Order No. RO/2/2022

BEFORE THE RECOVERY OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
NORTHERN REGIONAL OFFICE

Recovery Certificate No. 4303, 4312, 4323, 4324, 4325, 4326, 4327, 4328, 4329, 4330 and 4334 of 2021

In respect of the Hon'ble Securities Appellate Tribunal order dated February 07, 2022 in Appeal No. 65 of 2022

In respect of-

Shree Bhawani Paper Mills Limited

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1. Securities and Exchange Board of India (SEBI) initiated recovery proceedings vide recovery certificate no. 4303 and 4312 of 2021 (dated November 29, 2021), certificate no. 4323, 4324, 4325 and 4326 of 2021 (dated November 30, 2021), certificate no. 4327, 4328, 4329 and 4330 of 2021 (dated December 01, 2021) and certificate no. 4334 of 2021 (dated December 03. 2021), against the entities as mentioned in the table below for recovery of penalty (ies) imposed by the Adjudicating Officer (AO) vide order no. ASK/RGA/AO/40-72/2014-15 dated July 31, 2014 in the matter of Shree Bhawani Paper Mills Limited, along with further interest, all costs, charges and expenses incurred in respect of all the proceedings taken for recovery of the said sum.

S.No.	Name of Noticee	Regulation Violated of SAST Reg 1997	Penalty (in Rupees)	Recovery Certificate No.
1	Neera Tandon, Akshat Tandon	3(4)	4,00,000	4303 of 2021

2	Alankar Tandon, Gaurav Tandon	3(4)	4,00,000	4312 of 2021
3	Ela Tandon	3(4)	4,00,000	4323 of 2021
4	Girish Tandon	3(4)	4,00,000	4324 of 2021
5	Ela Tandon, Badri Vishal Tandon, Girish Tandon	3(4)	5,00,000	4325 of 2021
6	Akshat Tandon	3(4)	4,00,000	4326 of 2021
7	Neera Tandon, Akshat Tandon, Alankar Tandon, Gaurav Tandon	3(4)	6,00,000	4327 of 2021
8	Badri Vishal Tandon, Vishal Tandon, Neera Tandon, Alankar Tandon, Akshat Tandon, Gaurav Tandon	3(4)	6,00,000	4328 of 2021
9	Sahitya Bhawan Private Limited	3(4)	4,00,000	4329 of 2021
10	Badri Vishal Tandon	3(4)	4,00,000	4330 of 2021
11	Shri Akshat Tandon, Ms. Neera Tandon, Shri Alankar Tandon, Shri Gaurav Tandon	3(3)	3,00,000	4334 of 2021

2. Aggrieved by the aforesaid order passed by the adjudicating officer on July 31, 2014, the 15 entities challenged it in appeal no. 374 0f 2014 - Mr. Akshat Tandon & Ors vs SEBI before the Hon'ble Securities Appellate Tribunal (SAT). The Hon'ble SAT vide order dated October 05, 2016 upheld the AO order and dismissed the appeal. Thereafter, the order of the Hon'ble SAT dated October 05, 2016 was challenged by entities before the Hon'ble Supreme Court in C.A. no. 33 of 2017, (Akshat Tandon and Others Vs SEBI) which was decided along with the C.A. no. 11311 of 2013,

(Adjudicating Officer, SEBI Vs Bhavesh Pabari) by the Hon'ble Supreme Court vide common order dated February 28, 2019. The Hon'ble Court *inter alia*, held as under :

> *"35. This court, in the exercise of its jurisdiction under section 15Z of the SEBI Act, cannot go into the proportionality and quantum of the penalty imposed, unless the same is distinctly disproportionate to the nature of the violation which makes it offensive, tyrannous or intolerable. Penalty by the very nature of the provision is penal. We can interfere only where the quantum is wholly arbitrary and harsh which no reasonable man would award. In the instant case, the factual findings are not denied and, thus, we are not inclined to intermeddle with the quantum of penalty. The penalty imposed is just, fair and reasonable and, thus upheld."*

3. As the aforesaid entities (mentioned in the table at paragraph 1) failed to pay the penalty as directed in the order dated July 31, 2014 upheld by the Hon'ble SAT and the Hon'ble SC, recovery proceedings were initiated against them, in terms of Section 28A of SEBI Act. Thus, eleven (11) recovery certificates were drawn and respective notices of demand (NoD) were issued to the defaulters directing them to pay penalty jointly and severally along with further interest, all costs, charges and expenses incurred in respect of all the proceedings taken for recovery of the said sum.

