Order No. RRD/RD1/30907/2022

BEFORE THE RECOVERY OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

MUMBAI

Recovery Certificate No. 1020 of 2016 in the matter of Pancard Clubs Ltd.

1. CFM Asset Reconstruction Pvt. Ltd. 1st Floor, Wakefield House, Sprott Road, Ballard Estate, Mumbai-400038	**2. Panoramic Universal Limited Aman Chambers, 4th Floor, Opp. New Passport Office, Veer Savarkar Road, Prabhadevi, Mumbai-400025**

Order in terms of directions of Hon'ble Securities Appellate Tribunal dated 12.07.2022 in Appeal No. 143 / 2021 (CFM Asset Reconstruction Pvt. Ltd. v. SEBI) and in terms of direction dated 26.11.2020 in Appeal No. 422 / 2018 (Panoramic Universal Ltd. v. SEBI)

1. SEBI vide order dated 29.02.2016, *inter alia,* directed Pancard Clubs Ltd. and its directors namely Sudhir Shankar Morvekar, Shobha Ratnakar Barde, Usha Arun Tari, Manish Kalidas Gandhi, Chandrasen Ganpatrao Bhise and Ramachandran Ramakrishnan (**'Defaulters'**) to wind up their existing Collective Investment Schemes and refund the money with returns which are due to its investors as per the terms of offer within a period of three months from the date of the order. Upon failure of Defaulters to refund the money, recovery proceedings were initiated against the Defaulters vide Recovery Certificate No. 1020 of 2016 dated 02.12.2016 for an amount of Rs. 7035 Crore along with returns and Notice of Demand dated 02.12.2016 was issued to the Defaulters

for payment of the said amount. However, as the fund available in the Bank accounts, securities available in the demat accounts and the assets of the Defaulters already attached were found to be insufficient towards the dues to the investors, therefore, it was felt necessary to secure and prevent disposal or transfer or alienation of the assets of the subsidiaries, group companies and associates of the Defaulters which were *prima facie* observed to have been held from the funds acquired from Defaulters.

2. During the course of recovery proceedings, Defaulters had submitted a list of all subsidiary companies and enterprises owned/controlled by Directors/Relatives/Major Shareholders of Pancard Clubs Ltd ('**PCL**') which also included Panoramic Universal Limited ('**PUL**'). Further, it was observed by Recovery Officer ('**RCO**') that funds collected from investors of PCL were routed through other third party companies for purchase of assets of the PUL and its subsidiaries. It was *prima facie* observed that huge money was due from PUL to PCL and therefore, in order to recover such money, a notice dated 21.03.2018 under Section 28A of SEBI Act read with Section 226(3) of Income-tax Act, 1961 was issued to PUL directing it to pay to SEBI all monies remitted by PCL to PUL and its subsidiaries within a week from the date of receipt of the notice. However, no reply was received by RCO from PUL towards the said notice. Therefore, in terms of Section 226(3)(x) of the Income-tax Act and in the interest of investors of PCL, RCO vide order dated 28.03.2018, *inter alia* attached the properties of PUL and its subsidiaries/enterprises.

3. Pursuant to the order dated 28.03.2018, the objections were filed by PUL before RCO and after taking into account the documents/information supplied by PUL, RCO vide order dated 21.08.2018 disposed of the objections of PUL concluding that the

SECURITIES AND EXCHANGE BOARD OF INDIA RECOVERY DIVISION attachment of properties made under order dated 28.03.2018 against PUL and its subsidiaries, shall continue to remain in force. The said order of RCO was challenged by PUL before the Hon'ble Securities Appellate Tribunal ('**SAT**') vide Appeal No. 422/2018 and the Hon'ble SAT vide order dated 26.11.2020 quashed the order of RCO on the ground of denial of an opportunity of hearing to PUL and remanded the matter to RCO for passing a fresh order after providing opportunity of hearing to PUL. Accordingly, information/documents were sought from PUL and the same were forwarded to Forensic Auditors appointed by SEBI for the purpose of examination which is awaited. Therefore, order of attachment of properties against PUL passed by RCO did not exist as on date.

