SECURITIES AND EXCHANGE BOARD OF INDIA
SOUTHERN REGIONAL OFFICE AT CHENNAI
RECOVERY DIVISION

Decision in compliance with the Order dated March 6, 2020 passed by the Hon'ble High Court of Judicature at Madras, Madurai Bench, in Writ Petition No. 25644 of 2019

In the matter of representation made by Dr. A. Sivagurunathan and in respect of recovery proceedings initiated in the matter of SBS Investments vide Recovery Certificate No. 2454 of 2019

Background of the case:

1. The Securities and Exchange Board of India ("SEBI" or "the Board") vide Order No. WTM/MPB/EFD-1-DRA-IV/117/2018 dated January 09, 2018, concluded after an enquiry that **SBS Investments** (PAN: ACLFS5789F) and its partners **Mr. Srinivasa Thanga Durai** (PAN: BBDPS1849E) and **Ms. P. Soundravalli** (PAN: FLJPS3301B) {collectively referred to as "the defaulters"} had indulged in unregistered portfolio management services and had collected money from their clients, in contravention of the securities laws, and were *inter alia* directed to forthwith refund the money received from the clients under the unregistered portfolio management services, along with promised returns and to submit a certificate from a peer reviewed Chartered Accountant, within a period of three months.

2. Since the defaulters failed to comply with the refund directions mandated in the aforesaid SEBI's Order, recovery proceedings under section 28A of the Securities and Exchange Board of India Act, 1992 ("the SEBI Act") for recovery of Rs.65,00,000 along with interest and costs in respect of all proceedings taken for recovery, were initiated against them vide Recovery Certificate No. 2454 of 2019 dated August 13, 2019. Pursuant to the same, a Notice of Demand dated August 13, 2019 was issued to the defaulters. In view of the continued non-compliance by the defaulters, the Recovery Officer had issued vide separate Notices of Attachment dated August 30, 2019 (sent by way of email to banks/depositories on September 03, 2019) directing the attachment of Bank accounts/Demat accounts/Mutual Fund folios held either singly or jointly by the defaulters to the extent of their outstanding dues as per the Certificate.

3. Consequent to the said Notice of Attachment of Bank Accounts, ICICI Bank Limited ("ICICI") vide email dated September 10, 2019 had informed that in compliance with the said Notice of attachment, it had imposed a 'debit freeze' in respect of the bank accounts of the defaulter/s.

Writ Petition filed by Dr. A. Sivagurunathan:

4. Thereafter, on December 30, 2019, SEBI, Head Office at Mumbai was in receipt of a copy of a Writ Petition No. 25644 of 2019 filed by one Dr. A. Sivagurunathan ("the petitioner") before the Hon'ble High Court of Judicature at Madras, Madurai Bench, arraying SEBI, ICICI, Director of SBS Investments and Mr. P. Srinvasa Thangadurai as the respondents, praying the Hon'ble High Court for a writ in the nature of mandamus directing SEBI and ICICI to defreeze the petitioner's bank account bearing savings account no. 600601515069 maintained with ICICI by considering the petitioner's representation dated September 23, 2019 and to further direct SEBI and ICICI to remove the name of Mr. P. Srinvasa Thangadurai from the aforesaid bank account and to permit the petitioner to maintain the account as a single holder account. The Recovery Division came to know of the petitioner's representation from the writ petition. The averments/submissions of the petitioner made in his representation and in the writ petition were *inter alia* the following:

(i) that the petitioner had availed a personal loan of Rs.30,00,000/- for Doctors under Loan Account Number - 4120DLEY896453 from Bajaj Finance Limited with an intention to invest the same in real estate with the assistance of his friend Mr. P Srinivasa Thangadurai (who is one of the defaulters in the recovery proceedings initiated by SEBI in the matter of SBS Investments), who claimed to be in the real estate business;

(ii) the petitioner had therefore deposited the entire loan amount into the savings bank account no. 600601515069 held by the petitioner jointly with Mr. P. Srinivasa Thangadurai with ICICI for the purpose stated above and that the petitioner is the first holder in the said bank account;

