RRD/RD-3/RO/Order No. 002/2025

BEFORE THE RECOVERY OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

Certificate No. 2490 of 2019

Defaulter: Ms. Shilpa Kotak

Ms. Dipti Kishan Kotak…………………………………….……......……Applicant

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 TRADING ACTIVITY OF SUJIT KARKERA AND GROUP.

A. BACKGROUND

1. The Adjudicating Officer, Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) vide Adjudication Order dated May 15, 2012 (hereinafter referred to as "**AO Order"**) against **Ms. Shilpa Kotak (PAN: AHDPK7485R)** (hereinafter referred to as **"the defaulter"**) in the matter of Trading Activity of Sujit Karkera and Group, has *inter alia* imposed a penalty of Rs. 54,19,212/-. The defaulter challenged the said AO Order before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"the Hon'ble SAT"**) vide Appeal No. 167 of 2012. The Hon'ble SAT, vide order dated December 17, 2012, allowed the appeal of the defaulter and set aside the aforesaid AO Order. Thereafter, SEBI, preferred an appeal against the said Order of the Hon'ble SAT before the Hon'ble Supreme Court of India vide Appeal No. 2666 of 2013. The Hon'ble Supreme Court of India (hereinafter referred to as **"the Hon'ble SC"**) allowed the appeal filed by SEBI and upheld the AO Order vide order dated September 20, 2017 thereby setting aside the order dated December 17, 2012 passed by the Hon'ble SAT.

2. Since the defaulter failed to pay the penalty, as imposed by the Adjudicating Officer, Recovery proceedings were initiated by SEBI under Recovery Certificate No. 2490 of 2019 drawn against Ms. Shilpa Kotak (hereinafter referred to as **"RC"**). Notice of Demand (hereinafter referred to as **"NOD"**) dated August 28, 2019 was issued to the defaulter for an amount Rs. 1,01,61,206/- in RC No. 2490 (inclusive of interest

and costs) directing to pay the amount as mentioned in the NOD within a period of 15 days. However, the defaulter did not make the payment of the said amount within the prescribed period. Therefore, vide Notices of Attachment dated September 16, 2019 bearing Attachment Proceeding No. 4900 and 4901 in RC No. 2490, the Bank account(s), Demat account(s) and Mutual Fund folio(s) of the defaulter were attached.

3. Subsequently, General Remittance Order dated January 04, 2021 was issued to all banks and mutual funds to remit the available amounts in the accounts of defaulter/redeem the units in the mutual fund folios of the defaulter in favor of SEBI. However, the bank and demat remittances were inadequate to cover the dues. The defaulter through various remittances from the period of October, 2019 to August, 2022 paid the principal amount of Rs. 54,19,212/-. An amount of Rs. 62,15,084/- is still outstanding under the RC towards interest and cost.

4. During the course of proceedings, it was observed that the property *"Shop No. 4, A-Wing, Ground Floor, Mahaudi Darshan CHS Ltd., Dattani Park, Thakur Villlage, Kandivali East, Mumbai – 400101"* (hereinafter referred to as **"Subject Property"**) was transferred by the defaulter and another co-owner, Mr. Vanraj Kotak (father of the defaulter), in the name of one Ms. Dipti Kishan Kotak (hereinafter referred to as **"the applicant")**, vide sale deed dated November 02, 2016 i.e. after the AO order was served on the defaulter.

5. Therefore, it was felt necessary to immediately attach the assets of the defaulter held in the name of the applicant, to prevent them from disposing of or transferring or alienating the same with a view to obstruct or delay the recovery proceedings. In accordance therewith and in exercise of powers conferred under Section 28A of SEBI Act, 1992 read with Rules 16, 48 and 51 of the Second Schedule to the Income Tax Act, 1961, the immoveable property, as described above, was attached vide Prohibitory Order dated November 10, 2023.

6. In the meantime, the defaulter, vide various emails / letters, had requested the Recovery Officer for waiver / reduction of interest in their respective case. Recovery Officer, vide letter dated June 13, 2023, informed the defaulter that her request for waiver / reduction of interest cannot be acceded to. Thereafter, the defaulter along with one Mr. Sujit Karkera (husband of the defaulter) approached the Hon'ble SAT vide Appeal Nos. 886 and 887 of 2023 challenging the said letters issued by the Recovery Officer.