4. Subsequently, during the pendency of recovery proceedings, CFM Asset Reconstruction Pvt. Ltd. ('**CFM**') informed RCO in December 2018 that PUL had availed a term loan facility to the extent of Rs. 15 crore from Apna Sahakari Bank Ltd. (Apna Bank) and created a mortgage of two residential flats as security against the said loan viz. Flat Nos. 2201 and 2202, Tower No. 1, Sumer Trinity Towers Co-operative Housing Society, Prabhadevi, Mumbai ('**Prabhadevi Property**'). CFM informed that upon default in payment by PUL, recovery action was initiated by Apna Bank under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('**SARFAESI Act**') and subsequently, the said loan account of PUL was transferred to CFM by the Apna Bank under the provisions of SARFAESI Act vide an assignment agreement dated 21.04.2018. During the taking over of physical possession of the Prabhadevi Property, it had been noticed by CFM that such property was also attached by SEBI and therefore, CFM made request/representation to SEBI to remove such attachment.

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5. While the documents submitted by CFM were under examination, CFM filed an appeal before the Hon'ble SAT as appeal No. 408/2019, assailing the RCO's orders dated 28.03.2018 and 21.08.2018 *inter alia* challenging the attachment of Prabhadevi Property. The Hon'ble SAT vide order dated 04.12.2020 disposed the said appeal and directed CFM to file its claim/objections before RCO within 2 weeks and RCO to decide on the said claim/objections within a period of six weeks after giving an opportunity of hearing. Accordingly, CFM submitted its objections on 18.12.2020 and RCO after considering the submissions of CFM, vide order dated 29.01.2021 disposed of the objections of CFM as not maintainable *inter alia* holding that recovery proceedings under SEBI Act is not barred by SARFAESI Act and provisions of SEBI Act would prevail over that of SARFAESI Act.

6. The said order of RCO dated 29.01.2021 was assailed by CFM before Hon'ble SAT in Appeal No. 143/2021 *inter alia* on the grounds that proceedings under SARFAESI Act were initiated prior to SEBI's recovery proceedings and SARFAESI Act is a special law which overrides all other laws. During the course of hearing before Hon'ble SAT, it was submitted by SEBI that in view of the Hon'ble SAT order dated 26.11.2020 (in the matter of PUL) the attachment order dated 28.03.2018 and 21.08.2018 of RCO does not exist and no fresh order has been passed by RCO with respect to properties of PUL. In view of the said submission of SEBI, the Hon'ble SAT vide order dated 12.07.2022 set aside RCO's order dated 29.01.2021 and directed that fresh order, if any, will be passed by RCO within a period of three months after giving an opportunity of hearing.

7. In pursuance of order of the Hon'ble SAT dated 12.07.2022, I have examined the matter and observed that as on date the attachment order passed by RCO dated 28.03.2018 and 21.08.2018 attaching properties of PUL, are not in force as the same were

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quashed by Hon'ble SAT vide order dated 26.11.2020. I have also observed that Government of Maharashtra has initiated proceedings against the Defaulter(s) under Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 ('**MPID Act**') vide Notification dated 11.04.2019; and the properties of Defaulters/PCL, including properties of PUL were attached under the said notification. Deputy Collector, Mumbai City was appointed as the Competent Authority to exercise control over such attached properties in the MPID proceedings. I have observed that said Prabhadevi Property was also one of the properties attached under said Notification. The proceedings against the PCL / Defaulter(s) are pending before the Ld. MPID Court, Mumbai in MPID Case No. 98/2017.