(iii) the petitioner submitted that as on the date of the attachment order by SEBI, an amount of approximately Rs.20,00,000/- was lying in the said bank account;

(iv) the petitioner claimed that he is neither aware of the Order passed by SEBI against the defaulters nor aware of the 'debit freeze' imposed in respect of accounts of Mr. P. Srinivasa Thangadurai;

(v) the petitioner submitted that the defaulter, Mr. P. Srinivasa Thangadurai is willing to withdraw his name from the savings account and to permit the petitioner to operate the account as a single holder;

On these grounds, the petitioner has requested SEBI to defreeze his savings account bearing number 600601515069 maintained with ICICI, Tallakulam Branch and to remove the name of Mr. P Srinvasa Thangadurai from the savings account and allow the petitioner to operate the said account as a single account holder. On record, a similar (notarized) representation dated October 18, 2019 signed jointly by the petitioner and the defaulter, Mr. P. Srinivasa Thangadurai is available, which contains similar submissions and request for defreezing the account.

5. In view of the contents of the representation and also since the request is for defreezing a bank account which came to be attached pursuant to the attachment order issued by the Recovery Officer, a submission was made before the Hon'ble High Court that a decision with respect to defreezing of bank account has to be taken only after conducting an enquiry and accordingly prayed that the Hon'ble High Court be pleased to grant leave for conducting such enquiry. After hearing the parties, the Hon'ble High Court had, vide Order dated March 06, 2020, while disposing off the writ petition of the petitioner, observed and directed as follows:

> *"3. The learned counsel for the first and second respondents (SEBI, HO & SEBI, Southern Regional Office) states that they are duty bound to pass orders on the representation. They would follow due process. Due process would include issuing of notice not only to the petitioner, but also to Bajaj Finance Company Limited, I.C.I.C.I. Bank and also to any other individuals, including the 5^{th} respondent or any other persons, as the said enquiry would require, and then to afford personal hearing, to examine documents, records, submissions and then to pass orders. The petitioner has to participate in the enquiry and prove that the amount now lying in the third respondent Bank account is his own money.*

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4. Therefore, a Mandamus is issued to the first and second respondents to conduct such enquiry in manner known to law, follow the due process of law and complete such enquiry on or before 30.04.2020".

Proceedings in enquiry:

6. The certified copy of the aforesaid Order of the Hon'ble High Court was received in the Southern Regional Office of the Board at Chennai on March 13, 2020. In compliance with the said Order, and to decide whether the funds available in the bank account number 600601515069 held by the petitioner jointly with Mr. P. Srinivasa Thangadurai with ICICI are of the petitioner or not, the Recovery Officer had initiated an enquiry and sent notices (*only through e-mail as postal and courier services continued to remain closed on account of the restrictions imposed by the Government authorities due to the pandemic caused by the Covid-19 virus*) to the petitioner, ICICI, Bajaj Finance Limited (the entity which is said to have extended loan to the petitioner) and Mr. P. Srinivasa Thangadurai. The petitioner and Mr. P. Srinivasa Thangadurai were advised to make their submissions and were also afforded an opportunity of personal hearing before the Recovery Officer, if they may so desire. Notices dated March 23, 2020 were also sent to ICICI Bank Limited and Bajaj Finance Limited seeking documents/information to establish the claim of the petitioner on his ownership of the amounts lying in the savings account. The summary pertaining to the contents of the notice and the response received thereon from the parties are given below:

A. Bajaj Finance Limited:

Vide Notice dated March 23, 2020, Bajaj Finance Limited ("Bajaj") was asked to furnish the following information/document:

i. Whether the personal loan as stated above by the petitioner was sanctioned/disbursed to him;
ii. If so, to provide the details like name of the applicants including joint applicants, purpose & tenure of loan, date of sanction of loan & its disbursement, Bank account (account number, name of the beneficiary, Bank name & branch) to which the loan amount was credited;
iii. Supporting documents like copy of loan application, certified copy of letters sent to the applicants on sanction/disbursement, certified copy of statement reflecting the transfer of amount to the applicants in respect of the above loan.

