Order No. RO/2/2023

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

ORDER UNDER SECTION 28 A OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH THE SECOND SCHEDULE OF THE INCOME TAX ACT, 1961 AND RULES FRAMED THEREUNDER

In respect of Recovery proceedings in the matter of Rich Capital and Financial Services Ltd Case I

Recovery Certificate No. 3318 of 2021

Defaulter: Big Broker House Stocks Ltd [PAN: AACCB9811B]

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1. Securities and Exchange Board of India imposed a penalty of Rs. 8 lakh vide Adjudicating order no. BM/AO-38/2012 dated 31.07.2012 against Big Broker House Stocks Ltd (Defaulter) in the matter of Rich Capital and Financial Services Ltd Case I. The defaulter had challenged the aforesaid order passed by the Adjudicating Officer in Appeal no. 202 of 2012, Big Broker House Stocks Ltd vs The Adjudicating Officer, SEBI before the Hon'ble Securities Appellate Tribunal (SAT) which vide its order dated 27.08.2013 dismissed the appeal. Thereafter, the defaulter assailed the order dated 27.08.2013 passed by the Hon'ble SAT before the Hon'ble Supreme Court of India in C.A. no. 975-976 of 2014 (Sanjeev Agarwal etc. vs the Adjudicating Officer, SEBI). The Hon'ble Supreme Court vide order dated 24.01.2014 *inter alia* directed that on payment of 50 per cent of the penalty amount as determined by the Adjudicating Authority within one month from 24.01.2014, the recovery of the balance penalty shall remain stayed. Accordingly, the 50 per cent of the penalty amount i.e. Rs.4,00,000/- was paid by the defaulter. The matter came up for hearing before the Hon'ble Supreme Court, which vide its order dated 25.09.2019 dismissed the appeal.

2. As the dues were still pending to be paid by the defaulter, SEBI initiated recovery proceedings under Section 28A of SEBI Act, 1992 vide recovery certificate no. 3318 of 2021 dated 02.03.2021 against the defaulter for recovery of a sum of Rs. Rs.8,13,405/-*(Rupees Eight Lakh Thirteen Thousand Four Hundred and Five Only)* (i.e. then pending penalty of Rs. 4,00,000/-, interest component of Rs. 4,12,405/- and recovery cost of Rs. 1000/-). Accordingly, a Notice of Demand (NoD) was issued to the defaulter on 02.03.2021. As the NoD remained unanswered, the bank accounts

and demat accounts of the defaulter were attached vide attachment proceeding no. 6508 and 6509 of 2021 dated 24.03.2021 respectively. Subsequently, remittance advice was issued to the banks and mutual fund houses on 08.04.2021.

3. Since, no amount was recovered from the defaulter, SEBI vide its letter dated 09.11.2022 directed the defaulter to provide its complete asset details (movable as well as immovable property) and pay the outstanding dues.

4. SEBI has subsequently received a representation dated 18.01.2023 from the defaulter filed through its authorized representative, Mr. M K Pandey, Advocate *inter alia* to withdraw/recall the recovery notice, to waive interest under Section 220(2A) of the Income Tax Act, 1961 and provide sufficient time to remit the legal and legitimate dues under recovery. The representation dated 18.01.2023 *inter alia* was submitted with the following requests by the defaulter:

I. Recovery cannot be done through powers and provisions which came into force after the order of penalty.

i. That the recovery officer is not competent in the case because the provision of Section 28 A of SEBI Act came in force after passing of the orders by adjudicating authority. Hence, this recovery proceeding are without jurisdiction and therefore illegal and unsustainable.

ii. SEBI Act 1992 does not have any independent provisions for recovery rather it borrows the provisions of income tax act 1961. Section 28A of SEBI Act is enabling provision, which read as under-

