PROHIBITORY ORDER NO. RO/HO/1120/2025
Recovery Certificate No. 1603 of 2018

Kamal J Katkoria
(PAN: **AHCPK7426P)**
Flat No. 704, Building No. 2,
H-Wing, Mody Park
Pruthvy Classique, Iraniwadi,
Kandivali West, Mumbai – 400 067

Order under Rule 16 and 48 of the Second Schedule to the Income Tax Act, 1961 read with Section 28A of the SEBI Act, 1992

1. Recovery proceedings have been initiated against **Kamal J. Katkoria (AHCPK7426P)** ("Defaulter"), under Recovery Certificate no. 1603 of 2018 for non-compliance of directions issued vide WTM order no. WTM/MPB/SEBI/EFD/DRA-3/05/2018, dated May 08, 2018, and Notice of Demand dated July 19, 2018 has been issued for an amount of **Rs.72,74,997/-** (***Rupees Seventy Two lakh Seventy Four Thousand Nine Hundred Ninety Seven only***) along with further interest, all costs, charges and expenses incurred in respect of all the proceedings taken for recovery of the said sum within 15 days from the date of receipt of Notice of Demand.

2. As no amount was paid by the Defaulter, hence, vide order dated March 4, 2021 the Bank Account(s), Demat Account(s) and Mutual Fund folio(s) of the Defaulter were attached in execution of the abovementioned certificates and General Remittance Order was issued on June 29, 2022. However, as on date the complete outstanding dues could not be recovered in the instant proceedings.

3. As per available records, the Defaulter had certain ownership in a flat located in Mumbai. It is relevant to mention here the excerpts of the abovementioned WTM order, regarding the flat:
   a. "……
   10.viii) In the personal hearing dated December 17, 2013, before then Whole Time Member, SEBI, the Noticee claimed that he had bought a property/flat at the address: Flat No. 302, Building no-1, C-wing, Mody Park, Pruthvi Classique, Iraniwadi, Kandiwali (West) Mumbai (hereinafter referred to as 'Flat') and that he was forced to sell it and the money was extorted by Colin. The Noticee was given seven days' time to make these submissions by way of an affidavit; however, the Noticee failed to do so. It was observed that the said Flat was registered in the name of the Noticee and his wife Ms. Jagruti Katkoria vide "Agreement for sale" dated July 08, 2010. On analysis of share certificate of aforesaid Flat and letter dated September 2, 2015 of the Secretary of Mody Park, "C" Wing Co-operative Housing Society, it was observed that the Noticee transferred his share in the

भारतीय प्रतिभूति और विनिमय बोर्ड SEBI वसूली प्रभाग Recovery Division Securities and Exchange Board of India *aforesaid Flat to his mother, Ms. Saroj Katkoria vide gift deed dated November 08, 2013 and the said transfer was approved by Annual General Meeting of the aforesaid building on September 29, 2014. No other transfer of the said Flat took place during the investigation period, contrary to the Noticee's claims during the course of the proceedings.*

ix) From the Noticee's bank account statements, it was observed that the Flat was sold to the Noticee by Joint owner namely Mr. Mitesh Bharwada, Mr Amit Bharwada and Mr. Kumud Bharwada for ₹15,00,000 and the entire payment was made only by the Noticee......."

b. "........

41.v) The flat, having address as 302, Building no-1, C-wing, Mody Park, Pruthvi Classique, Iraniwadi, Kandiwali (West), Mumbai, was bought by Kamal (in his name and that of his wife) from the ill-gotten gains of front running transactions. The said flat is now registered in the name of Ms. Jagruti Katkoria and Ms. Saroj Katkoria (wife and mother of Kamal, espectively). Considering the same, I direct Ms. Jagruti Katkoria (wife of Kamal) and Ms. Saroj Katkoria (mother of Kamal) not to dispose of or alienate the said flat until the directions of this order are complied with by the Noticee."

Points for Consideration:

4. In order to ascertain whether the flat can legally be attached and auctioned in the present recovery proceedings, in order to recover the outstanding dues, the following points need examination:
   (i) The extent of ownership interest of the Defaulter and his wife in the flat on the date of execution of the initial Agreement for sale dated July 08, 2010;
   (ii) Validity of the Gift Deed dated November 08, 2013.

With respect to point no. (i)

5. For the observation that the Defaulter had purchased the flat in his and his wife's name vide "Agreement for sale" dated July 08, 2010, reference may be drawn to Section 45 of the Transfer of Property Act, 1872 ('TPA'), the text of which is reproduced below:

" 45. Joint transfer for consideration—

Where immoveable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

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<u>In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property."(Underline Supplied)</u>

6. Further, Hon'ble Bombay High Court has interpreted Section 45 of TPA in Peter Francis Conceicao and Ors. Vs. Candolina Conceicao and Ors., 2016, and *inter alia* ruled that:
"...
Admittedly, in the present case, there is no contract as to the manner in which the transferee would have a share in the property in question based on the subject sale deed. In such circumstances, the share in the property transferred would be in terms of the said provisions to the extent of the consideration contributed by the respective parties."

7. Therefore, in view of Section 45 of TPA and the ruling of the Hon'ble Bombay High Court, it may be concluded that for all practical purposes, the Defaulter was the sole owner of the property since the time of execution of the said Agreement for Sale.