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iv. Any other correspondences exchanged with the petitioner in respect of the above loan.

In response, Bajaj Finance Limited has forwarded its reply in email sent on April 20, 2020, forwarding therewith the copy of loan sanction letter, copy of loan application form, copy of loan account statement and other information as sought in the above Notice. Though Bajaj informed that they are unable to send the certified copy of letters sent to the applicant on disbursement due to the current lockdown situation across the country, it however confirmed having disbursed the loan amount of Rs.30,00,000/- to the petitioner and provided details of transfer of loan amount; copy of loan account statement etc., in support of the same. The following portions of the reply of Bajaj Finance Limited are relevant for the purpose of the decision:

"1. As per our records, the Loan Agreement No ***("LAN"):*** *4120DLEY896453, as stated in your Notice, is registered in the name of Mr. SIVAGURUNATHAN A ("****Customer****"). Please note that Customer has availed loan of Rs.30 Lakhs in the month of August 2019 and after deducting all agreed applicable charges sum of Rs.29,44,459/- was transferred in Customer's bank account. The Statement of Account depicting the details associated with the LAN is enclosed as "****Annexure - A****".*

2. Pointwise response to the concerns raised by your good office in your Notice under reply are as under:

(i)	*Name of the Applicant*	*MR. SIVAGURUNATHAN A S/O ARUMUGAM (Copy of loan application enclosed as "**Annexure - B**".)*
(ii)	*Name of the Co-applicant*	*There is No co-applicant*
(iii)	*Purpose of Loan*	*Business / Professional Loan*
(iv)	*Tenure of Loan*	*48 months Commencing from 02.10.2019 and ending on 02.09.2023 (Copy of Most Important Terms & Conditions enclosed as **"Annexure-C"**)*
(v)	*Date of Disbursement*	*17.08.2019 (Screenshot enclosed as "**Annexure - D**".)*
(vi)	*Bank Account Details:*	*At the time of availing the loan the customer has provided his ICICI bank details for disbursement of loan amount and also provided auto debit / NACH mandate for monthly collection of EMI. Details of bank are as under **Bank & Branch Name:** ICICI Bank Ltd., Madurai Tallakulam Branch **Account No.**: 600601515069 **MICR No.**: 625229011*

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		In the month of December 2019 Customer has swapped his auto debit / NACH mandate for collection of his EMIs from his other bank account wef JAN'2020. Details of said bank are as under: ***Bank & Branch Name**: INDUSIND Bank Ltd., Madurai Branch* ***Account No.**: 159876543000* ***MICR No.**: 625234002*
(viii)	*Certified copy of letters sent to the applicant on disbursement*	*Due to lockdown situation we are not able to retrieve these details. However, we shall endeavour to retrieve these details post closure of this lockdown.*
	……….…..	…………………..

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B. ICICI Bank Limited:

Vide Notice dated March 23, 2020, ICICI was asked to furnish the following information/document:

i. Details of account opening like copy of account opening form, details of main and secondary holders operating the said account;
ii. Certified copy of statement of the savings account from the date of account opening to till date;
iii. Counter party details for credit entry of Rs.29, 44,459/- received on 19.08.2019 in the aforesaid account like name of the payee, Bank account number, Name of the bank and its branch; and
iv. Any other comments which they would like to offer with respect to the request of the petitioner in the subject matter.

Vide emails dated April 30, 2020 ICICI has provided its reply forwarding therewith the copy of KYC, Account opening form, bank statement and counter party details of credit entry as sought above. It is pertinent to note from the details that the amount of Rs.29,44,459/ was credited into the subject bank account through 'NEFT' by Bajaj Finance Limited.