7. The Hon'ble SAT, vide order dated November 30, 2023 (as modified on December 05, 2023), in Appeal No. 886 and 887 of 2023, remanded the matter and held as follows:

   "…
   Considering the aforesaid, we are of the view that the matter requires reconsideration by the Recovery Officer on the aforesaid two issues. Thus, on this short ground, the impugned order cannot be sustained and is quashed. The matter is remitted to the Recovery Officer to pass a reasoned and speaking order after giving an opportunity of hearing. In the circumstances of the case, parties shall bear their own costs. The misc. applications are disposed of accordingly."

   The Hon'ble SAT has also held that:

   i. *"Recovery Officer is required to take into consideration as to whether interest could be validly levied for the period 2012- 2017 when the order of the AO was not in existence; and*
   ii. *Whether the appellant is entitled for waiver or reduction of interest?"*

8. Pursuant to passing of the above-said order, the applicant, vide letter dated January 03, 2024, raised objections on the aforesaid Prohibitory Order dated November 10, 2023 and requested for an opportunity of personal hearing. Vide the said letter, the applicant has stated that the Prohibitory Order dated November 10, 2023 is illegal,

unwarranted and infructuous for the reasons stated in the letter. The detailed submissions of the applicant are mentioned in the following paragraphs.

9. It may be pertinent to note that, at the time of passing of the order dated November 30, 2023 (as modified on December 05, 2023) by the Hon'ble SAT, there was no designated Competent Authority in SEBI for hearing applications in respect of waiver / reduction of interest. Therefore, in order to align with Section 220 (2A) of the Income Tax Act, 1961, SEBI Board in its meeting dated April 18, 2024 amended the SEBI (Delegation of Statutory and Financial Powers) Order, 2019 and authorized a panel of Executive Director(s) / Whole Time Member(s) as the Competent Authorities to handle application for waiver / reduction of interest.

10. On the backdrop of the said amendment, SEBI issued a Circular No. SEBI/HO/RRD_PoD_TPD/P/CIR/2025/05 dated January 10, 2025 in respect of *"Procedure for Seeking waiver or reduction of interest in respect of recovery proceedings initiated for failure to pay penalty"* (hereinafter referred to as **"Interest Waiver Circular"**). Therefore, the instant Recovery Proceedings under RC No. 2490 of 2019 were kept in abeyance till the disposal of the application for waiver / reduction of interest by the Competent Authority.

11. Thereafter, the matter was placed before the Competent Authority for consideration. The Competent Authority, vide order dated May 06, 2025, rejected the defaulter's application for waiver / reduction of interest whereupon the Recovery Proceedings against the defaulter were resumed.

12. Vide e-mail dated May 29, 2025, the applicant was granted an opportunity of personal hearing before the Recovery Officer, SEBI, scheduled on June 04, 2025. Vide e-mail dated June 04, 2025, the applicant requested for adjournment of the said hearing which was granted by the Recovery Officer and the next date was scheduled on June 16, 2025 at 11:00 AM.

13. The applicant informed that she would not be able to attend the scheduled meeting due to personal reasons. Therefore, Authorized Representative of the Applicant,

Advocate Deepak Dhane, (hereinafter referred to as **"AR"**) appeared on behalf of the applicant for the virtual hearing scheduled on June 16, 2025 and made submissions.

B. WRITTEN AND ORAL SUBMISSIONS:

14. Vide her letter dated January 03, 2024, the applicant has submitted the following:

i. An appeal was preferred by Ms. Shilpa Kotak against the order dated May 15, 2012, passed by the Adjudicating Officer, SEBI. In the said appeal, the Hon'ble SAT, vide order dated December 17, 2012, set aside the impugned AO order.

ii. Consequently, SEBI challenged the order of the Hon'ble SAT dated December 17, 2012, by way of Civil Appeal No. 2666 of 2013 before the Hon'ble Supreme Court. In the said appeal, SEBI sought stay against the Order of Hon'ble SAT. However, the Hon'ble Supreme Court vide Interim Order dated April 22, 2013, inter-alia listed the matter for Final Disposal and stated *"No orders on the application of stay".*

iii. Vide order dated September 20, 2017, the Hon'ble Supreme Court allowed SEBI's appeal and set-aside the Hon'ble SAT order dated December 17, 2012.

