RRD/RD-3/RO/Order No.1/ 2024

BEFORE THE RECOVERY OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
MUMBAI

Certificate No. 436 of 2014

Defaulter: M/s Four Season Farms Limited

Darshana Umesh Doshi
Arvindkumar Bhagwandas Doshi……………………………….. Applicants

Bipin Janardan Sane, Chartered Accountant of Applicants
Kailash Dubey, Advocate for Applicants

ORDER UNDER RULE 11 OF THE SECOND SCHEDULE TO THE INCOME-TAX ACT, 1961 READ WITH SECTION 28A OF THE SEBI ACT, 1992 IN THE MATTER OF FOUR SEASON FARMS LIMITED.

BACKGROUND:

1. Securities and Exchange Board of India (SEBI) vide order dated February 13, 2002 directed M/s Four Season Farms Limited (hereinafter referred to as 'Defaulter') to refund Rs.15.20 crore collected in violation of SEBI (Collective Investment Schemes) Regulations, 1999 together with assured returns, interest, cost, etc. to the investors.

2. Since the Defaulter failed to refund the monies so collected as directed by the said order, recovery proceedings were initiated by SEBI against Defaulter under Recovery Certificate No 436 of 2014 dated September 19, 2014. A Notice of Demand dated September 19, 2014 was issued to the Defaulter directing them to make the payment of the aforementioned amount within 15 days and then Notices of Attachment dated September 19, 2014 were also issued to banks and depositories, attaching bank/demat accounts of the Defaulter in execution of the said recovery certificate.

3. In spite of the said notices, the Defaulter failed to pay the entire dues and the amount available in the bank/demat accounts of the Defaulter was insufficient to pay the entire dues as detailed in the Recovery Certificate No. 436 of 2014. Therefore, the Recovery Officer, SEBI issued Prohibitory order dated November 21, 2014 under section 28A of SEBI Act, 1992 read with Rule 16 and 48 of the Second Schedule of the Income-tax Act, 1961, prohibiting the Defaulter from disposing, transferring, alienating or charging in respect of:

a. all the immovable properties held by the Defaulter including the following:

(i) 17 flats in Vasundhara Building, situated at Plot No. 620 (Pt), Bengali Compound, behind Minaxi Tower, Gokuldham, Goregaon (East), Mumbai – 400063

(ii) 252.06 acres of agricultural land at Taluka: Mahad and Mangaon with approx. 500 cashew trees and 40,000 teakwood trees.

(iii) Prawns Hatchery Plant at Village: Kothrude, Taluka: Mahad District: Raigad

b. All other movable properties held by the Defaulter.

4. Further, the abovementioned Prohibitory Order dated November 21, 2014 has also directed the Defaulter to furnish the following:

a) complete details of all the movable and immovable properties held by the defaulter and charges, if any thereon in the format prescribed in the Annexure, duly certified by the Board of Directors within one week from the date of this order.

b) copies of all the title deeds, valuation reports of all the properties held by it within two weeks from the date of this order.

c) list of all schemes floated by the defaulter along with brochure/ scheme information document for each of the schemes and details of all activities undertaken under each of the schemes within two weeks from the date of this order.

d) complete list of all investors along with address, telephone number, bank details, details of investments, the amounts due in each of the schemes etc., both in electronic and physical form within one month from the date of this order."

5. At this point of time, the Defaulter challenged the said recovery proceedings initiated by SEBI in Appeal No. 62 of 2015 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'the Hon'ble SAT'). In appeal, the Defaulter contended that the amount collected from the investors have already been refunded pursuant to the proceedings initiated under the Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999 (MPID Act).

6. Accordingly, the Hon'ble SAT vide order dated August 4, 2016 disposed of Appeal No. 62 of 2015, and observed as under:

"If the amount is already refunded, the proper course for the appellant is to satisfy the Recovery Officer with facts and figures and by furnishing requisite particulars called for and not to challenge the order passed by the Recovery Officer by filing an appeal before the Tribunal.

In these circumstances, the counsel for the appellant seeks to withdraw the appeal and seeks four weeks' time to furnish requisite particulars called for by the Recovery Officer.

Accordingly, the appeal is allowed to be withdrawn and the appellant is granted four weeks' time to furnish the particulars as per the list set out in the impugned order dated November 21, 2014."