4. At this stage pursuant to initiation of recovery proceedings, 15 entities approached the Hon'ble SAT (Appeal No. 65 of 2022) against the above mentioned recovery certificates issued in the matter, *inter alia* with the prayer that penalty imposed on jointly and severally basis be segregated for payment by respective individual/ entity and the interest on recovery amount, as per the NoD(s), be recalculated by withdrawing the levy for the period when the matters of appeals were under consideration before the Hon'ble SAT and the Hon'ble Supreme Court, including the period for which stay from operation of the impugned order had been effective and for the period that the pandemic of Covid had restricted the work of the authorities and the defaulters.

5. The Hon'ble SAT vide its order dated February 07, 2022 disposed of the aforesaid appeal with, inter alia, the following directions:

"6(a) The appellants may make a fresh application before SEBI for segregation of the penalty amount quo the appellants and for waiver of interest within two weeks from today. Upon receipt of the application SEBI will consider and decide the matter within six weeks thereafter.

6(b) In the meanwhile, the appellants will deposit a sum of Rs. 15 lakh within 2 weeks from today. It has been stated that the bank accounts, etc have been frozen. We accordingly direct SEBI to issue necessary instructions to the banks that the request of the appellants be entertained for the purpose of debiting the said amount to SEBI for this installment as well as for the second installment.

6(c) The balance amount along with interest shall be paid in five equal monthly installments of Rs. 15 lakh each on or before the 25th day of the month. The balance amount, if any, would be paid in the last installment.

6(d) Any decision made by SEBI on the application of the appellants, if found favourable in favour of the appellants, will be adjusted in the last installment.

6(e) The bank accounts, demat accounts including trading accounts, lockers etc will be defreezed after the payment of the second installment."

6. In compliance with paragraph 6(a) of SAT order dated February 07, 2022, the representation filed on behalf of the defaulters was received by SEBI on February 21, 2022 and by the recovery officer on March 31, 2022. Vide the above mentioned representation, the defaulters have, *inter alia*, submitted the following:

a) each of the applicants are independent and separate individuals/ entity and his/ her/ its financial affairs are independent of each other. Also, each of the applicants have their own separate assets and sources of income, which will be utilized by each of the applicants to meet their liability to be discharged.

b) the violations of regulations 3(3) and 3(4) of the SAST Regulations mentioned in the AO order are violations of a particular person and penalty is payable by him/her/ it for the violation. Imposition of penalty and direction for payment by a Group of persons on joint and several basis is an unfair treatment and is prayed that fair treatment be afforded to all the applicants in the matter.

c) that it is the expectation of each of the applicants that no one person pays the liability to be discharged by another person or persons listed hereunder, and that the liability imposed on the Applicants as a group of persons or as part of more than one group of persons is segregated and that each of the persons named hereunder discharge the amount payable by him/ her/ it.

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भारतीय प्रतिभूति और विनिमय बोर्ड Securities and Exchange Board of India SEBI उ.प्र.का. वसूली प्रभाग

d) the recovery officer has levied interest and recovery charges on the amount of penalty that has been levied as per the AO order. The interest has been levied from date of the AO order without considering (i)The amount of penalty payable by each of the Applicants had not been determined by SEBI (ii) that stay had been imposed by the Hon'ble Supreme Court vide order dated 09.01.2017 and upto dismissal of the civil application on 28.02.2019 (iii) the period of lockdown imposed by the Central Government from march 25, 2020 and upto easing of lockdown conditions, in phases, and resumption of business activities from December 2020. (iv) further lockdown imposed by the State Governments from March 2021 to about June 15, 2021.

e) that non - payment of penalty amount by the applicants has been due to circumstance beyond control of the applicants.

f) that amongst the applicants, Mrs. Meenu Tandon, Mr. Girish Tandon and Mrs. Neera Tandon are senior citizens and have been leading retired lives. The onerous payment of interest, which amounts to almost the amount of penalty would be too arduous for them to pay.

