



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF
GREENSTAR AGRICULTURAL CORPORATION AND LIANYUN GUAN**

**REASONS AND DECISION
(Sections 127 and 127.1 of the Act)**

Hearing: In Writing

Decision: September 18, 2015

Panel: Christopher Portner - Commissioner

Appearances: Tamara Center - For Staff of the Commission

REASONS AND DECISION

- [1] This was a written hearing before the Ontario Securities Commission (the “**Commission**”) pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”) to determine whether it is in the public interest to make an Order against GreenStar Agricultural Corporation (“**GreenStar**”) and Lianyun Guan (“**Guan**” and, together with GreenStar, the “**Respondents**”).
- [2] GreenStar was a holding company which conducted substantially all of its business and operations through its subsidiary, Fujian Pucheng Star of Green Foodstuff Co., Ltd. (“**Fujian Pucheng**”).¹
- [3] Fujian Pucheng’s management and all of its operations are located in the People’s Republic of China (the “**PRC**”). The principal activities of GreenStar and its subsidiaries were agricultural farming and food processing in the PRC.²
- [4] Guan is a resident of the PRC and has been the President, Chief Executive Officer and Chairman of the Board of Directors of GreenStar (the “**Board**”) since May 2011. As at September 30, 2013, Guan beneficially owned or exercised control or direction over 24.7% of the outstanding common shares of GreenStar.³
- [5] Guan has been acting as the sole director and general manager of Fujian Pucheng since 2004.⁴
- [6] On April 28, 2014, GreenStar issued a press release which stated that its annual filings for the fiscal year ended December 31, 2013 would be delayed, and that GreenStar’s auditors would not be able to render an audit opinion by the filing deadline.⁵
- [7] On May 21, 2014, GreenStar issued a press release advising that a Management Cease Trade Order had been ordered by the Commission. Greenstar also advised that GreenStar’s Audit Committee had identified certain corporate governance and administrative deficiencies that had contributed to the delay in the audit, and that the Audit Committee was working with Guan to attempt to resolve all outstanding issues with the audit.⁶
- [8] On June 16, 2014, the Commission ordered that all trading in the securities of Greenstar cease and that Greenstar’s common shares be suspended from trading on the TSX-V. The

¹ Affidavit of Marcel Tillie, sworn May 22, 2015 (the “**Tillie Affidavit**”), at para. 9.

² Tillie Affidavit, at para. 9.

³ Tillie Affidavit, at para. 12.

⁴ Tillie Affidavit, at para. 12.

⁵ April 28, 2014 Press Release, Tillie Affidavit, Exhibit W.

⁶ May 21, 2014 Press Release, Tillie Affidavit, Exhibit X.

British Columbia and Alberta Securities Commissions have also cease-traded GreenStar's shares.⁷

- [9] On September 4, 2014, GreenStar issued a press release stating that it had not been able to complete the audit due to a lack of co-operation from its China-based management team. Greenstar also stated that its Audit Committee's independent investigation had been frustrated by GreenStar's China-based management team. The Board had been unable to confirm the accuracy of numerous material facts concerning the status of GreenStar's business operations due to numerous conflicting representations by Greenstar's China-based management team.⁸
- [10] On September 11, 2014, GreenStar issued a press release stating that GreenStar's Canadian management team had recently discovered that the real property of Fujian Pucheng had been put up for auction by a Chinese financial institution as the result of a judgment granted by the local courts. The press release also stated that Greenstar's Canadian directors had been unable to confirm the facts and circumstances leading to the proposed sale by auction of the real property due to various inconsistencies and contradictory statements and documents provided to the Canadian management team by China-based management. GreenStar stated that its Audit Committee and Canadian directors and management had strong concerns about unauthorized activities in China and their failure to receive further information, documentation and funding from Guan notwithstanding repeated requests.⁹
- [11] On September 25, 2014, GreenStar issued a further press release announcing the resignation of its Canadian directors and three Canadian management personnel and stating that the resignations were the result of a lack of cooperation, support and funding from Guan. The press release also announced the resignation of GreenStar's auditors and the intention of GreenStar's Canadian legal counsel to withdraw their services.¹⁰
- [12] On March 12, 2015, the Commission issued a Notice of Hearing in respect of the Statement of Allegations filed by Staff of the Commission ("**Staff**") and dated March 11, 2015.
- [13] The hearing on the merits in this proceeding was converted to a hearing in writing by Order of the Commission dated April 30, 2015.
- [14] The Respondents have not appeared or made submissions, and have not objected to the hearing on the merits being determined on the basis of the written record.
- [15] Pursuant to subsection 7(2) of the *Statutory Powers Procedure Act*, R.S.O. c. S. 22, the Commission has jurisdiction to proceed with a hearing in the absence of the Respondents when the Respondents have been given notice but have not appeared. I am satisfied that the Respondents have been given notice.

⁷ Tillie Affidavit, paras. 4 to 6; Tillie Affidavit, Exhibits D, H, and I.

⁸ September 4, 2014 Press Release, Tillie Affidavit, Exhibit LL.

