RRD/RD-3/RO/Order No. 004/2025

BEFORE THE RECOVERY OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

Certificate No. 0436 of 2014

Defaulter: M/s Four Season Farms Limited

Mr. Hanif Hussain Sumra……………………………………………...………Applicant

ORDER UNDER RULE 11 OF THE SECOND SCHEDULE TO THE INCOME-TAX ACT, 1961 READ WITH SECTION 28A OF THE SEBI ACT, 1992 IN THE MATTER OF FOUR SEASON FARMS LIMITED.

BACKGROUND:

1. Securities and Exchange Board of India (SEBI) vide order dated February 13, 2002 directed M/s Four Season Farms Limited (hereinafter referred to as 'Defaulter') to refund Rs.15.20 crore collected in violation of SEBI (Collective Investment Schemes) Regulations, 1999 together with assured returns, interest, cost, etc. to the investors.

2. Since the Defaulter failed to refund the monies so collected, as directed by SEBI, recovery proceedings were initiated by SEBI against the Defaulter under Recovery Certificate No. 436 of 2014 dated September 19, 2014. A Notice of Demand dated September 19, 2014 was issued to the Defaulter directing them to make the payment of the aforementioned amount within 15 days and vide Notices of Attachment dated September 19, 2014, the bank/demat accounts and mutual fund folios of the defaulter were attached.

3. In spite of the said notices, the Defaulter failed to pay the entire dues and the amount available in the bank/demat accounts of the Defaulter was insufficient to pay the entire dues, as detailed in the Recovery Certificate No. 436 of 2014. Therefore, the Recovery Officer, SEBI vide Prohibitory order dated November 21, 2014 under section 28A of SEBI Act, 1992 read with Rule 16 and 48 of the Second Schedule of the Income-tax Act, 1961, prohibited the Defaulter from disposing, transferring, alienating or charging in respect of:

   a. *"all the immovable properties held by the Defaulter including the following:*

i. *17 flats in Vasundhara Building, situated at Plot No. 620 (Pt), Bengali Compound, behind Minaxi Tower, Gokuldham, Goregaon (East), Mumbai – 400063*
ii. *252.06 acres of agricultural land at Taluka: Mahad and Mangaon with approx. 500 cashew trees and 40,000 teakwood trees.*
iii. *Prawns Hatchery Plant at Village: Kothrude, Taluka: Mahad District: Raigad*

b. *All other movable properties held by the Defaulter."*

4. Further, the abovementioned Prohibitory Order dated November 21, 2014 also directed the Defaulter to furnish the following:

a. *"complete details of all the movable and immovable properties held by the defaulter and charges, if any thereon in the format prescribed in the Annexure, duly certified by the Board of Directors within one week from the date of this order.*

b. *copies of all the title deeds, valuation reports of all the properties held by it within two weeks from the date of this order.*

c. *list of all schemes floated by the defaulter along with brochure/ scheme information document for each of the schemes and details of all activities undertaken under each of the schemes within two weeks from the date of this order.*

d. *complete list of all investors along with address, telephone number, bank details, details of investments, the amounts due in each of the schemes etc., both in electronic and physical form within one month from the date of this order."*

5. At this point of time, the Defaulter challenged the said recovery proceedings initiated by SEBI in Appeal No. 62 of 2015 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'the Hon'ble SAT'). In appeal, the Defaulter contended that the amount collected from the investors have already been refunded pursuant to the proceedings initiated under the Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999 (MPID Act).

6. Accordingly, the Hon'ble SAT vide order dated August 4, 2016 disposed of Appeal No. 62 of 2015, and observed as under:

"If the amount is already refunded, the proper course for the appellant is to satisfy the Recovery Officer with facts and figures and by furnishing

> *requisite particulars called for and not to challenge the order passed by the Recovery Officer by filing an appeal before the Tribunal.*
>
> *In these circumstances, the counsel for the appellant seeks to withdraw the appeal and seeks four weeks' time to furnish requisite particulars called for by the Recovery Officer.*
>
> *Accordingly, the appeal is allowed to be withdrawn and the appellant is granted four weeks' time to furnish the particulars as per the list set out in the impugned order dated November 21, 2014."*

7. However, the Defaulter failed to furnish any of the details of repayment to the investors or the information directed to be submitted by the Recovery Officer (in the order dated November 21, 2014) within four weeks' time as directed by the Hon'ble SAT, i.e. by September 6, 2016. Subsequently, the Defaulter vide letters dated September 7 and September 26, 2016, informed SEBI that there are no investors whose claims remain unsettled and requested for extension of time till October 4, 2016 for complying with the Hon'ble SAT's order as the records are in the custody of the Hon'ble MPID Court/ Economic Offences Wing (EOW). Since sufficient time has already been given to the Defaulter, the Recovery Officer, SEBI vide letters dated September 14, 2016 and October 4, 2016, directed the Defaulter to submit the information regarding repayment made to the investors and other details as per the directions of SEBI and the Hon'ble SAT.