7. However, the Defaulter failed to furnish any of the details of repayment to the investors or the information directed to be submitted by the Recovery Officer (in the order dated November 21, 2014) within four weeks' time as directed by the Hon'ble SAT, i.e. by September 6, 2016. Subsequently, the Defaulter vide letters dated September 7 and 26, 2016, informed SEBI that there are no investors whose claims remain unsettled and requested for extension of time till October 4, 2016 for complying with the Hon'ble SAT's order as the records are in the custody of the Hon'ble MPID Court/ Economic Offences Wing (EOW). Since sufficient time has already been given to the Defaulter, the Recovery Officer, SEBI vide letters dated September 14, 2016 and October 4, 2016, directed the Defaulter to submit the information regarding repayment made to the investors and other details as per the directions of SEBI and the Hon'ble SAT.

8. Vide letter dated October 5, 2016 the Defaulter submitted six volumes of photocopies of documents claimed to be pertaining to repayments made to the investors. After analyzing the said documents and submissions of the Defaulters, Recovery Officer, SEBI passed an order on November 22, 2016 holding that it would not be possible to conclude that the Defaulter has repaid the entire money to the investors. Accordingly, the claim of the Defaulter that it had repaid entire dues to all the investors was rejected.

9. The Recovery Officer, SEBI, thereafter proceeded to dispose of the attached assets and in this regard Notice of Sale for e-auction of 17 flats in Vasundhara Co-Op. Housing Society Limited, Vatika Road, Off Film City Road, Gokuldham, Goregaon(East), Mumbai – 400063 was issued by SEBI on August 10, 2018, *inter alia*, against the properties of the Defaulter and the same was published in Times of India, Lokmat and Dainik Jagran.

10. Against the said Notice of Sale for e-auction, Cello Infrastructure Limited had filed a Writ Petition before the Hon'ble High Court of Bombay on September 6, 2018 seeking to direct SEBI to abstain from auctioning certain flats. Vide order dated September 12, 2018, the Hon'ble High Court of Bombay has granted interim order and has directed that the auction scheduled to be held on the said date be proceeded, however, SEBI shall not take any decision with regard to finalization of the auction. It may be noted that in the abovementioned e-auction, no bids were received, and therefore the auction could not be finalized. Subsequently, Mrs. Darshana Umesh Doshi and Mr. Arvindkumar Bhagwandas Doshi (hereinafter referred to as the Applicants) had filed Interim Application Nos. 32824 & 32676 of 2022, before the Hon'ble High Court of Bombay, wherein the Applicants claimed that Flat Nos 101 and 201, Vasundhara Co-Op. Housing Society Limited, attached by the Recovery Officer, SEBI, and included in the sale notice August 10, 2018 are owned by them and do not belong to the Defaulter.

11. Subsequently, the Hon'ble High Court of Bombay vide order dated October 17, 2023 disposed of the said Interim Application Nos. 32824 & 32676 of 2022, and observed as under:

> *"2. We have heard learned counsel for the parties, as also having perused the record, we are of the opinion that of the petition in regard to the prayers as made, need not proceed for adjudication any further, suffice it to observe, that in the event, the SEBI has any future plans to auction the property, a 14 days' notice of such auction shall be issued to the petitioners, so as to enable the petitioners to assert any challenge to the same, if the petitioners so desire.*
>
> *3. ..the interveners are free to assert their rights, if any, in regard to the said property in a manner known to law and / or in defending any action, if any resorted by the SEBI against the interveners."*

<u>PERSONAL HEARING, ORAL AND WRITTEN SUBMISSIONS:</u>

12. Pursuant to the abovementioned Order passed by the Hon'ble High Court of Bombay, vide letter dated December 27, 2023, the Applicants, through their Chartered Accountant Mr. Bipin Janardan Sane have submitted that the Applicants are the owners of Flat No. 101 and Flat No. 201, Vasundhara Co-Op. Housing Society Limited, Goregaon (East), Mumbai – 400063 (hereinafter referred to as the disputed property) and have requested to release the attachments issued by the Recovery Officer, SEBI in respect of the same. The Applicants have enclosed some documents in support of their

claim. Upon oral request made on behalf of the Applicants seeking a personal hearing before the Recovery Officer, SEBI, vide letter dated January 23, 2024, an opportunity of personal hearing was granted to the Applicants before the Recovery Officer, SEBI on January 30, 2024. On the scheduled date of hearing, Chartered Accountant, Mr. Bipin Janardan Sane and advocate Mr. Kailash Dubey (hereinafter referred to as the authorized representatives of the Applicants) have appeared before the recovery Officer, SEBI, and made the following submissions:

(a) That the Applicants had purchased two flats, bearing Flat No. 101 and Flat No. 201, Vasundhara Co-Op. Housing Society Limited, Goregaon (East), Mumbai – 400063 through Agreement for sale with M/s Hari Shree Enterprises dated 11.05.2001.
(b) That the entire consideration of both the flats were paid by them.
(c) That the Applicants purchased the flats prior to the issuance of SEBI's Prohibitory Order dated November 21, 2014 and SEBI's Order dated February 13, 2002. Hence, aforesaid Prohibitory Order and Notices of Attachment under RC 436 of 2014 is not binding on the Applicant's flats.
(d) The Applicants requested that SEBI's attachment on the Flat Nos 101 and 201, Vasundhara Co-Op. Housing Society Limited, Goregaon (East), Mumbai – 400063 be lifted and the Flats be released.

