

4. Counsel for appellant, however, submitted that the appellant was an employee director and he was the first person to lodge a Police Complaint against promoter directors and other key directors of the company on August 01, 2012 who had mismanaged and misappropriated the funds so collected by the company. In such a case, it is submitted that for the illegal activities committed by the company and other directors the appellant could not be held liable.

5. We see no merit in the above contentions.

6. In the present case, it is not in dispute that the company had collected money from the investors by issuance of Non-Convertible Debentures and Redeemable Preference Shares from more than 50 investors without complying with the public issue norms.

7. Admittedly, appellant was a director of the company when the Non-Convertible Debentures/ Redeemable Preference Shares were issued without following the public issue norms. In fact, appellant had signed the offer documents relating to debentures pursuant to the resolution dated March 02, 2012. Thus, the appellant who was party to the issuance of Non-Convertible Debentures and Redeemable Preference Shares

without following the public issue norms is guilty of violating the provisions contained in the Companies Act, 1956 and the SEBI Act.

8. Fact that the appellant was an employee director and the fact that the appellant on August 01, 2012 had filed a complaint against some directors for misappropriation of funds cannot be a ground to exonerate the appellant. It is interesting to note that in the complaint dated August 01, 2012 the appellant had not stated that the amounts were collected by the company was in violation of the Companies Act and the SEBI Act. What is stated in the complaint is that the funds collected by the company are being misappropriated by some of the directors. In such a case, where collection of funds itself is in violation of law, appellant who is party to such illegal collection of funds cannot escape liability merely because he had filed a police complaint against some directors for misappropriation of funds. Accordingly, we see no merit in the arguments advanced on behalf of the appellant.

9. Admittedly, SEBI has attached the bank accounts and assets of the company and other directors. In the facts of present case, we direct SEBI to take immediate steps for disposal of the aforesaid assets already attached by SEBI. If the amount realised on sale of aforesaid assets/ bank accounts is not sufficient for refunding the amount payable to the investors then it would be open to SEBI to implement the impugned order passed against the appellant.

10. Appellant is directed to give list of his assets to SEBI within a period of two weeks from today and the appellant is directed not to dispose of the said assets without the prior approval of SEBI.

11. Appeal is disposed of in the aforesaid terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
Dr. C.K.G. Nair
Member

**17.10.2017**
**Prepared & Compared By: PK**