8. Vide letter dated October 5, 2016 the Defaulter submitted six volumes of photocopies of documents claimed to be pertaining to repayments made to the investors. After analysing the said documents and submissions of the Defaulters, Recovery Officer, SEBI passed an order on November 22, 2016 holding that it would not be possible to conclude that the Defaulter has repaid the entire money to the investors. Accordingly, the claim of the Defaulter that it had repaid entire dues to all the investors was rejected.

9. The Recovery Officer, SEBI, thereafter proceeded to dispose-off the attached assets and in this regard, Notice of Sale for e-auction of 17 flats in Vasundhara Co-Op. Housing Society Limited, Vatika Road, Off Film City Road, Gokuldham, Goregaon (East), Mumbai – 400063 was issued by SEBI on August 10, 2018, *inter alia*, against the properties of the Defaulter and the same was published in Times of India, Lokmat and Dainik Jagran.

10. Against the said Notice of Sale for e-auction, Cello Infrastructure Limited had filed a Writ Petition before the Hon'ble High Court of Bombay on September 6, 2018 seeking to direct SEBI to abstain from auctioning certain flats. Vide order dated September 12, 2018, the Hon'ble High Court of Bombay granted an

interim order and directed that, the auction scheduled to be held on the said date be proceeded with however, SEBI shall not take any decision with regard to finalization of the auction. It may be noted that no bids were received in the above mentioned e-auction and therefore, the auction could not be finalized. Subsequently, an Interim Application No. 40552 of 2022 was filed before the Hon'ble High Court of Bombay by Vasundhara Co-Op Housing Society Limited challenging the attachment of said flats by SEBI.

11. The Hon'ble High Court of Bombay vide order dated October 17, 2023 disposed of the said Interim Application along with the Writ Petition No, 1951 of 2019, and observed as under:

> *"2. We have heard learned counsel for the parties, as also having perused the record, we are of the opinion that of the petition in regard to the prayers as made, need not proceed for adjudication any further, suffice it to observe, that in the event, the SEBI has any future plans to auction the property, a 14 days' notice of such auction shall be issued to the petitioners, so as to enable the petitioners to assert any challenge to the same, if the petitioners so desire.*
>
> *3. ...the interveners are free to assert their rights, if any, in regard to the said property in a manner known to law and / or in defending any action, if any resorted by the SEBI against the interveners."*

12. In compliance of the above-said order, vide letter dated May 14, 2025, a 14 days' notice was given to the petitioners as well as the Intervenors in Writ Petition No. 1951 of 2019 wherein a list of flats to be auctioned was provided. Vide the said letter, the Petitioners and Intervenors in the aforesaid Writ Petition were given 14 days' time to assert any challenge to the proposed auction and the attachment of properties.

WRITTEN SUBMISSIONS AND PERSONAL HEARING:

13. Pursuant to the above notice, the Applicant, vide letter dated May 18, 2025, submitted the following in respect of Flat No. 704, Vasundhara Co-Op. Housing Society Limited, Goregaon (East), Mumbai –400063 (hereinafter referred to as **"Flat No. 704"**):

    a. The aforementioned flat was legally released in year 2016 by the Designated Court under MPID Act at Bombay City Civil and Sessions Court, at Mumbai (hereinafter referred to as **"Hon'ble MPID Court"**) in Miscellaneous Application No. 62 of 2014 in MPID Special Case No. 62 of 2014 in CR No. 43 of 2000 dated June 13, 2016 (inadvertently mentioned as Hon'ble High Court of Bombay in the said letter).

b. The court explicitly directed the release of the property from all encumbrances.

c. The applicant is in lawful possession and ownership of the flat since the aforesaid order of MPID Court. Vide the said letter the applicant enclosed the following documents:

   i. Copy of the Hon'ble MPID Court Order dated June 13, 2016.
   ii. Proof of Ownership (Sale Deed/Title Documents)
   iii. Property Tax receipts and Utility Bills for the aforesaid property in the name of the applicant.
   iv. Society Panchanama.

d. Vide the said letter, the applicant has prayed for the following:
   i. Immediate exclusion of Flat No. 704 from the auction process.
   ii. Rectification of records to reflect lawful ownership and status of the property.
   iii. Confirmation in writing the withdrawal of the flat from the auction list.