28A. (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) end shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:— (a) attachment and sale of the person's movable property; (b) attachment of the person's brink accounts; (c) attachment and sale of the person's immovable property; (d) arrest of the person and his detention in prison; (e) appointing a receiver for the management of the person's movable and immovable properties, and for his purpose, the provisions of sections 220 to 227, 228A, 229, 232, the Second and third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 and in force from time to time, in so far as may be, apply with necessary modification as if the said provisions and the rules made thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

iii. This provision of section 28A has been inserted through the Securities Laws (Amendment) Act, 2014, w.e.f. 18.07.2013. When the order of adjudicating authority imposing penalty is passed on 31.07.2012 when this provision of section 28A enabling recovery was not on statute book or in existence, then it cannot be applied in the instant case. Provision of 28A cannot be applied retrospectively in cases where in the order under SEBI Act has been passed prior to the enactment of the Securities Laws (Amendment) Act, 2014.

II. Interest cannot be charged or imposed for period of stay granted by Supreme Court and litigation period.

i. That the matter was under stay for 2014 to 2019 by the Hon'ble Supreme Court and levy of interest for such **period is illegal**.

ii. On 24.01.2014 there was stay order passed by the Supreme court of India, in Civil Appeal no 976/2014 which read as under:

O R D E R

Delay condoned.

Issue notice refundable in four weeks.

Dasti service, in addition, in permitted.

In the meanwhile, on the payment of 50 per cent of the penalty amount as determined by the Adjudicating Authority within one month from today, the recovery of the balance penalty shall remain stayed.

When the recovery is stayed for the period 24.01.2014 till final disposal by the Supreme Court in 25.09.2019, interest cannot be imposed for this period as it is patently illegal and unsustainable. Further as a judicial propriety for the period of litigation in appeal before SAT, interest cannot be charged.

III. Waiver of interest rate under Section 220 (2A)

Section 220 of Income Tax Act has to be read and interpreted holistically and in totality. Section 220 (2A) has provisions for waiving/reduction of interest rate. Interest cannot be imposed mechanically and when there is specific power to waiving/reduction of the interest by the authority.

Section 220(2A) read as under:

(2A) Notwithstanding anything contained in sub-section (2), the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner may reduce or waive the amount of interest paid or payable by an assessee under the said sub-section if he is satisfied that—

(i) payment of such amount has caused or would cause genuine hardship to the assessee;

(ii) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee; and

(iii) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

In the instant case all the three requirements for waiver/reduction of interest are fulfilled as such the interest levied must also be waived

- Payment of such amount may cause genuine hardship to the assessee.
- Default in the payment of the interest payable was due to circumstances beyond the control of the assessee.
- The assessee has extended his/her co-operation in any inquiry relating to the assessment of any proceeding for the recovery of my amount due.

Time –Limit for Adjudicating the Application for Waiver of Interest
The decision on waiver of interest must be made within a period of 12 months from the end of the month in which the application is received. Before deciding on rejection the assesse, like in many cases must be given an opportunity of being heard. Petition of waiver of interest under section 220(2A) can be filed even after the payment of interest by the assesse.

Increase or Decrease on Interest payable under Section 220 (2)
According to the first proviso to Section 220(2), if the taxes payable under this section has been reduced, interest shall be reduced accordingly, and the excess interest paid, if any, shall be refunded. The second proviso under section 220(2) states that, as a result of an order under in the first proviso, the interest payable under this section has been reduced, subsequently, based on order under this section or section 263, interest payable under section 220 is increased. The assessee would be hereby liable to pay interest under section 220(2) on the amount payable of such order, immediately after the lapse of the due date. Payment of interest must continue until the date of final payment.

IV. Issue of Notices

The Assessing officer is responsible for issuing prior notices under Section 220(2), demanding the taxpayer to meet the payments required. Besides that, in cases where the Assessing officer alters his/her assessment, a fresh notice of demand must be issued. The second demand notice will replace the initial one.

V. Waiver of interest on account of Covid 19 pandemic

Interest for the period of lockdown and covid 19 cannot be levied in light of the unprecedented and unusual business and general circumstances wherein entire activities has come to halt. Taking cognizance of the situation honorable Supreme Court of India has passed various orders regarding recovery and interest in this regard. In tune with these orders of Supreme Court interest could not be levied for the period of Covid pandemic. During the Covid 19 pandemic even the Reserve Bank of India (RBI) had allowed borrowers to defer their payments in the wake of the economic crisis following the COVID-19 pandemic. In the decision during the covid 19 pandemic, India's apex court has ordered the waiver of interest on interest on all loans under moratorium, not just those amounting to Rs.2 crore.