iv. Recovery Certificate No.2490 of 2019 was drawn against Shilpa Kotak dated August 28, 2019 and her bank, demat accounts and mutual fund folios were attached by SEBI on September 16, 2019. It is important to note that the property in question was purchased by her (the applicant) from Mr. Vanraj and Shilpa Kotak on November 02, 2016 and at that relevant time there was no order against Mr. Vanraj Kotak and / or Shilpa Kotak.

v. Subsequent to the above, Shilpa Kotak has paid the penalty amount of Rs.54,19,212/- and requested to waive the interest amount of Rs.62,15,084.81/-. SEBI vide letter dated June 13, 2023 refused to waive-off the interest amount. Shilpa Kotak challenged the said letter of SEBI refusing the waiver of interest before the Hon'ble SAT. Vide its Order dated November 30, 2023 (as modified on December 05, 2023), the Hon'ble SAT allowed her appeal no. 887 of 2023 and remanded the matter back to SEBI.

vi. She also claimed that the Prohibitory Order issued by the Recovery Officer is illegal, infructuous and unwarranted for the reasons stated below and requested the Prohibitory Order be withdrawn:

a) The said property was purchased by Mr. Vanraj Kotak in the year 1992, out of his funds and Ms. Shilpa Kotak's name was added for mere convenience. At the time of purchase of the said property by Mr. Vanraj Kotak, Shilpa Kotak was only 20 years of age and had no source of income. Since Shilpa Kotak had no source of income, she had not contributed even a single rupee towards purchase of the said property.

b) The applicant purchased the said property by paying full amount of Rs. 45,00,000/- (INR Forty-Five Lakhs only) under Sale Deed dated November 02, 2016. Additionally, at the time of purchase, she was informed that the property was fully owned by Mr. Vanraj Kotak and Shilpa Kotak's name was added only for convenience.

c) The applicant did her due diligence at the time of purchase of property and at that time, there was no encumbrance, attachment, prohibitory order(s) or restrain on Mr. Vanraj Kotak and / or Shilpa Kotak to sale / transfer the property. Therefore, the said purchase is valid in law and cannot be questioned.

d) SEBI while issuing the Prohibitory Order has relied upon AO Order dated May 15, 2012 levying the monetary penalty on Shilpa Kotak. However, SEBI has brushed aside a fact that the said Order was set aside by the Hon'ble SAT on December 17, 2012 and there was no stay on the order of Hon'ble SAT till the order was set-aside by Hon'ble SC on September 20, 2017.

e) The Hon'ble SC order dated September 20, 2017, setting aside the Hon'ble SAT's order dated December 17, 2012, does not make the said purchase by the applicant on November 02, 2016 invalid.

f) Hon'ble SAT in appeal no. 887 of 2023 has specifically directed SEBI *"to take into consideration as whether interest could be validly levied for the period 2012 to 2017 when the order of AO was not in existence and further whether the Appellant is entitled for waiver or reduction of interest."* In these circumstances, SEBI ought not to have issued the subject prohibitory order.

g) It is important to consider that Recovery Officer had issued the subject Recovery Certificate on August 28, 2019 and only thereafter, SEBI has started the attachment of properties belonging to Shilpa Kotak to recover the amounts from her. Therefore, the property purchased by her on November 02, 2016, prior to initiation of recovery proceedings, cannot be attached now on November 10, 2023.

h) The applicant re-iterated that at the time and sale of the subject property, neither any order nor any monetary penalty was in existence against Shilpa Kotak. Furthermore, there was no prohibition or any kind of restriction on Mr. Vanraj Kotak and Shilpa Kotak to sell / transfer the subject property.

15. During the virtual hearing dated June 16, 2025, the AR reiterated the submissions made in the applicant's letter dated January 03, 2024. In addition to the same, the AR requested for 15 days' time to submit the proof of payment of consideration by the applicant to Mr. Vanraj Kotak during which the Recovery Proceedings in respect of the subject property may be kept in abeyance.