14. Considering the above written submissions of the Applicant, an opportunity of Personal Hearing on June 11, 2025 before the Recovery Officer, SEBI, was granted to the Applicant vide letter dated June 03, 2025. In response to the above letter, the applicant along with his wife (Rubina Sumra), son (Ashfaq Sumra) and nephew (Shabbir Sumra) appeared for hearing before the Recovery Officer on June 11, 2025.

15. In the said hearing, the applicant has made the following submissions that:

a. The letter dated May 18, 2025 inadvertently mentions the court as Hon'ble High Court of Bombay. The same may be read as the Hon'ble MPID Court;

b. The applicant along with his wife are the bona fide purchasers of Flat No. 704 from M/s Harishree Enterprises which was purchased by the applicant in the year 1999 for a valid consideration of Rs. 9,90,000/- (Rupees Nine Lakh Ninety Thousand only). In this regard, the applicant referred to Agreement for Sale dated October 09, 1999 between M/s Harishree Enterprises and the applicant and Mrs. Rubina Sumra;

c. On April 13, 2000, Unit VII of CB, CID, registered a case against the defaulter under section 120-B r/w 406 and 420 IPC and Sec. 3 and 4 of MPID Act which had come into force on April 29, 1999. The defaulter was a partner in M/S Harishree Enterprises, the builder / promoter of the disputed property. Therefore, the said flat among others was attached by the Investigating Officer as per the Order of the then Hon'ble Special Judge, MPID Court, Mumbai;

d. Vide order dated July 24, 2013, Hon'ble Special Judge for MPID cases, Mumbai acquitted all the accused and ordered the release of attached flats to the accused;

e. The applicant came to know of the order releasing the flats to the accused and hence, filed Miscellaneous Application No. 62 of 2014 (MA No. 62/2014) in MPID Special Case No. 01 of 2004 in CR No. 43 of 2000 before the Hon'ble MPID Court, for return of property (Flat No. 704) to him;

f. The Hon'ble MPID Court, vide order dated June 13, 2016, passed in MA No. 62/2014 in MPID Special Case No. 01 of 2004, ordered the release of Flat No. 704 in favor of the applicant. Thereafter, the Senior Inspector of Police, EOW, GB, CID, Mumbai, vide letter dated 20.08.2016, addressed to Chairman / Secretary of Vasundhara Co-Op Housing Society, Goregaon - Mulund Link Road, Goregaon, Mumbai, directed the release of Flat No. 704 to the applicant;

g. The applicant has further submitted that he has also paid the stamp duty of Rs. 1,07,910 in respect of Flat No. 704 on March 29, 2017 along with a fine of Rs. 4,31,640/- to the collector of stamps;

CONSIDERATION OF ISSUES:

16. I have carefully perused the documents available on record, the order dated October 17, 2023 passed by the Hon'ble High Court of Bombay, the Order dated June 13, 2016 passed by the Hon'ble MPID Court in MA No. 62/2014 in MPID Special Case 01/2004 and the oral and written submissions and the documents submitted therein by the Applicant. After examining the above, the issues for consideration in the instant matter is:

    a. Whether the Applicant in the present matter is the owner of the disputed property i.e. Flat No. 704?

    b. If the answer to the above is in the affirmative, whether the attachment issued by the Recovery Officer, SEBI vide Prohibitory Order dated November 21, 2014 in respect of Flat No. 704 is to be released or not?

17. Upon a perusal of the documents submitted by the Applicant, it is noted that Flat No. 704 has been purchased by the Applicant vide Agreement for sale dated October 09, 1999 executed between M/s Harishree Enterprise and the Applicant and one Mrs. Rubina Sumra (wife of the Applicant).

18. From the records, it is noted that the said Agreement for Sale dated October 09, 1999 was in lieu of a valid consideration paid to M/s Harishree Enterprises. The Applicant paid a total consideration of Rs. 9,90,000/- (Rupees Nine Lakh Ninety Thousand only) for Flat No. 704, in fulfilment of para 2 of the Agreement for Sale dated October 09, 1999. In the 'Second Schedule' of the said Agreement for Sale dated October 09, 1999, a Receipt of Rs 9,40,000/- is acknowledged by M/s Harishree Enterprises being part consideration. The said receipt is appended to the Agreement for Sale dated October 09, 1999.