8. Further, it is observed from the records that the CFM had filed an application (M.A. No. 1340/2019) before the Ld. MPID Court, Mumbai *inter alia* seeking directions of the Ld. MPID Court for quashing the attachment passed vide order dated 11.04.2019 with respect to Prabhadevi Property and to allow CFM to conclude the sale of the said property. I have observed that Ld. MPID Court vide order dated 29.09.2021 *inter-alia* cancelled the attachment with respect to Prabhadevi Property i.e. *Flats No. 1 to 3 and Flats No. 4 to 6 of Building No. 1, Sumer Towers of 22 A, 2, 22nd Floor, Bandekar Chowk, New Prabhadevi Marg, Mumbai-25*. The relevant paragraph of order of Ld. MPID Court is produced below:

"2. The order of attachment of the properties i.e. Flats No.1 to 3 and Flats No. 4 to 6 of Building No.1, Sumer Towers of 22 A, 2, 22nd Floor, Bandekar Chowk, New Prabhadevi Marg, Mumbai-25 vide notification no. MAHBIL/2009/37831 dated 11.04.2019 of Government of Maharashtra is cancelled.

3. Prayer clause (b) of the application is rejected.

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4. The applicant is at liberty to auction the aforesaid properties afresh, but the reserve price shall not be less than Rs.25,00,00,000/-(Twenty Five Crores).

5. The amount in excess of the outstanding dues of the loan account with Apna Sahakari Bank shall be deposited in this Court in connection with C.R. No.98 of 2017 of EOW, Unit VII, Mumbai.

6. If the M/s. Panoramic Universal Ltd. Succeeds in repayment of the loan with outstanding dues and the applicant or Apna Sahakari Bank decides to release the said properties from mortgage then, in that event they shall give prior intimation to this Court."

9. I view of the aforesaid, I am of the view that since the issue of release of Prabhadevi Property *(viz. Flats No. 1 to 3 and Flats No. 4 to 6 of Building No. 1, Sumer Towers of 22 A, 2, 22nd Floor, Bandekar Chowk, New Prabhadevi Marg, Mumbai-25)* has been examined by Ld. MPID Court vide order dated 29.09.2021, therefore, no attachment exists as on date with respect to said property either under SEBI Act or under MPID Act.

Finding with respect to PUL:

10. With respect to remaining properties of PUL attached by SEBI vide orders dated 28.03.2018 and 21.08.2018, I find that no attachment order of SEBI exists as on date for the said properties of PUL in view of Hon'ble SAT's order dated 26.11.2020. At this juncture, it is relevant to mention that properties of PCL including its associate PUL have already been attached by Government of Maharashtra vide Notification dated 11.04.2019 under MPID Act and the proceedings before Ld. MPID Court, Mumbai are still going on against PCL/its directors. Further, I have noted that in terms of SEBI Board approved policy dated 28.12.2021 (viz. where if recovery proceeding is pending before SEBI and on the similar issue / cause of action, other parallel proceedings are also pending before any State PID Court), SEBI had filed an application before the Ld. MPID Court, Mumbai in March 2022 *inter-alia* submitting that since the Ld. MPID Court is seized of the matter,

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hence, SEBI will not be proceeding independently; and SEBI would continue to assist the Ld. Court in such matter as and when directed in this regard. Therefore, I am of the view that since the properties of PCL including the properties of PUL have already been attached under MPID proceedings and SEBI had filed application before MPID Court submitting that it will not proceed further independently in this matter (including attachment if any), hence, further attachment of any property of PUL is not warranted by SEBI at this stage.

Finding with respect to CFM:

11. I am of the view that since no attachment order exists as on date with respect to Prabhadevi Property (*i.e. Flat Nos. 2201 and 2202, Tower No. 1, Sumer Trinity Towers Co-operative Housing Society, Prabhadevi, Mumbai)* and the issue on such property has already been decided by Ld. MPID Court vide order dated 29.09.2021, therefore, CFM may deal with the said property in accordance with the direction of Ld. MPID Court, Mumbai; and no further attachment of said property is warranted by SEBI in the facts and circumstance of the matter.

29/07/2022

Date: 29th July 2022

Place: Mumbai

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JAI PARKASH

RECOVERY OFFICER

जय प्रकाश
Jai Parkash
वसूली अधिकारी
Recovery Officer
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