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C. The petitioner, Dr. A. Sivagurunathan:

(a) Vide Notice dated March 23, 2020, the petitioner was advised to make any additional submissions in connection with his request and he was also afforded an opportunity of personal hearing before the Recovery Officer at SEBI, Southern Regional Office at Chennai on April 15, 2020 if he may desire to avail. Vide email dated April 10, 2020, the petitioner informed that he is suffering from a limb injury due to which he is unable to avail the personal hearing on the above date and further requested the Recovery Officer to grant extension of time which may be after the relaxation of current lockdown situation imposed by the Govt. due to COVID-19 pandemic across the state. Further, he also stated in the email that he continues to pay the EMI on the personal loan availed from Bajaj Finance Limited through his account maintained with IndusInd Bank.

(b) Vide email dated April 11, 2020, the petitioner was informed that the date of personal hearing, in case he desires to appear before the Recovery Officer in person, could be rescheduled, however, the deadline (i.e. April 30, 2020) imposed by the Hon'ble High Court to conclude this enquiry has to be adhered to. Further, he was also requested to furnish the copy of IndusInd Bank statement reflecting the payment of said EMIs. He was contacted over telephone and informed that his presence is not mandatory and that personal hearing will be given only if the petitioner wants to avail. He was also advised that he may send all his submissions and documents by email, which will be considered while arriving at a decision, considering that he is not fit to travel owing to a limb fracture and the restrictions imposed because of the pandemic.

(c) Thereafter vide email sent on April 11, 2020, the petitioner requested that due to his medical ailments and the lockdown situation/travel restrictions imposed in the State due to COVID-19 pandemic, his physical presence may be exempted at SEBI. Subsequently, vide email sent on April 21, 2020, the petitioner had made the following submissions in support of his claim towards the amount lying in the joint savings account:

i. Scanned copy of Original Loan sanction letter from Bajaj Finance Limited;

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ii. Transaction Statement from Bajaj from August 17, 2019 to April 09, 2020;
iii. Copy of joint savings bank account reflecting the receipt of amount from Bajaj Finance;
iv. copy of representation dated October 18, 2019 submitted jointly by the petitioner and Mr. P. Srinivasa Thangadurai.

D. Mr. P. Sinivasa Thanga Durai:

Vide Notice dated March 23, 2020, the defaulter, Mr. P. Sinivasa Thanga Durai was advised to make any additional submissions in connection with the representation and request made by the petitioner to SEBI. He was also afforded an opportunity of personal hearing before the Recovery Officer on April 15, 2020, if he may desire to avail. Though the notice was sent and delivered on Mr. P. Sinivasa Thanga Durai through e-mail, he has not filed any additional submissions in the matter. Therefore, the case would be proceeded on the basis of material available on record including the joint representation made by the petitioner and Mr. P. Sinivasa Thanga Durai and the 'no-objection' conveyed therein by Mr. P. Sinivasa Thanga Durai in respect of the funds lying in the account and the removal of his name from the joint account no. 600601515069 with ICICI.

Consideration:

7. The recovery proceedings had been initiated against the defaulters vide Recovery Certificate No. 2454 of 2019 dated August 13, 2019 and notice of demand dated August 13, 2019 was issued to them. As the amounts dues under the recovery certificate was not satisfied, the Recovery Officer in exercise of powers under section 28A of the SEBI Act read with section 226 of the Income-tax Act, 1961 and the provisions of the Second Schedule thereto, had issued separate Notices of Attachment dated August 30, 2019, directing the attachment of Bank accounts/Demat accounts/Mutual Fund folios held either singly or jointly by the defaulters to the extent of their outstanding dues. Section 226 (3) (ii) of the Income-tax Act, 1961 reads as, "*, ...A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the assesse jointly with any other person and for the purpose of this sub-section, the shares of the joint holders in such account shall be presumed, unless to the contrary is proved, to be equal.*" The subject bank account bearing savings account number 600601515069 maintained with ICICI by the petitioner (as primary holder) along with one of the

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defaulters, Mr. P. Srinivasa Thangadurai (as a joint holder) also came to be attached pursuant to the Notice of Attachment (in Attachment Proceeding No.4806/2019 dated August 30, 2019 in R.C. No. 2454/2019) as the account was identified on the basis of the Permanent Account Number namely '*BBDPS1849E*' of one of the defaulters, Mr. P. Srinivasa Thangadurai.