16. Vide e-mail dated June 30, 2025, the AR has submitted scanned copy of the bank statements relating to the Applicant and Mr. Vanraj Kotak wherein the entire sale consideration of Rs. 45,00,000/- was paid by the applicant to Mr. Vanraj Kotak only. Further, vide the said e-mail, the AR informed that they intend to place certain affidavits pertaining to the subject property before the Recovery Officer / SEBI for consideration, for which they need an extension of 10 days. Accordingly, 10 days' time was granted to the applicant for submitting the said affidavits.

17. Subsequently, vide e-mail dated July 07, 2025, AR submitted the scanned copy of 3 case laws to be relied upon in support of the Applicant's submissions. Additionally, vide the said e-mail, AR submitted three separate affidavits dated July 01, 2025 executed by Mr. Vanraj Kotak, Ms. Shilpa Karkera and Ms. Dipti Kishan Kotak, stating relevant facts on record before SEBI with respect to the subject property. The contents of the affidavit in brief is as follows:

    i. Affidavit of Mr. Vanraj Kotak states that the defaulter had not contributed even a single rupee towards the purchase of subject property and the entire sale consideration was paid by him alone. Further, during the sale of the property in 2016, the sale consideration of Rs. 45,00,000/- from the applicant was paid to him alone and not a single rupee was received by the defaulter. Therefore, the defaulter had no title, or interest in the subject property and he is the bona-fide seller of the property and the applicant has acquired the said property validly and legally.
    ii. Affidavit of the defaulter reiterates the points mentioned in the affidavit of Mr. Vanraj Kotak.

iii. Affidavit of the applicant states that the subject property was purchased by her in November 2016 and at that time there was no attachment order against Mr. Vanraj Kotak or the defaulter and the penalty imposed by SEBI was set-aside by the Hon'ble SAT. Further, she has independently purchased the subject property from Mr. Vanraj Kotak and the entire sale consideration was paid to him alone and no payment was paid to the defaulter. Therefore, the defaulter had no title, or interest in the subject property. The subject property was legally and validly purchased by the applicant through valid consideration.

18. Vide letter dated July 07, 2025 and received on July 09, 2025, the AR submitted hard copies of the Original Affidavits, Copies of Bank Statement and the case laws.

C. CONSIDERATION OF ISSUES:

19. I have carefully perused the documents available on record, the documents submitted by the authorized representative of the applicant and the written and oral submissions of the applicant, as submitted by their authorized representative. After examining the above, the issues for consideration in the instant matter is:

    i. Whether the applicant is the bona fide purchaser of the subject property?

    ii. If the answer to the above is in the affirmative, whether the attachment issued by the Recovery Officer, SEBI vide Prohibitory Order dated November 10, 2023 is to be removed?

20. Before examining the merits of the submissions of the applicant, I consider it appropriate to first examine the facts of the matter. I note from the records that the subject property was purchased by Mr. Vanraj Kotak in the year 1992, jointly with the defaulter. Vide sale deed dated November 02, 2016, the applicant, for a consideration of Rs. 45,00,000/-, has purchased the said property. As per the bank account statements submitted by the applicant, the entire sale consideration of Rs. 45,00,000/- from the sale of subject property has been paid to Mr. Vanraj Kotak only. Further, the defaulter, the applicant and Mr. Vanraj Kotak have submitted notarised

affidavits stating that the entire sale consideration from the sale of subject property has been received by Mr. Vanraj Kotak and the defaulter has no right, title or interest in the subject property.

21. The Transfer of Property Act, 1882 (hereinafter referred to as **"the TP Act"**) envisages various modes for transferring a property but the present factual matrix is concerned with one mode i.e., by way of "Sale" and the same is dealt under section 54 of the TP Act which defines "sale" and a "contract for sale" as follows:

> *"**54. 'Sale' defined**. — 'Sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part promised.*
> ***Sale how made.** —Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.*
> ***Contract for sale.** —A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property."*

22. As per the above provision, a sale is a transfer of ownership in exchange for a price paid or promised or part-paid and the requirement of law for the transfer of property of sale is that it must take place through a validly executed sale deed, i.e., it must be in writing, properly attested and registered.

23. In the instant matter, I note that there has been a transfer of ownership of the subject property for a valid consideration of Rs. 45,00,000/- through execution of a valid Sale Deed. As per the bank statements produced by the applicant, the consideration has

been paid to Mr. Vanraj Kotak. Therefore, as per section 54 of the Transfer of Property Act, 1882, the applicant is a valid transferee of the subject property.

