

SECURITIES AND EXCHANGE BOARD OF INDIA

MISCELLANEOUS ORDER

On the representation of Ms. Kamlesh Agarwal (PAN: AZQPA1126Q) and Mr. Anil Agarwal (PAN: ACDPA2591F) – In respect of Interim Order dated April 27, 2023 passed in the matter of suspected entities front running the trades of Life Insurance Corporation of India (Big Client)

1. Securities and Exchange Board of India (“SEBI”) has passed an Interim Order on April 27, 2023 (“Interim Order”) in the matter of suspected entities front running the trades of Life Insurance Corporation of India (Big Client) against 5 entities including Ms.Kamlesh Agarwal (“Noticee 3”) wherein *inter alia* the following direction was issued:

“39.6. The banks where Noticees 1 to 5 are holding bank accounts, individually or jointly, are directed to ensure that till further directions, except for compliance of direction at paragraph 39.3 above, no debits are made in the said bank accounts without the permission of SEBI. The banks are directed to ensure that all the above directions are strictly enforced. On production of proof of deposit of entire amount mentioned in Table 14 above, SEBI shall communicate to the banks to defreeze the accounts corresponding to the entities mentioned in said Table. Debit freeze on the bank accounts of the Noticees shall be removed only upon deposit of all illegal gains due from Noticees, as mentioned in Table 14 above. Further, the depositories are directed to ensure, that till further directions, no debits are made in the demat accounts of Noticees 1 to 5 held individually or jointly.”

2. Vide letters dated May 30, 2023 and June 21, 2023 (“Representations”), Noticee 3 and her husband (Mr. Anil Agarwal) requested that a jointly held bank account bearing no. 9129xxxxxx0110 in Canara Bank which was frozen pursuant to the

Interim Order to be defreezed as it is a pension account and it was being used by them for meeting daily household and medical expenses.

3. It is to be noted that the present Order is limited in its scope to the determination of whether the bank account no. 9129xxxxxx0110 held jointly by Noticee 3 and her husband should be defreezed pursuant to the Representations received. Therefore, the other contentions submitted by Noticee 3 and her husband in the Representations are not being dealt herewith. In this regard, the relevant portions relating to the said account from the Representations are as follows:

Reply of Noticee 3 dated May 30, 2023

“17. I also want to make a humble request to your office, that the pension account 9129xxxxxx0110 of my husband is the only source of income for meeting daily household and medical expenditure of myself and my husband. My husband is 63 years old and is suffering from heart ailments and diabetes. I am also not in the best of my health. Furthermore, this pension of my husband is his hard-earned income and is not my income in any manner. I am a mere joint account holder as required by government regulations. My husband inadvertently withdrew some money from the aforementioned pension account for household expenses and the account was freezed by the bank. I request to kindly remove the freeze from the pension account and allow my husband to withdraw money from the same in order to meet our day-to-day household and medical expenditure.”

Reply of Noticee 3's husband dated June 21, 2023

“2. I am Anil Kumar Agarwal, retired from..... New Delhi in June'2019 and opened my pension account in Canara Bank (A/c No. 9129xxxxxx0110). As required by government regulations it is a joint account with my wife Kamlesh Agarwal. As per directions of the interim order the above has been freezed. I request you to please release my pension account that have been wrongly attached, especially when considering that I have not received any money from the alleged trades and that it's my only source of sustaining my living.

3. In this regard, I submit that I receive money due to me in my Pension Account amount which is held in the bank accounts listed below:

Particulars	Bank Account Details
Bank Name	: Canara Bank
Branch	: Delhi, Dilshad Garden (19179)
Account Type	: Saving A/c for pension purpose
Account No.	: 9129xxxxxx0110
Account Holder details :	Anil Kumar Agarwal Jointly with (wife) Kamlesh Agarwal

3.1. I further submit that the amounts lying in this Bank Account are my sole property and ought not to be attached by your goodself. Hence, it is requested that the same be released.

3.2. With respect to the Pensions Act, 1871 amount (hereinafter referred to as "Pension amount") due to me, I want to draw your kind attention to Rule 10 of Schedule-II to the Income-tax Act, 1961 (hereinafter referred to as "IT Act"), Section 11 of the Pension Act, 1871 and Miscellaneous Provisions Act, 1952.....

3.3 In light of aforesaid provisions of law, it is submitted that the amount lying in the pension fund of a subscriber is immune from attachment and sale for recovery. Additionally, Rule 10 of Schedule - II to the IT Act, exempts all such properties from recovery as envisaged under the CPC. Further, clause (k) of the provision to Section 60 (1)(g) of the CPC provides that all deposits and other sums in or derived from any fund to which the Pension Act applies, in so far as they are declared by the said Act, to not be liable to attachment, shall not be liable for attachment or sale under the Code. Thus, the same is exempted from attachment and sale in the execution of a decree of a civil court under the said schedule.