8. It therefore follows that the attachment of singly held or jointly held bank and demat accounts can be attached for recovering the dues in accordance with the procedure laid down under the above provisions and section 226 (3) (ii) of the Income-tax Act, 1961 emphasizes that the share of the joint holders in such account shall be presumed, unless the contrary is proved, to be equal. Therefore, when an objection is made in respect of attachment of a joint account, by a person against whom recovery certificate has not be drawn, then the said objection needs to be proved with material evidence in order to revoke the same. This proceeding therefore is an enquiry in that regard on the representation made by the petitioner.

9. The stand of the petitioner is that he had applied for loan from Bajaj Finance Limited, which was sanctioned and credited to him and that the amounts lying in the attached bank account number 600601515069 maintained with ICICI by the petitioner along with Mr. P. Srinivasa Thangadurai, are his, as substantial amounts are from the bank loan availed by him from Bajaj Finance Limited. The petitioner has provided the scanned/photo copy/image of the 'Loan Sanction Letter' from Bajaj Finance Limited issued to him. This letter also provides details such as the sanctioned amount (of Rs.30,00,000/-), tenure, instalment amount, loan account number and the bank account (which is 600601515069) to which the loan amount was credited. This is fortified by the reply/documents from Bajaj Finance Limited, which has in clear terms informed SEBI that the petitioner had availed a loan of Rs.30,00,000/- and that after deducting all agreed charges, a sum of Rs.29,44,459/- was transferred to the petitioner's bank account which is to the Account No. 600601515069 maintained with ICICI, Madurai Tallakulam Branch. From the statement of account provided by ICICI, it is noted that there is a credit entry on August 19, 2019 for an amount of Rs.29,44,459/- with the legend 'NEFT-N231192904431-BAJAJ FINANCE LIMITED...'.

10. The response from Bajaj Finance further clarifies that the petitioner was the sole applicant and there was no 'co-applicant' for the aforesaid loan. Bajaj Finance has also informed that in the month of December 2019, the petitioner has swapped his auto debit account from ICICI to his account number 159876543000 maintained with IndusInd Bank, Madurai Branch. It is noted that the auto debit mandate for payment of EMI in

respect of the said loan was set up in the aforesaid account till December 2019 and during December 2019, the petitioner has swapped it with his IndusInd Bank Account w.e.f January 2020. This is also evident from the reply of the petitioner.

11. From perusal of the bank statement of the joint savings account and the reply of ICICI, it is noted that the subject joint savings account was opened on July 10, 2019 by way of initial deposit of Rs.20,000/- made from the account (no. 600601151599 held with ICICI) of the petitioner through a cheque bearing number '118363' dated July 10, 2019. Thereafter, the only substantial credit entry (apart from interest credit on September 30, 2019) appearing in the account statement was of Rs.29,44,459/- received from Bajaj Finance on August 19, 2019 which also matches with the details of personal loan disbursement provided by Bajaj Finance in its reply to SEBI in this enquiry proceedings. Thus, it is clear that even the initial amount has come from the petitioner. Except for the said credit of initial amount of Rs.20,000/-, the loan amount of Rs.29,44,459/- and credit of interest for the period June-September 2019, there is no other credit. The joint holder has not made any claim for the amounts, he has rather through the joint representation dated October 18, 2019 sought for the release of the amounts in favour of the petitioner.