13. The authorized representatives have then requested for two weeks' time to make written submissions and to submit the documents in support of their claim thereof to the Recovery Officer. The said request was conceded to. Subsequently, vide letter dated February 9, 2024, the applicants have submitted their written submissions along with the documents in support of their claim. The written submissions are summarized as below:

(a) That the Applicants had purchased two flats, bearing Flat No. 101, B-Wing, Building No.1, Vasundhara Co-Op. Housing Society Limited, Goregaon Mulund Link Road, Goregaon (East), Mumbai – 400063 admeasuring area 1005 sq. ft. (builtup) area or thereabout and Flat No. 201, on 2nd Floor, B-Wing, Building No. 1, Vasundhara Co-Op. Housing Society Limited, Goregaon (East), Mumbai – 400063 admeasuring area 1005 sq. ft. (builtup) area on 11.05.2001. Agreements for Sale dated 11.05.2001 was executed between the Applicants and M/s Hari Shree Enterprises for both flats, which were duly registered before the Joint Sub-Registrar, Bandra, Bombay, bearing Registration No. 2641/2001 and 2643/2001.

(b) That at the time of purchase, the building was not ready for possession, hence the Applicants did not get the possession even though the entire consideration of both flat premises was paid by them.

(c) That, after completion of building, it came to the Applicant's knowledge that the builder M/s Hari Shree Enterprises has taken loan from various banks and other financial institutions, and the aforesaid flats were in possession of Syndicate Bank as the builder was not paying their loans and hence the bank had attached various flats including the Applicants' flats by the Order dated September 10, 2003 of the Recovery Officer, Hon'ble Debt Recovery Tribunal – III, Mumbai.

(d) That the Applicants approached the Hon'ble Debt Recovery Tribunal – III, Mumbai and filed an intervening application to release the flats in possession of Syndicate Bank. That the Hon'ble Debt Recovery Tribunal – III vide order dated November 12, 2009, released Flat Nos 101 and 201 along with another applicant's flat.

(e) That after release of aforesaid property, it came to the knowledge of the applicants that the Senior Police Inspector, Economic Offences Wing, Room No. 7, Opp. G.P.O, 2nd Floor, Mumbai – 400001 had sealed the premises.

(f) That in the meanwhile, the Hon'ble MPID Court, Mumbai had acquitted all the accused Directors of the Defaulter company and released the flats to them.

(g) That the Applicants after receipt of aforesaid information issued notice to Assistant Commissioner of Police and Senior Police Inspector, Economic Offences Wing, Room No. 7, Fort, Mumbai to open the seal and provide possession to the Applicants.

(h) That the Applicants on non-response of the Office of Economic Offences Wing to their aforementioned letter, filed Miscellaneous Application before the Hon'ble MPID Court, Mumbai, for necessary directions to the Economic Offences Wing to handover the possession of the aforesaid flats to the Applicants.

(i) That the Applicants subsequently filed Interim Application before the Hon'ble High Court of Bombay, which heard the matter and passed the abovementioned order dated October 17, 2023.

(j) That the Applicants submit that they have paid the entire amount to developer M/s Hari Shree Enterprises and the same was accepted by Hon'ble Debt Recovery Tribunal – III, Mumbai, and that no person other than the Applicants has any rights and titles and interests in Flat Nos 101 and 201.

(k) That the Applicants submit that prior to purchase of aforesaid flats, no order was passed by SEBI. Further, prior to attachment by SEBI in 2014, the Hon'ble Debt Recovery Tribunal – III, Mumbai released the flats from Syndicate Bank to the Applicants vide Order dated November 12, 2009, hence SEBI's attachment order dated November 21, 2014 is not applicable on the Applicants' flats.

(l) That the Applicants are the absolute owners of the flats and have good title, that they have paid the entire consideration to the seller, the Hon'ble Debt Recovery Tribunal – III, Mumbai has considered the bonafide purchasers and directed to Syndicate Bank to release the attached flats.

(m) That the Applicants purchased the flat premises prior to the issuance of SEBI's Prohibitory Order dated November 21, 2014. Also, the Hon'ble Debt Recovery Tribunal – III, Mumbai had given possession to the Applicants prior to SEBI's Notices of Attachment dated September 19, 2014. Hence, the aforesaid attachment order is not binding on the Applicant's flats.