With respect to point no. (ii)

8. The Transfer of Property Act, 1882 ('TPA') under Section 4 provides that the Chapters and sections of this Act (i.e. TPA) which relate to contracts shall be taken as part of the Indian Contract Act, 1872 ('ICA'). Therefore, the provisions of ICA shall be applicable upon the said gift deed to determine its validity.
9. As per Section 2 (h) of the Indian Contract Act, 1872 a contract is an agreement enforceable by law. In order to be enforceable by law, the agreement is required to satisfy the conditions laid down under Section 10 of the ICA, one of which is that an agreement should be made with a lawful object. Further, Section 23 of the ICA stipulates conditions when object of an agreement is not lawful. As per the said section the object of an agreement is unlawful if it is fraudulent. Hence, as per Section 23 of ICA, an agreement entered into between parties with a fraudulent objective is void and will not have any existence in the eyes of law. Further, it is settled principle of law that an act done with the intent to defraud is fraudulent. The relevant legal provisions are reproduced below for ease of reference:

"...

Section 2(h) - An agreement enforceable by law is a contract;

Section 10 - All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with ***a lawful object*** *and are not hereby expressly declared to be void...*

Section 23 *- What consideration and objects are lawful, and what not – The consideration or object of an agreement is lawful, unless –*

it is forbidden by law; or

सेबी वसूली प्रभाग Recovery Division Securities and Exchange Board of India *is of such a nature that, if permitted, it would defeat the provisions of any law; or is **fraudulent; or***

involves or implies, injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

10. The ad interim order no. WTM/PS/191/IVD/MAR/2016 dated March 17, 2016 mentions that during the course of investigation in the matter, show cause notice dated August 8, 2013 was issued to the Defaulter. Thereafter, letter dated October 11, 2013, providing opportunity of personal hearing to the Defaulter was sent twice, however, the same returned undelivered with remark "refused to accept" and "unclaimed". Subsequently, the Defaulter transferred his share in the Flat to his mother, Ms. Saroj Katkoria vide gift deed dated November 08, 2013 and thereafter replied to the SCN vide email dated November 12, 2013 and appeared for personal hearing on December 17, 2013. Hence, the Defaulter had transferred his share in the said flat by way of gift to his mother after service of SCN, but before responding to the SCN, vide email dated November 12, 2023. The said transfer by Defaulter clearly shows that he intended to defraud by disposing off his interest in the flat. Therefore, it is clearly established that the said transfer of his share in the flat vide gift deed dated November 08, 2013 was fraudulent and involved an unlawful objective.

11. In view of the foregoing, I find that the gift deed executed by the Defaulter in favour of his mother is void as per Section 23 of the Indian Contract Act, 1872, thus, it has no existence in the eyes of law. Therefore, the Share of the flat which was gifted by Defaulter to his mother will continue to be owned by the Defaulter himself irrespective of the execution of the said gift deed by him. Hence, the Defaulter continues to be sole owner of the flat since the date of purchase for all the practical purposes.

12. It is also felt that the Defaulter may dispose or transfer or alienate the assets with a view to obstruct or delay the recovery proceedings, which needs to be prevented immediately by attaching the said assets.

13. In view of the above, and in exercise of the powers conferred under Rule 16 and 48 of the Second Schedule to the Income Tax Act, 1961 read with Section 28A of the SEBI Act, 1992, the Defaulter is hereby prohibited from disposing, transferring, alienating, or charging in respect of the following properties attached:

"Flat No. 302, Building no-1, C-wing, Mody Park, Pruthvi Classique, Iraniwadi, Kandiwali (West) Mumbai"

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14. It is further directed that all persons are hereby prohibited from taking any benefit under such disposal/ transfer/ alienation/ charge in respect of the property mentioned above which stands attached in execution of present Recovery Certificate.

15. The Defaulter is also hereby directed to furnish the complete details of all the movable and immovable properties held by the Defaulter and charges, if any, thereon in the format prescribed at **Annexure - A**, within two weeks from the date of this order at SEBI, Head Office, Mumbai.

16. This order shall be served on the Defaulter, Ms. Jagruti Katkoria, Ms. Saroj Katkoria and
    i. The Inspector General of Registration of all the States and Union Territories; and
    ii. The concerned Tehsildars, District Registrars and Sub-Registrars of the respective areas where the above mentioned properties are located.

    with a direction not to act upon any documents purporting to be dealing with transfer, mortgage, charge, lease or creation or alteration of any interest in any of the properties owned / held by the Defaulter, including the said properties, if presented for registration.

Given under my hand and seal at Mumbai this 25th day of April, 2025.

SEAL

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J. Ashok Kumar

RECOVERY OFFICER

J. ASHOK KUMAR
जे. अशोक कुमार
Recovery Officer
वसूली अधिकारी
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Mumbai
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ANNEXURE- A

Sl. No.	Description of the Property	Date of Purchase	Purchase Price	Present Market	Value Details of building, fixtures, fittings, standing crop, timber, livestock etc.	Details of encumbrance if any
1.	District					
	Sub-Division					
	Block					
	Village					
	Khasra/ Mouza					
	Khata No.					
	Plot No.					
	Boundaries					
	Extent of land					
2.						
3.						
4.						
5.						