7. In view of the above, the defaulters have, *inter alia*, sought the following reliefs-

a) Segregate the amounts of penalty determined as payable by each of the applicants out of the amount imposed as penalty on a jointly and severally basis, which will facilitate the payment of amounts by each of the applicants.

b) Waive the interest on amount of penalty payable by each of the applicants for the period that the AO order was stayed by the Hon'ble Supreme Court i.e. for the period from 09.01.2017 to 28.02.2019.

c) Waive the interest on amount of penalty payable by each of the applicants for the period of lockdown imposed by the Central and State Governments to contain the spread of Covid-19 and during its multiple waves, which commenced on varying dates in March 2020 and up to complete easing of aforementioned lockdown conditions, as the periods of lockdown also included substantial periods of intermittent working, and up to resumption of business activities in a normalised manner from February 2021.

8. The first relief sought in the representation filed by the defaulters is to segregate the amounts of penalty determined as payable by each of the applicants out of the amount imposed as penalty on a joint and several basis, which will facilitate the payment of amounts by each of the applicants. The contention of the defaulters on the basis of which this relief is sought is that each of the applicants are independent and separate

entities and his/her/its financial affairs are independent of each other. Further, that each of the applicants have their own separate assets and sources of income, which will be utilized by each of the applicants to meet their liability to be discharged. The defaulters also contended that the amount of penalty payable by each of the applicants had not been determined by SEBI. It is noted that as the penalty by the AO vide its order dated July 31, 2014 is imposed jointly and severally, recovery certificates have been drawn accordingly for the execution of the aforesaid order and respective NoD(s) have been issued to be complied with by the defaulters. As per the joint and several concept, the recovery officer is entitled to recover the penal amount, from any or all of the defaulters against whom the penalty was imposed jointly and severally, it is therefore for these defaulters to appropriate amongst them the amount payable by each of them and in case the amount is to be recovered from any of the defaulters in the group, the same has to be claimed from the others.

9. Another contention of the defaulters' is that the violations of Section 3(3) and 3(4) of the SAST regulations are violations of a particular person and penalty is payable by him/her/it for the violation. Further, the imposition of penalty and direction for payment by a group of persons on joint and several basis is an unfair treatment and is prayed that fair treatment be afforded to all the appellants in the matter. It is noted that as the underlying AO order dated July 31, 2014 on the basis of which the recovery certificate(s) have been drawn, has already been upheld by the Hon'ble SAT (order dated October 05, 2016) and the Hon'ble SC (order dated February 28, 2019), therefore it is not open for the defaulters to raise this dispute during the recovery proceedings.

10. In view of the above, the contentions raised by the defaulters in the representation regarding the segregation of penalty is devoid of merit and thus not tenable.

11. The next relief sought in the representation is to waive the interest on amount of penalty payable by each of the defaulters for the period that the AO order was stayed by the Hon'ble Supreme Court i.e. for the period from January 09, 2017 to February

28, 2019. In this regard, reference may be drawn to Section 220(6) in the Income- Tax Act, 1961 which stipulates "*Where an assessee has presented an appeal under section 246 or section 246A the Assessing Officer may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of*". It is noted that as the defaulters failed to pay the penalty pursuant to the dismissal of the appeals and despite reminders dated February 13, 2020 for the payment of penalty, reliance is placed on the orders dated September 10, 2013 and December 12, 2013 in appeal no. 53 of 2012 and appeal no. 56 of 2013, respectively, wherein the Hon'ble SAT ruled that if adjudication penalty is not paid within four weeks of its order, then SEBI can recover interest at the rate of 10% per annum from the date of AO order till the date of payment. Applying this ratio in the instant case, the period under appeal would get included as period under default, as the penalty is not paid immediately after the dismissal of the appeal.