CONSIDERATION OF ISSUES:

14. I have carefully perused the documents available on record, the order dated October 17, 2023 passed by the Hon'ble High Court of Bombay, the Order dated November 12, 2009 passed by the Hon'ble Debt Recovery Tribunal – III, Mumbai and the oral and written submissions and the documents submitted therein by the Applicants. After examining the above, the issue for consideration in the instant matter is whether the Applicants herein are the owners of the disputed property? If the answer to the said issue is in affirmative, whether the attachments issued by the Recovery Officer, SEBI vide Prohibitory Order dated November 21, 2014 on the disputed property are to be released or not?

15. I note from the documents submitted by the Applicants that the disputed property has been purchased by the Applicants on May 11, 2001. The said purchase was executed through Agreements for Sale dated May 11, 2001 between the Applicants and M/s Hari Shree Enterprises, which were duly registered before the Joint Sub-Registrar, Bandra, Bombay, bearing Registration No. 2641/2001 and 2643/2001.

16. From the perusal of records, I note that the said Agreement for Sale was in lieu of valuable consideration. The Applicants paid a total consideration of Rs.11,55,750/- (Rupees Eleven Lakh Fifty-Five Thousand Seven Hundred and Fifty only) for Flat No. 201 in fulfilment of para 3(a) of the Agreement for Sale dated May 11, 2001 and Rs.11,55,750/- (Rupees Eleven Lakh Fifty-Five Thousand Seven Hundred and Fifty only) for Flat No. 101 in fulfilment of para 3(a) of the Agreement for Sale dated May 11, 2001. The same is corroborated by the Receipts for both Flat No. 101 and Flat No. 201 issued by M/s Hari Shree Enterprises to the Applicants. Copies of the said receipts were submitted alongwith the documents.

17. I also note that SEBI has passed an order against the Defaulter directing them to refund the investors along with assured returns at actuals on February 13, 2002. As noted and detailed above, the Applicants have purchased the disputed property before the said Order of SEBI was passed. It is also noted that the said disputed property was purchased by the Applicants from M/s Hari Shree Enterprises, who is one of the partners of the Defaulter. Since the said purchase was made prior to passing of the order dated February 13, 2002 by SEBI, I find merit in the submissions of the Applicants that the disputed property belongs to them and not the Defaulter.

18. I also note that the Hon'ble Debt Recovery Tribunal III, Mumbai, vide Order dated November 12, 2009, had also released the attachments on the disputed property on the grounds that the disputed property was purchased by the Applicants before the Attachment Order dated September 10, 2003 was issued by the Recovery Officer, Hon'ble Debt Recovery Tribunal - III, Mumbai. The relevant part of the order dated November 12, 2009 passed by the Hon'ble Debt Recovery Tribunal - III, Mumbai is reproduced below:

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(a) The property attached by this Tribunal i.e. Flat Nos 101 and 201, Vasundhara Enclave, Film City Road, Gokuldham,

Goregaon (E), Mumbai – 400063 is not mortgaged to the Certified Debtors (Four Seasons Farms Ltd.)

(b) The intervenor i.e. Mrs Darshana Umesh Doshi is the owner of the property and has purchased the same in May 2001 i.e. much before the attachment awarant was issued.

(c) Bank has failed to prove that the property does not belong to the Intervenor.

Order:

(a) The attachment levied on Flat Nos 101 and 201, situated at Vasundhara Enclave, Film City Road, Gokul Dham, Goregaon (E), Mumbai – 400063 is hereby raised. The seals on these flats must be opened.

(b) No order as to costs.

Date: 12.11.2009 *V.K. Malviya*
Place: Mumbai *Recovery Officer*
MDRT – III, Mumbai

19. In view of the above, I find that the Applicants are the owners of the disputed property and therefore, I hold the issue under consideration in the affirmative.

20. Now, since the answer to the issue is in the affirmative, I am of the view that the attachments dated November 21, 2014 issued by the Recovery Officer, SEBI, on the disputed property which stand in the name of the Applicants are liable to be released.

ORDER:

21. In view of the above, for the reasons stated in the preceding paragraphs, I hereby order release of Flat No. 101 and Flat No. 201, Vasundhara Co-Op. Housing Society Limited, Goregaon (East), Mumbai – 400063 from the attachments made vide Prohibitory Order dated November 21, 2014 issued by the Recovery Officer, SEBI.

22. A copy of this Order is to be served on the Applicants.

-sd-

Date: March 28, 2024 **Deepu Anandan**
Place: Mumbai **Deputy General Manager & Recovery Officer**