19. It is also noted that vide order dated June 13, 2016, the Hon'ble MPID Court, while disposing of the MA 62/2014 in MPID Spl. Case 01/2004, released the Flat No. 704 in favor of the applicant noting that, *"as the fact that he has paid entire consideration to the accused against the said flat is not disputed and the accused has also given no objection to handover possession of the flat to him."* The relevant text of the order dated June 13, 2016 passed by the Hon'ble Special Judge MPID Act is reproduced below for ready reference:

> ***"CB, CID, EOW Unit VII, Mumbai (Applicant) v. Four Season Farms Limited and Ors. (Accused)***
>
> ***AND***
>
> ***Hanif Sumra and Rubina Hanif Sumra (Intervener - Applicants)***
>
> **<u>ORDER</u>**
>
> *On compliance being made the Sr. PI. EOW Unit VII, GB, CID or the Parvi Adhikari is directed to release the property i.e. flat no. 704, B Block, 7th Floor, Vasundhara Co-operative Housing Society Limited, Goregaon – Mulund Link Road (Bengali Compound), Goregaon East, Mumbai – 400063 in favor of the applicant, as the fact that he has paid entire consideration to the accused against the said flat is not disputed and the accused has also given no objection to handover possession flat to him."*
>
> *…*
>
> *Date: 13/06/2016* *(D.P. Surana)*

Spl. Judge, MPID Act &
Addl. Sessions Judge,
City Civil & Sessions
Court, Gr. Mumbai.”

20. The payment and receipt of full consideration amount has been affirmed by the Hon’ble MPID Court order dated June 13, 2016 wherein it is stated that the payment of entire consideration to the accused is not disputed. Furthermore, as can be observed from the aforesaid order, the accused has also not given any objection to the handing over of possession to the applicant.

21. Subsequently, and in compliance to the above order, the Senior Inspector of Police, EOW, GB, CID, Mumbai, vide letter dated August 20, 2016, directed the chairman / secretary of society to handover the possession of Flat No. 704 to the applicant.

22. It is also noted that SEBI has passed an order against the Defaulter directing them to refund the investors along with assured returns at actuals on February 13, 2002. As noted and detailed above, the Applicant has purchased the Flat No. 704 before the said Order of SEBI was passed. It is also noted that the said Flat No. 704 was purchased by the Applicant from M/s Harishree Enterprises, who is one of the partners of the Defaulter and M/s Harishree Enterprises is not the defaulter in the instant proceedings. Since the said purchase was made prior to passing of the order dated February 13, 2002 by SEBI, I find merit in the submissions of the Applicant that Flat No. 704 belongs to them and not the Defaulter.

23. It might also be pertinent to note that the applicant has been in possession of Flat No. 704 pursuant to Hon’ble MPID Court Order dated June 13, 2016 and has been paying the property tax and utility bills in respect of the said property. Furthermore, the applicant has also paid the valid stamp duty for the flat along with the fine to the Collector of Stamps.

24. In view of the aforesaid, I find that the Applicant is the *bona fide* owner of the Flat No. 704 and therefore, I hold the issue (a) under consideration in the affirmative.

25. Now, since the answer to the issue (a) is in the affirmative, it might be pertinent to refer to the judgement of the Hon’ble Supreme Court in the matter of ***Tax Recovery Officer II, Sadar v. Gangadhar Vishwanath Ranade [AIR 1999 SC 427]*** wherein the Hon’ble Court, while deciding on the issue of applications under Rule 11 of the Second Schedule to the Income Tax Act, 1961, held as follows:

> *"12. …if we examine Rule 11(4) of the Second Schedule to the Income-tax Act, it is clear that the Tax Recovery Officer is required to examine whether the possession of the third party is of a claimant in his own right or in trust for the assessee or on account of the assessee. <u>If he comes to a conclusion that the transferee is in possession in his or her own right, he will have to raise the attachment [emphasis added].</u>"*

26. From the consideration of issue (a) in preceding paragraphs, it has been established that the Applicant is in possession of Flat No. 704 in their own right. Therefore, with regards to issue (b), I am of the view that the attachment dated November 21, 2014 issued by the Recovery Officer, SEBI on Flat No. 704, which stands in the name of the Applicant, is liable to be released.

<u>ORDER:</u>

27. In view of the above, for the reasons as stated in the preceding paragraphs, I hereby order release of the Flat No. 704, Vasundhara Co-Op Housing Society, Goregaon (East), Mumbai – 400063, from attachment made vide prohibitory order dated November 21, 2014 issued by the Recovery Officer, SEBI. The letter dated May 18, 2025 submitted by the Applicant is accordingly disposed of.

28. A copy of this Order is to be served on the Applicant.

Date: November 07, 2025
Place: Mumbai

-sd-
Deepu Anandan
Deputy General Manager & Recovery Officer