⁹ September 11, 2014 Press Release, Tillie Affidavit, Exhibit MM.

¹⁰ September 25, 2014 Press Release, Tillie Affidavit, Exhibit O.

- [16] The written record which I have reviewed is comprised of the Affidavit of Marcel Tillie, a Senior Forensic Accountant with Staff, sworn May 22, 2015 (the “**Tillie Affidavit**”), together with two volumes of exhibits to which the Tillie Affidavit relates.
- [17] Based on my review of the written record, I find that GreenStar has not complied with Ontario securities law and has acted contrary to the public interest by failing to:
- (a) File audited annual financial statements for the year ended December 31, 2013 as required by section 4.1 and paragraph 4.2(b) of National Instrument 51-102 - *Continuous Disclosure Obligations* (“**NI 51-102**”) and the related Management’s Discussion and Analysis (“**MD&A**”) required by section 5.1 of NI 51-102;
 - (b) File interim financial statements for the three-month periods ended March 31, 2014, June 30, 2014 and September 30, 2014 required by subsections 4.3(1), (2), (2.1) and (3) and paragraph 4.4(b) of NI 51-102, and the related MD&A required by section 5.1 of NI 51-102;
 - (c) File a certification of annual filings required by section 4.1 of National Instrument 52-109 - *Certification of Disclosure in Issuers’ Annual and Interim Filings* (“**NI 52-109**”) for the year ended December 31, 2013;
 - (d) File certifications of interim filings required by section 5.1 of NI 52-109 for the interim periods ended March 31, 2014, June 30, 2014 and September 30, 2014;
 - (e) Maintain an audit committee in accordance with section 2.1 of National Instrument 52-110 - *Audit Committees*;¹¹
 - (f) File a change of auditor notice in accordance with subsection 4.11(5)(b) of NI 51-102; and
 - (g) Pay its participation fee for the year ended December 31, 2013, in accordance with sections 2.2 and 2.3 of the Commission’s Rule 13-502 *Fees*.¹²
- [18] Based on my review of the written record, I find that Guan did not comply with Ontario securities law and acted contrary to the public interest by failing to:
- (a) File an amended Appointment of Agent for Service of Process following the resignations of Guan’s and Fujian Pucheng’s agents in accordance with National Instrument 41-101 - *General Prospectus Requirements*;¹³
 - (b) Cooperate with the audit of GreenStar’s fiscal year ended December 31, 2013 which failure included, in particular, the failure to arrange for the auditors to visit

¹¹ Following GreenStar’s announcement on September 25, 2014, that its audit committee members had resigned, GreenStar has not filed a press release or a material change report disclosing the appointment of members of an audit committee (September 25, 2014 Press Release, Tillie Affidavit, Exhibit O; Tillie Affidavit, para. 49; Section 139 Certificate, dated April 1, 2015, Tillie Affidavit, Exhibit PP).

¹² Tillie Affidavit, para. 49; Section 139 Certificate, dated April 1, 2015, Tillie Affidavit, Exhibit PP.

¹³ Tillie Affidavit, paras. 59-62; Section 139 Certificate, dated April 1, 2015, Tillie Affidavit, Exhibit PP.

GreenStar's bank and the tax bureau to perform certain audit procedures and the failure to provide copies of official receipts, information and documents to the auditors on a timely basis; and

- (c) Provide sufficient funding to the auditors to complete the 2013 audit and frustrated the efforts of three law firms in the PRC to conduct an independent investigation on behalf of the Audit Committee of GreenStar.
- [19] As a director and the Chief Executive Officer of GreenStar and the primary decision maker with respect to GreenStar and its subsidiaries, including Fujian Pucheng, Guan is liable pursuant to section 129.2 of the Act for GreenStar's and Fujian Pucheng's contraventions of Ontario securities law set out above.
- [20] Guan's conduct, which is described above, shows a complete disregard for the integrity of Ontario's capital markets, was abusive to investors and was contrary to the public interest.
- [21] The Commission has previously found that the failure to cooperate with a company's audit committee in addressing an auditor's concerns and in obstructing an independent investigation of such concerns constitute conduct that is contrary to the public interest. (*Re Zungui Haixi Corp*, (2012), 35 OSCB 2615 at para. 3(e)).
- [22] Having found that the Respondents have breached the Act and acted in a manner that is contrary to the public interest as alleged, I will issue an order as of the date of these Reasons and Decision as follows:
- (a) The Respondents shall have until September 28, 2015 to notify the Secretary of the Commission that they, or either of them, require an oral sanctions hearing, which, if required, will then be scheduled by the Secretary;
 - (b) Failing notification by the Respondents, Staff shall serve and file its written submissions on sanctions and costs by October 9, 2015;
 - (c) The Respondents shall serve and file their written submissions on sanctions and costs by October 16, 2015; and

- (d) Staff shall serve and file reply submissions on sanctions and costs, if any, by October 23, 2015.

Dated at Toronto this 18th day of September, 2015.

“Christopher Portner”

Christopher Portner