"We are of the opinion that there shall be no interest on interest or compensation interest during the moratorium period irrespective of loan amount. Any such amount collected shall be refunded,"
Supreme Court of India further added that if a refund is not possible, the interest on interest collected shall be adjusted in the next instalment payable.

It is submitted that the company has been regularly complying with respect to SEBI Act 1992.
The intention of the establishment is very clear and it does not wish to delay payment of any legal dues. The bonafide of the establishment can be established through regular challenge of the order of adjudication authority at its various forums.
That the instant recovery proceedings against the company has been initiated on the basis of the recovery certificate pertaining to demand after decision of the Supreme Court of India in Civil Appeal no 976/2014.

That the during the pendency of the appeal there was specific stay by the Supreme Court of India in the matter. The order of the stay by the Supreme Court and period of the stay is significant for the purpose of this recovery proceedings.
That even though the supreme court in its final order dated 21.11.2019 has dismissed the appeal, specific stay period cannot be taken for the purpose of calculation of the interest. As per legal position entire period of litigation and pendency of appeal cannot be taken for the purpose of calculation of interest. The observations and order of the Hon'ble Supreme Court does not direct, mandates or warrants any coercive action on the part of the department against the company without considering the complete meaning and implication of Supreme Court orders.
Such coercive measures against the company when the establishment is willing to remit the legal dues is not only unnecessary and harassing but it dictates against the basic spirit of judicial propriety and prudence.
The actions of the department that the establishment is delaying the remittance of dues is not only false but also misconceived. The department is proceeding in this matter without having any substantive basis either on the practical ground realities and financial positions of the company. It is reiterated that recovery officer is proceeding in the matter without legal authority, any proper verification of ground realities and situation.

VI. Director is not vicariously liable

It is submitted that the director is not vicariously liable for the default of the company. Hon'ble Supreme Court of India has given a wind of relief to the Corporate World by holding that the concept of vicarious liability of Company cannot be extended to directors, for offence committed by the company or its officers. Hon'ble Supreme Court of India held that those statues which has no Section which is on lines of Section 5 of the Companies Act, 1956 or Section 141 of the Negotiable Instruments Act, 1851 which provides for the vicarious liability of directors, Doctrine of Vicarious liability cannot be incorporated in those statues. Admittedly, Indian Penal code does not contain any provision which provides for the vicarious liability of directors and therefore Magistrate's Courts cannot take cognizance against the Directors based on vicarious liability concept, if nothing is visible from the complaint.
Hon'ble Supreme Court in the recent Judgment of S K Alagh Vs State of UP 2008 (2) SCALE 523 held that:-
19. *As, Admittedly, drafts were drawn in the name of the company, even if appellant was its Managing Director, he cannot be said to have committed an offence under section 406, of the Indian Penal Code. If and when a statues contemplates creation of such a legal fiction, it provides specifically therefore. In absence of any provision laid down under the statute, a director of a company, or an employee thereof cannot be field to be vicariously liable for an offence committed by the company itself*

(Sabitha Ramamurthy and Another Vs. R B S Channabasavaradhya (2006) 10 SCC 581).
20. We may in this regard; notice that the provisions of the Essential Commodities Act, Negotiable Instruments Act, employee's Provident Fund (Miscellaneous Provisions) Act, 1952 etc have created such Vicarious liability. It is interesting to note that Section 14 A of the 1952 Act specifically creates an offence of criminal breach of trust in respect of the amount deducted from the employees by the company. In terms of the said explanation appended to section 405 of the Indian Penal Code, a legal fiction has been created to the effect that the employer shall be deemed to have committed an offence of criminal breach of trust. Whereas a person in charge of the affairs of the company and in control thereof has been made vicariously liable for the offence committed by the company alonqwith the company, but even in case falling under section 406 of the Indian Penal code vicarious liability cannot be extendable to the directors of officers of the Company. (Makshud Saiyeed vs. State of Gujarat and others 2007 (11) SCALE 318.)
In the light of this recent pronouncement by the Hon'ble Supreme court, the law as is settled is that Since the Doctrine of vicarious liability has not been incorporated under the provisions of the Indian Penal Code, the doctrine of vicarious Liability cannot be incorporated therein only because it finds place in the Companies Act, 1956, Essential Commodities Act, Negotiable Instruments Act, and / or Employees' Provident Fund (Miscellaneous Provisions) Act, 1952 etc.

VII. ARBITRARY NATURE OF NOTICE

That without following the due process and set procedures, recovery notice has been issued without assigning reason making it arbitrary, improper, illegal and unsustainable. There is no reasoning for calculation of interest component and issue of such notice is against the law laid down in the judgment of supreme court.
In **Kranti Associates v. Masood Ahmed Khan (2010) 9 SCC 496, the legal position** was summarized as under: —

51. *Summarizing the above* discussion, this Court *holds:*

- **a.** *In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- **b.** *A quasi-judicial authority must record reasons in support of its conclusions.*
- **c.** *Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- **d.** *Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
- **e.** *Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
- **f.** *Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
- **g.** *Reasons facilitate the process of judicial review by superior Courts.*
- **h.** *The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.*

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
j. Insistence on reason is a requirement for both judicial accountability and transparency.
k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or rubber-stamp reasons' is not to be equated with a valid decision making process.

5. The defaulter, vide the abovementioned representation has therein put forth the following requests:

i. waive the interest component of the notice
ii. to drop the proceedings in terms of the explanations and reply as submitted above and provide us instalment of Rs. 25,000/- per month to remit the principal dues.
iii. decide the question of issue under preliminary objection/maintainability of this proceeding
iv. give full hearing on the issue raised in the objection.

6. An opportunity of hearing was provided to the defaulter on 18.01.2023 which was attended by its authorized representative (AR) Mr. M.K. Pandey, Advocate who re-iterated the contentions made in its representation dated 18.01.2023. During the pendency of the aforesaid proceedings, the revised NoD dated 17.04.2023 was issued to the defaulter as detailed below:

Description of Dues	**Amount**
Penalty imposed by the A.O. vide order no. BM/AO-38/2012 dated July 31, 2012 in the matter of Rich Capital and Financial Services Ltd Case I.	8,00,000/-
Interest From July 2012 to February, 2014 @ 1% per month	**1,60,000/-**
Amount Recovered from the defaulter (on February 06, 2014)	4,00,000/-
Penalty amount due	**4,00,000/-**
Interest on penalty amount due @ 1% p.m. from March, 2014 to April, 2023	**4,40,000/-**
Recovery Cost	**1,000/-**
Total	**10,01,000/-**

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Securities and Exchange Board of India
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New Delhi

7. In the aforesaid backdrop and on the basis of the records available/documents submitted by the defaulter, the main contentions of the defaulter are being dealt with in the following paragraphs:

i. The defaulter has raised the preliminary legal objection with regard to the retrospective effect of the Section 28A of SEBI Act, 1992. The contention of the defaulter is that *the provision of section 28A has been inserted through the Securities Laws (Amendment) Act, 2014, w.e.f. 18.07.2013. When the order of adjudicating authority imposing penalty is passed on 31.07.2012 when this provision of section 28A enabling recovery was not on statute book or in existence, then it cannot be applied in the instant case. Provision of 28A cannot be applied retrospectively in cases where in the order under SEBI Act has been passed prior to the enactment of the Securities Laws (Amendment) Act, 2014.* In this regard, it is noted that the Parliament has passed the Securities laws (Amendment) Act, 2014 empowering SEBI *inter alia* to recover the money from the defaulters, in case a person fails to pay the penalty imposed by the adjudicating officer. The object clause of the Bill presented before the Parliament when section 28A was inserted in the SEBI Act reads as under:

> *"Clause 21 – The clause seeks to insert a new section 28A in the SEBI Act, 1992 relating to recovery of amounts. This clause empowers the Board, inter alia, to attach and sell movable and immovable property of the defaulters without recourse to any court of law and attach bank accounts of defaulters, in case a person fails to pay the penalty imposed by the adjudicating officers or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order under Section 11B or fails to pay any fees to the Board."*

I note that the underlying intention of the Section 28A is to grant the relevant authority and powers to SEBI to recover the dues. Section 28A was added to SEBI Act by 2014 amendment with retrospective effect from 18.07.2013 giving powers of recovery to SEBI and provides recovery mechanism. The proceedings under Section 28A are akin to execution proceedings and the procedure to be followed is laid down in Second Schedule to Income Tax Act, 1961. Since Section 28A is a procedural mechanism to recover various dues payable to SEBI in the cases where orders have already been passed by SEBI but not complied with by the defaulters, the amounts pending unpaid as on the date of coming of it into the operation of Section 28A can be recovered under it. Therefore, this contention raised by the defaulter is not tenable.

ii. The second contention raised by the defaulter is that interest cannot be charged or imposed for period of stay granted by Supreme Court and Litigation Period. The defaulter contended that *the matter was under stay for 2014 to 2019 by the Hon'ble Supreme Court and levy of interest for such period is illegal. Further, as per legal position entire period of litigation and pendency of appeal cannot be taken for the purpose of calculation of interest. The observations and order of the Hon'ble Supreme Court does not directs, mandates or warrants any coercive action on the part of the department against the company without considering the complete meaning ad implication of Supreme Court orders.*

It is noted that the defaulter preferred an appeal before the Hon'ble SAT (Appeal No. 202 of 2012) and before the Hon'ble Supreme Court (Appeal no. 976 of 2014). The Hon'ble SAT vide its order dated 27.08.2013 had dismissed the appeal and whereas the Hon'ble Supreme Court vide its order dated 24.01.2014 had stayed the execution of recovery proceedings if the appellant pays 50% of the penalty amount (i.e. Rs. 4,00,000/) within one month from the date of passing of this order. The defaulter had then deposited an amount of Rs. 4,00,000/- on 11.02.2014 under protest to SEBI within the prescribed time. However, the defaulter failed to pay the remaining penalty amount of Rs. 4,00,000/- pursuant to the dismissal of the appeal (on 25.09.2019). Reference may also be drawn to the order dated 10.09.2013 in appeal no. 53 of 2012 (Hemant Sheth vs SEBI) and order dated 12.12.2013 in appeal no. 56 of 2013 (Sunita Gupta vs SEBI), 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. 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. Thus, for the calculation of interest, the period during which the appeals were pending and the execution of proceedings was stayed, would be included. Further, it is important to note that as the penalty remains unpaid since it was imposed by the AO vide its order dated 31.07.2012 and the said order has already been upheld by the Hon'ble SAT (vide order dated 27.08.2013) and the Hon'ble Supreme Court (vide order dated 25.09.2019), the interest is to be levied as per 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 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. Since the date from which the amount payable by the defaulter is the date on which the order was passed by the adjudicating officer, i.e. 31.07.2012, the interest would be calculated from the date of AO order till the day the dues are recovered in full.

iii. The third contention/request by the defaulter is for the waiver of interest rate under Section 220(2A) of the Income Tax Act, 1961 and to support this, the defaulter relied upon Section 220(2A) of the Income tax Act, 1961 which states as *"The Chief Commissioner or Commissioner may reduce or waive the amount of interest payable by an assessee he is satisfied that-*

(i) payment of such amount has caused or would cause genuine hardship to the assessee;

(ii) default in the payment of the amount on which interest has been paid or was payable under the said sub- section was due to circumstances beyond the control of the assessee; and

(iii) the assessee has co- operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him."