12. Therefore, from the above discussion, it can be concluded that the credit of Rs.20,000/- is by the petitioner from his other account while opening the Account No. 600601515069 and the substantial credit of Rs. Rs.29,44,459/- is a loan availed solely by the petitioner from Bajaj Finance Limited. I also note there are series of withdrawals from the said account on August 26, 2019 and thereafter. These withdrawals are not the subject matter of this enquiry. As on the date of enforcing the notice of attachment issued by the Recovery Officer, SEBI i.e. on September 03, 2019 by ICICI, the balance lying in the savings account was Rs.19,04,504/-. Thus, from the foregoing observations based on material evidence, it can be held that the amounts deposited on two instances in the joint savings account till the date of attachment was primarily on account of the petitioner and therefore the petitioner could be entitled to the balance of Rs.19,13,210.18/- as of September 30, 2019 along with any additions thereon on account of interest, if any. Such amounts held in Account No. 600601515069 maintained with ICICI, Madurai Tallakulam Branch are therefore not to be subjected to the Notice of Attachment of Bank Account in Attachment Proceeding No. 4806/2019 dated August 30, 2019 issued in respect of the defaulters in the matter of recovery proceedings in SBS Investments.

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13. The petitioner has also made certain other allegations regarding his financial transactions with the defaulter Mr. P. Srinivasa Thangadurai and the dues from the defaulter and in relation to their real estate dealings. Such transactions are beyond the purview of SEBI and remedies in that regard are to be pursued by the petitioner in accordance with law as may be advised to him. However, transactions of the petitioner with the defaulters which fall under unregistered portfolio management services are already covered vide SEBI's Order dated January 09, 2018 and the consequential recovery proceedings initiated against the defaulters. The petitioner has also made a request that the subject bank account be converted from the present 'joint account' into a single holder account (solely in his name). In this regard, the petitioner is advised that the said request has to be taken before the concerned Bank by the parties.

14. In compliance with the Order dated March 6, 2020 passed by the Hon'ble High Court of Judicature at Madras, Madurai Bench, in Writ Petition No. 25644 of 2019, the request/representation dated September 23, 2019 and October 18, 2019 made by the petitioner are disposed off by the following decision:

Decision:

(i) In view of the foregoing, I, in exercise of powers under section 28A of the SEBI Act read with section 226 of the Income-tax Act, 196 read with Second Schedule thereto, hereby direct that the attachment issued vide Notice of Attachment No. 4806 of 2019 dated August 30, 2019 is not to be effected in the Savings Account bearing no. 600601515069 held in ICICI Bank Limited by Dr. A. Sivagurunathan jointly with Mr. P Srinivasa Thangadurai to the extent of Rs.19,13,210.18/- as of September 30, 2019 along with any additions thereon on account of interest, if any.

(ii) ICICI Bank Limited shall allow Dr. A. Sivagurunathan to withdraw the amounts as aforesaid or have them transferred to any of his personal Bank Accounts, as he desires, subject to the applicable banking regulations.

(iii) Subject to the aforesaid decision, the Savings Account bearing no. 600601515069 shall continue to have "No Debit" imposed on the account as long as it continues to be a joint account with the defaulter, Mr. P. Srinivasa Thangadurai.

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(iv) ICICI Bank Limited is advised that the aforesaid decision shall not be an impediment if the concerned parties approach it indicating their desire to convert/change the account from a 'joint account' to a 'single holder account' (i.e. solely in the name of the petitioner, Dr. A. Sivagurunathan) and make such request to the Bank.

(v) Except for the aforesaid decision, the attachment imposed in pursuance of the Notice of Attachment No. 4806 of 2019 dated August 30, 2019 (attached in e-mail) issued by the Recovery Officer shall continue to be in force and all other accounts attached pursuant to the aforesaid Notice of Attachment shall continue to be attached.

15. Copy of this decision is sent by e-mail to ICICI Bank for information and necessary action/compliance. Copy of this decision is also sent by e-mail to Dr. A. Sivagurunathan and Mr. P. Srinivasa Thangadurai for their information and action as deemed necessary by them.

Signed at Chennai on this the 27th day of April 2020.

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Securities and Exchange Board of India

RECOVERY OFFICER

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T. VINAY RAJNEESH
वसूली अधिकारी एवं उप महा प्रबंधक
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