24. Additionally, I note that as per the proviso (i) to Section 281 of the Income Tax Act, 1961, transfer by the defaulter during the pendency of Recovery Proceedings shall not be void if it is made for adequate consideration and without notice of the pendency of proceedings. The same is reproduced below for ready reference:

> ***"Certain transfers to be void.***
>
> ***281.*** *(1) Where, during the pendency of any proceeding under this Act or after the completion thereof, but before the service of notice under rule 2 of the Second Schedule, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise :*
>
> ***Provided*** *that such charge or transfer shall not be void if it is made—*
> i. *for adequate consideration and without notice of the pendency of such proceeding or, as the case may be, without notice of such tax or other sum payable by the assessee; or*
> ii. *with the previous permission of the Assessing Officer.*
>
> *(2) This section applies to cases where the amount of tax or other sum payable or likely to be payable exceeds five thousand rupees and the assets charged or transferred exceed ten thousand rupees in value.*
>
> *Explanation. —In this section, "assets" means land, building, machinery, plant, shares, securities and fixed deposits in banks, to the extent to which any of the assets aforesaid does not form part of the stock-in-trade of the business of the assessee."*

25. Since the transaction was made for a valid consideration, as detailed above, the said transfer cannot be declared as void. Accordingly, I find merit in the submission of the applicant that, since the applicant has paid adequate consideration for the purchase of property and is therefore the *bona fide* purchaser of the subject property.

26. It may be pertinent to note here that at the time of passing of the Prohibitory Order dated November 10, 2023, the proof of payment of consideration, of Rs. 45,00,000/- by the applicant to Mr. Vanraj Kotak was not available on record. The said proof of payment of consideration has been submitted by the applicant vide e-mail dated June 30, 2025. Therefore, the same is being taken into consideration at this stage. On perusal of the bank statements submitted by the applicant, I note that, the entire sale consideration of Rs. 45,00,000/-, as mentioned in sale deed dated November 02, 2016, has been paid only to Mr. Vanraj Kotak and not to the defaulter. Further, in the affidavit dated July 01, 2025, submitted by Mr. Vanraj Kotak, he has stated that the entire sale consideration from the sale of subject property was paid to him alone and no single rupee was received by the defaulter. As evident from the above-mentioned documents, I note that the transaction for the sale of subject property has taken place between the applicant and Mr. Vanraj Kotak only and not with the defaulter.

27. In view of the above-discussed factual and legal positions of the matter, I hold the issue (i) under consideration in the affirmative i.e., the applicant is the *bona fide* purchaser of the subject property. Now, since the answer to the issue (i) is in the affirmative, I proceed to the issue (ii) under consideration. In this regard, reference may be drawn to the order of Hon'ble Supreme Court in the matter of ***Tax Recovery Officer II, Sadar v. Gangadhar Vishwanath Ranade [AIR 1999 SC 427]*** wherein the Hon'ble Supreme Court, while deciding on the issue of applications under Rule 11 of the Second Schedule to the Income Tax Act, 1961, held as follows:

> *"12. …if we examine Rule 11(4) of the Second Schedule to the Income-tax Act, it is clear that the Tax Recovery Officer is required to examine whether the possession of the third party is of a claimant in his own right or in trust for the assessee or on account of the assessee. <u>If he comes to a conclusion that the transferee is in possession in his or her own right, he will have to raise the attachment."</u>*

[Emphasis supplied]

28. From the consideration of issue (i) in the preceding paragraphs, it is established that the applicant is the *bona fide* purchaser of the subject property and thus, is in possession of the subject property in her own right. Therefore, with regards to issue (ii), I am of the view that the Prohibitory Order dated November 10, 2023 is to be lifted.

D. ORDER:

29. In view of the above and for the reasons as stated in the preceding paragraphs, I hereby order the release of the subject property from attachment made vide Prohibitory Order dated November 10, 2023. The applicant's letter dated January 03, 2024 is accordingly disposed of.

30. A copy of this order to be served on the applicant.

Date: October 31, 2025
Place: Mumbai

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DEEPU ANANDAN
Deputy General Manager
and Recovery Officer