3.4. *It is further submitted that Pensions Act, 1871 is a beneficial social welfare legislation which is aimed at promoting and securing the well-being of the retired people. Thus, it must be interpreted with a wide interpretation so as to not defeat the purpose of the legislation.*

3.5. *It is submitted that my pension money is my only source of income and livelihood. I suffer from heart ailments and diabetes and this money is my only source to meet my medical expenditure. The effect of attachment of this Pension amount would push me and my family to the brink of destitution. Furthermore, without my Pension amount, I will not be able to exercise my right as envisaged in the Constitution of India. Therefore, I request you to please do not attach the Pension amount due to me. The unhampered utilization of the same forms an integral part of right to life and liberty under Article 21 of the Constitution of India.*

3.6. *In this regard, reliance is placed on Anisuddin v. Aklimabee, 2015 SCC Online Bom 3120, the Hon'ble Bombay High Court, wherein it held that under clause (k) of Section 60, Civil Procedure Code, all compulsory deposits and other sums in or derived from any fund to which the Pensions Act, 1871 for the time being applies, are not liable to attachment. Section 11 of Pensions Act, 1871 and Miscellaneous Provisions Act, 1952, makes it clear that amount standing to the credit of any member in the Fund shall not be liable to be attached under any decree or order of any Court in respect of any debt or liability incurred by the member.*

3.7. *Therefore, upon a harmonious construction of the relevant provisions of the Pensions Act, 1871 read with the provisions contained in the CPC the IT Act, for recovery of the dues and in light of the aforesaid legal precedents, it clearly emerges that the pension amount is not liable to be attached for the recovery of dues..."*

4. After receipt of the Representations, through various communications, certain information/clarification and documents as were deemed necessary, were sought

from Noticee 3, her husband and Canara Bank. In reply thereto, important documents *inter alia* including copies of bank account statement and Income Tax Returns (ITRs) of Noticee 3's husband were made available on record.

5. I note that the concerned operational department of SEBI sought confirmation from Canara Bank as to whether the said bank account is a pension account and whether the amounts being credited in the said account are pension amounts. Canara Bank *vide* letter dated July 03, 2023, confirmed that:

- (i) There are no documents submitted to the bank authorizing any other individuals to access the said bank account;
- (ii) The said bank account is being used as a pension account; and
- (iii) The amounts being received in the said account is pension amount.

6. I note that the statement for bank account bearing no. 9129xxxxxx0110 for the period June 01, 2018 to May 01, 2023 shows that cumulatively Rs. 15,57,752 pension has been credited during the said period in the bank account.

7. Further, per the Representations, Noticee 3 is not earning any salary and does not have any other source of income, hence she has not filed any ITRs. Regarding ITRs of Noticee 3's husband, I note that basis perusal of his ITRs for assessment years (AYs) 2018-2019 and 2019-2020, that he has only earned income from his salary. As stated in the Representations, Noticee 3's husband retired in June, 2019, therefore, I note that the ITRs filed for AY 2020-2021, AY 2021-2022 and AY 2022-2023 mentions his "nature of employment" as "pensioner" and records that during the said years he has *inter alia* earned income chargeable under the head "salaries".

8. Basis the above, I am satisfied that Noticee 3's husband was receiving pension in Canara Bank account no. 9129xxxxxx0110. Now, what is left to be determined is whether the said bank account can be defreezed. Noticee 3's husband has cited provisions of Pensions Act, 1871, Income Tax Act, 1961 and Code of Civil

Procedure, 1908 to contend that a pension account is exempt from attachment. Further, he has cited judgment of Hon'ble Bombay High Court in the case of Anisuddin vs. Aklimabee, decision dated January 20, 2015 in his support. I have gone through the provisions cited and the judgment referred. Without going into the question of whether any sort of dues can be recovered from the said pension account, I find it important to highlight certain fundamental facts regarding Noticee 3's husband:

- (a) He was not one of the individuals against whom an examination was conducted or Interim Order was passed;
- (b) The Interim Order does not allude to his role in the alleged front running;
- (c) The Interim Order does not state that funds from the alleged front running were routed to the said bank account;
- (d) He has been receiving pension since August, 2019 which is his individual source of income due to his past government service.

9. Though Noticee 3 is a joint holder of bank account no. 9129xxxxxx0110, the documents placed before me clearly suggest that credits thereto primarily pertained to pension that Noticee 3's husband has received who *prima facie* does not appear to be involved in the alleged front running activity detailed in the Interim Order. Pending further investigation, at such a preliminary stage, it may not be appropriate to continue freeze on a bank account that is recipient of social security amounts pertaining to a person against whom no allegations have been made in the examination report and the Interim Order.
10. Thus, I deem it fit to allow the bank account of Mr. Anil Agarwal held jointly with Ms. Kamlesh Agarwal in Canara Bank bearing no. 9129xxxxxx0110 to be defreezed.
11. Accordingly, the Representations stands disposed of.

12. A copy of this Order shall be sent to Kamlesh Agarwal (Noticee 3), Anil Agarwal (Noticee 3's husband) and Canara Bank for ensuring compliance with the above direction.

DATE: JULY 20, 2023

PLACE: MUMBAI

ANANTH NARAYAN G.

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA