PROHIBITORY ORDER NO. RO/HO/ 1104 / 2025

BEFORE THE RECOVERY OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

In Recovery Certificate No. 3132 of 2020

Name of the Defaulter	PAN	Description of the property	Share of %age in the flat
Kaushik Shak	AXAPS7940N	Flat No. 502, 5th Floor, Vimla Niwas, Road No. 17, Jawahar Nagar, Goregaon (West), Mumbai 400101 (admeasuring 611 sq. ft. i.e. 56.76 sq. mtrs. RERA Carpet area) along with one parking in stilt / stack / cantilever parting)	To the extent of 33.33%

Order under Rules 16, 48 and 51 of the Second Schedule to the Income-tax Act, 1961 read with Section 28A of the Securities and Exchange Board of India Act, 1992

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') has initiated recovery proceedings against **Mr. Kaushik Shah (PAN: AXAPS7940N)** ["**Defaulter**"] for failure to pay the penalty imposed by Adjudicating Officer, SEBI vide order no. EAD-9/AO/SM/52-86/2019-20 dated August 02, 2019 ["AO Order"] along with further interest and cost. Recovery Certificate No. 3132 of 2020 dated November 05, 2020 has been drawn up by the Recovery Officer, SEBI, Mumbai for a sum of Rs.63,34,589/- (Rupees Sixty-Three Lakh Thirty-Four Thousand Five Hundred and Eighty-Nine only) along with further interest, all costs, charges, expenses, etc. As per the available records, Mr. Kaushik Shah has expired on May 29, 2022.

2. A Notice of Demand dated November 05, 2020 (hereinafter referred to as "NoD") has been issued by the Recovery Officer, directing the Defaulter to make payment of the said amount along with further interest, all costs, charges, expenses, etc. within 15 days from the date of receipt of the NoD. Since the Defaulter has failed to make the payment as directed in the NoD, the Recovery Officer has attached the bank accounts, demat accounts and mutual fund folios of the Defaulter on March 22, 2021 in execution of the NoD. Thereafter, a general remittance order has been issued on May 31, 2021. Till date, an amount of Rs.4,700/- has been recovered in the said Recovery Certificate. The amount outstanding under Recovery Certificate No.3132 of 2020 as on date is Rs.91,25,300/-

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3. Since the entire dues could not be recovered from the Defaulter, the assets of the Defaulter including immovable properties are liable to be attached. In this regard, it is noted that the Defaulter was entitled to 33.33% undivided share, right, title and interest in respect of the premises located at Flat No. 10 on 3rd Floor, Jawahar Nagar Co-operative Housing Society Limited situated at plot No. 326, Goregaon (West), Mumbai – 400104 area admeasuring 425 Sq. Ft. Carpet along with Garage No. 4, Ground Floor, area admeasuring 160 Sq. Ft. Carpet (hereinafter referred to as '**the Old Property**). The building was constructed in the year 1978 and the building was having Ground + 3 Floors without lift. It is noted from the records that the Defaulter vide Deed of Release dated September 16, 2020 had released his 33.33% share in the old property to Mrs. Kalpana K. Shah (his Sister in Law).

4. Section 28A of SEBI Act, 1992 empowers the Recovery Officer to apply the relevant provisions of Income Tax Act, 1961 in execution of Recovery Certificates drawn. As per Explanation 1 to Section 28A of the SEBI Act, 1992 read with Rules 16 and 51 of the Second Schedule of the Income Tax Act, 1961, any private alienation of the immovable property of the defaulter, done after the amount mentioned in the Recovery Certificate has become payable, shall be void. The relevant provisions are reproduced hereunder for reference:

   Explanation 1 to Section 28A of the SEBI Act, 1992:

   *"**Explanation 1:** For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act."*

   Rule 16(1) of the Second Schedule to the Income Tax Act, 1961:

   *"**Rule 16 (1)** Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money."*

SEBI वसूली विभाग Recovery Division Securities and Exchange Board of India

Rule 51 of the Second Schedule to the Income Tax Act, 1961:

*"**Rule 51** Where any immovable property is attached under this Schedule, the attachment shall relate back to, and take effect from, the date on which the notice to pay the arrears, issued under this Schedule, was served upon the defaulter."*

In the instant case, it is noted that the Penalty was imposed upon the defaulter vide Adjudication Order No. EAD-9/AO/SM/52-86/2019-20 dated August 02, 2019 which was delivered to the Defaulter through Speed Post on August 10, 2019. Thus, the penalty amount became payable by the defaulter from the date of passing of the order whereas, the release deed was executed on 16.09.2020 i.e. after the date of passing of the AO order and the amount became due.

5. Further, the building, where the old property was situated has undergone re-development and pursuant to which, vide Agreement for Permanent Alternate Accommodation dated September 29, 2022 executed between Mr. Yash Promodkumar Shah, Partner of M/s Yash Realtors & Developers and Mrs. Kalpana Ketan Shah, the developer has allotted Flat No. 502, 5th Floor, Vimla Niwas, Road No. 17, Jawahar Nagar, Goregaon (West), Mumbai 400101 (admeasuring 611 sq. ft. i.e. 56.76 sq. mtrs. RERA Carpet area) along with one parking in stilt / stack / cantilever parting) (hereinafter referred to as "**the New property**") to Mrs. Kalpana Ketan Shah in lieu of the Old Property.

6. Upon further enquiry with the above mentioned developer, contact details of one Mr. Keyur Shah has been received. It was noted from the release deed, that Mr. Keyur Shah is one of the releasers and is the son of Mrs Kalpana Shah. Accordingly, vide e-mail dated 02.01.2025, Mr Keyur Shah was advised to meet the Recovery Officer on 06.01.2025 to discuss further course of action. In the said meeting, it was informed by Mr. Keyur Shah that the said release deed was executed on the basis of adequate consideration to Mr. Kaushik Shah. Vide e-mail dated 07.01.2025, Mr Keyur Shah was advised to submit the proof of payment of consideration within a period of seven days. In response to the said e-mail, vide e-mail dated 13.01.2025, Mr Keyur Shah requested for extension of time to comply with the directions of e-mail dated 07.01.2025 and the same was granted to him vide e-mail dated 14.01.2025 wherein he was granted time till 17.01.2025 to submit the proof of payment of consideration. However, no documents were submitted within the time. Thereafter, vide e-mail dated 20.01.2025, Mr. Keyur Shah was granted time till 21.01.2025 for submitting the documents. It was also mentioned in the said e-mail that in case of non-submission of the said document(s), if any, by 21.01.2025, Recovery Officer, SEBI shall take further actions as envisaged under the law. Mr Keyur Shah has however failed to submit any documents.

7. As stated above, the release deed was executed after the date of passing of the AO order i.e. after the amount became due and there is no document on record which suggests that the said release deed was executed for adequate consideration. Any release/alienation done subsequent to the passing of the Adjudication Order dated 02.08.2019 pending payment of the penalty, without adequate consideration shall be void and shall be considered to be the property of the defaulter in view of the aforesaid provisions.

8. It may also be pertinent at this juncture to mention that, upon a perusal of the Release Deed executed on 16.09.2020, it is noted from page no. 4 of the aforesaid release deed that the releasers have released their respective shares *"in consideration of sense of love and affection"* which suggests that there is no monetary consideration paid for the execution of said release deed. Therefore, as discussed above and based on the evidences available on record, it is noted that there is no monetary consideration paid for executing the said release deed whereby the defaulter has relinquished his rights of 33.33% share in the old property in the name of Mrs. Kalpana Shah.

9. It may be noted that, if not for the said release deed, the defaulter would have continued to be the beneficial owner in the newly allocated property to the extent of 33.33%. As discussed above, the said right over the old property was alienated in favour of Mrs. Kalpana Shah without adequate consideration, after the passing of the Adjudication Order dated 02.08.2019 imposing penalty. Hence, in view of the abovementioned provisions of the law, it is felt necessary to immediately attach the said share of the defaulter i.e. to the extent of 33.33% only of the new property.

10. In view of the above, and in exercise of the powers conferred under Rules 16, 48 and 51 of the Second Schedule to the Income-tax Act, 1961 read with Section 28A of the SEBI Act, 1992, 33.33% share of the aforesaid new property i.e. to the extent of share of the defaulter, is hereby attached. Accordingly, Mrs. Kalpana Ketan Shah and all the subsequent purchasers of the attached property are hereby prohibited from disposing / transferring / alienating / charging the said 33.33% share of the new property. The details of the attached property are mentioned in the table below:

Description of Property	Area of property (Sq. ft.)	Address of Property	Percentage share of the defaulter.
Residential Flat	admeasuring 611 sq. ft. (i.e. 56.76 sq. mtrs. RERA Carpet area) along with one parking in stilt / stack / cantilever parting)	Flat No. 502, 5th Floor, Vimla Niwas, Road No. 17, Jawahar Nagar, Goregaon (West), Mumbai 400101.	To the extent of 33.33%

11. It is further directed that all persons are hereby prohibited from taking any benefit under such disposal / transfer / alienation / charge in respect of the said 33.33% share of the property mentioned above which stands attached in execution of the Recovery Certificate No. 3121 of 2020.

12. This order shall be served upon Mrs Kalpana Ketan Shah and to the respective:

(i) The Inspector General of Registration and Controller of Stamps;
(ii) The concerned Sub-Registrar Office;
(iii) Chairman/Secretary, Vimla Niwas, Road No. 17, Jawahar Nagar, Goregaon (West), Mumbai 400101
(iv) Mr. Yash Shah, Realtors & Developer, Vimla Niwas, Road No. 17, Jawahar Nagar, Goregaon (West), Mumbai 400101

with a direction not to act upon any documents purporting to be dealing with transfer, charge, lease or creation or alteration of any interest on the above mentioned property, if presented for registration.

Given under my hand and seal at Mumbai this the 23rd day of January, 2025.

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SEBI
वसूली विभाग
Recovery Division
Securities and Exchange Board of India

RECOVERY OFFICER

DEEPU ANANDAN
दीपू आनंदन
Dy. General Manager & Recovery Officer
उप महाप्रबंधक एवं वसूली अधिकारी
Securities and Exchange Board of India
भारतीय प्रतिभूति और विनिमय बोर्ड
Mumbai
मुंबई