12. Reference may also be drawn to section 28A of SEBI Act read with the Section 220(1) of the Income tax Act, 1961, which authorizes the recovery officer, SEBI to recover interest on the dues as specified under Section 220 (2) of the Income-tax Act, 1961 from the assessee /defaulter at the rate of one per cent for every month or part of a month on simple interest i.e. 12% per annum. Further, the explanation 4 to Section 28A of the SEBI Act, 1992 stipulates that the interest referred to in section 220 of the Income-tax Act, 1961 shall commence from the date the amount became payable by the person.

13. Further, the relief sought to waive the interest on amount of penalty payable by each of the defaulters for the period of lockdown imposed by the Central and State Governments to contain the spread of Covid-19 and during its multiple waves, which commenced on varying dates in March 2020 and up to complete easing of aforementioned lockdown conditions, as the periods of lockdown also included substantial periods of intermittent working, and up to resumption of business activities

in a normalised manner from February 2021. It is noted that no waiver was granted by SEBI for interest payable on the penalty amount imposed during the period of lockdown imposed by central and various state governments. Further, the defaulters did not pay the penalty pursuant to the dismissal of their appeal by the Hon'ble Supreme Court of India vide its order February 28, 2019 and have stated one of the underlying causes as the spread of Covid -19 pandemic, which however spread more than one year pursuant to the dismissal of their appeal.

14. The defaulters have also submitted that amongst the applicants, Mrs. Meenu Tandon, Mr. Girish Tandon and Mrs. Neera Tandon are senior citizens and have been leading retired lives. The onerous payment of interest, which amounts to almost the amount of penalty would be too arduous for them to pay. The submissions of the defaulters on old age merits scrutiny. However, the defaulters have not brought any substantial evidence on record showing that the payment of interest would cause genuine hardship to them. SEBI has also received various letters from the defaulters dated March 02, 2020, March 03, 2020, March 04, 2020 and March 05, 2020. From the perusal of the abovementioned letters and the present representation, it appears more of a request to segregate the penalty (ies) rather than a case of hardship faced by them. Thus, the request of the defaulters for the waiver of interest is not tenable.

15. The defaulters vide their representation filed with SEBI have stated that non - payment of penalty amount by the defaulters has been due to circumstance beyond their control. I note that the representation lacks to substantiate the reasons that non - payment of penalty amount by the defaulters has been due to circumstance beyond control of the defaulters.

16. In view of above, the representation filed by the defaulters fall short of presenting that the payment of such an amount would cause genuine hardship to the defaulters and default in payment of the amount was beyond the control of the defaulters. Further, even after the dismissal of the appeal of the defaulters by the Hon'ble Supreme Court vide order dated February 28, 2019 and subsequent reminder dated February 13,

2020 from SEBI to pay the penalty, the defaulters have failed to pay the penalty and have not extended any co-operation in this regard. Reference may also be drawn to the judgement dated October 04, 2017 in Dushyant N. Dalal and Anr. v. SEBI, passed by the Hon'ble Supreme Court, wherein the Hon'ble court at paragraph 28 *inter alia* held "*.......the present is a case where interest would be payable in equity for the reason that all penalties collected by SEBI would be credited to the Consolidated Fund under Section 15JA of the SEBI Act. There is no greater equity than such money being used for public purposes. Deprivation of the use of such money would, therefore, sound in equity.......*". In view of the above, the request of the defaulters for waiver of interest payable on penalty is not tenable and is liable to be rejected.

Order:

17. In view of the above, I find no merits in the representation dated February 21, 2022 filed by the defaulters. Hence, the representation filed by the defaulters is disposed of as directed by Hon'ble SAT vide its order dated February 07, 2022. The defaulters are ordered to continue to pay the penalty amounts as per their respective NoD(s) including further interest, all costs, charges and expenses incurred in respect of all the proceedings taken for recovery of the said sum and as directed by Hon'ble SAT vide its order dated February 07, 2022.

April 04, 2022

Rajeev Rastogi

Recovery Officer

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