It is to be noted that the defaulter has not brought any substantial evidence on record showing that the payment of interest would cause genuine hardship to it. Further, vide its representation, the defaulter has stated that non - payment of penalty amount by the defaulter 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 defaulter has been due to circumstance beyond control of the defaulter. Further, even after the dismissal of the appeal of the defaulters by the Hon'ble Supreme Court vide order dated 25.09.2019 and subsequent reminder from

SEBI dated 22.01.2021 to pay the penalty, the defaulter has failed to pay the penalty and has not extended any co-operation in this regard. Reference may also be drawn to the judgement dated 04.10.2017 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 defaulter for waiver of interest payable on penalty is not tenable and is liable to be rejected.

iv. The defaulter has also raised an objection contending *that the Assessing officer is responsible for issuing prior notices under Section 220(2), demanding the taxpayer to meet the payments required. Besides that, in cases where the Assessing officer alters his/her assessment, a fresh notice of demand must be issued. The second demand notice will replace the initial one.* In this regard, it is noted that the Adjudicating Officer in its order dated 31.07.2012 while imposing penalty had also directed the appellant to pay the penalty amount within 45 days and this order of penalty shall be deemed to be a notice of demand as also held by the Hon'ble SAT in its order dated 12.04.2019 (Appeal no. 451 of 2018, PVP Global Ventures Private Limited vs SEBI). Therefore, this contention raised by the defaulter is not tenable.

v. Another contention/request raised by the defaulter is waiver of interest on account of covid 19 pandemic. The defaulter contended that *the interest for the period of lockdown and covid 19 cannot be levied in light of the unprecedented and unusual business and general circumstances wherein entire activities has come to halt. Taking cognizance of the situation honourable Supreme Court of India has passed various orders regarding recovery and interest in this regard. In tune with these orders of Supreme Court interest could not be levied for the period of Covid pandemic. During the Covid 19 pandemic even the Reserve Bank of India (RBI) had allowed borrowers to defer their payments in the wake of the economic crisis following the COVID-19 pandemic. In the decision during the covid 19 pandemic, India's apex court has ordered the waiver of interest on interest on all loans under moratorium, not just those amounting to Rs.2 crore.* In this regard, with respect to the relief sought to waive the interest on amount of penalty payable by the defaulter for the period of lockdown imposed by the Central and State Governments to contain the spread of Covid-19 and during its multiple waves, 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 defaulter did not pay the penalty pursuant to the dismissal of its appeal by the Hon'ble Supreme Court of India vide its order 25.09.2019, which was dismissed more than 3 years ago.

vi. The defaulter has also contended that *without following the due process and set procedures, recovery notice has been issued without assigning reason making it arbitrary, improper, illegal and unsustainable. There is no reasoning for calculation of interest component and issue of the notice is against the law laid down in the judgment of Supreme Court.* In this regard, it is noted that the recovery proceedings are the execution proceedings and the notice of demand has been duly issued to the defaulter after following the due process of law. Further, the notice of demand clearly explain the penalty imposed by the Adjudicating authority and the interest levied on it and the total amount due. Therefore, this contention of the defaulter is not tenable.

vii. I note regarding the request of availing the installment facility to remit the dues is to be dealt separately in accordance with procedure, pursuant to such application being filed by the defaulter with SEBI.

ORDER

8. In view of the above, I find no merits in the submissions made by the defaulter in the representation. I find that Section 28A is applicable against the defaulter in the matter, hence the Recovery Certificate no. 3318 of 2019 dated 02.03.2021 (revised on 17.04.2023) and the recovery proceedings initiated against the defaulter is in accordance with law. Hence, the representation of the defaulter is rejected and the recovery proceedings against the defaulter are to continue. The representation dated 18.01.2023 is hereby disposed of.

17.08.2023

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Securities and Exchange Board of India
नई दिल्ली
New Delhi

Rajeev Rastogi

Rajeev Rastogi
Recovery Officer

राजीव रस्तोगी / RAJEEV RASTOGI
वसूली अधिकारी एवं उप महाप्रबंधक
Recovery Officer & Deputy General Manager
भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board
उत्तरी प्रादेशिक कार्यालय/Northern Regional Office
नई दिल्ली/New Delhi