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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 11426/2022, CM APPL. 33698/2022 & CM APPL. 33699/2022**

KUBER FLORITECH LTD.

..... Petitioner

Through: Mr. Asim Naeem, Advocate.

versus

SECURITIES AND EXCHANGE BOARD OF INDIA.... Respondent

Through: Ms. Pinky Anand, Senior Advocate
with Mr. Ashish Aggarwal, Ms.
Asees Jasmine Kaur, Ms. Nikita
Sharma and Mr. Shantanu Rai,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

02.08.2022

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1. The present writ petition impugns order No. RO/1/2022 dated 11th January, 2022 [*hereinafter*, “**impugned order**”] issued by Securities and Exchange Board of India [“**SEBI**”] disposing of the Petitioner’s representation dated 15th July, 2021.

2. At the outset, Ms. Pinky Anand, Senior Counsel for Respondent, has taken an objection regarding the maintainability of the present petition and the Court has heard the counsels at length.

3. Before giving an opinion on the afore-said matter, a brief reference to the previous proceedings would be apposite.

4. At the first instance, the Petitioner, by way of W.P. (C) No. 10558 of 2021, had impugned the attachment order No. RO/NRO/112/2018 dated 9th March, 2018, which was an action taken by the concerned Recovery Officer pursuant to the Recovery Certificate No. 911 of 2016, issued on 3rd June, 2016, against Kuber Planters Ltd. In the said petition, the Court took note of pendency of Petitioner's representation dated 15th July, 2021, against the afore-said attachment order. In that light, the Court, also took note of the alternate statutory remedy available to Petitioner under Section 15T read with Section 28A of the SEBI Act, 1992 and Rule 26 of the Second Schedule to the Income Tax Act, 1961, and passed the following order dated 16th November, 2021:

"1. By the order dated 22.09.2021, the objection of Mr. Ashish Aggarwal, learned counsel for respondent-Securities and Exchange Board of India ["SEBI"], was recorded to the effect that the petitioner has an alternative remedy available under Section 15T read with Section 28A of the SEBI Act, 1992 and Rule 26 of the Second Schedule to the Income Tax Act, 1961.

2. Mr. Asim Naeem, learned counsel for the petitioner, does not dispute that the remedy of appeal is available. He however submits that the SEBI may be directed to dispose of the petitioner's representation dated 15.07.2021 (Annexure P-7 to the writ petition) wherein the petitioner has contended that the property in question is not the property of M/s. Kuber Planters Limited, against which the impugned order dated 09 .03 .2018 has been passed.

3. Having regard to the above, SEBI is directed to dispose of the petitioner's representation dated 15.07.2021 within eight weeks from today. If necessary, the petitioner may then take its alternative statutory remedies. The rights and contentions of the parties on all points are left open."

5. Pursuant to above directions, Petitioner's representation dated 15th July, 2021 have been adjudicated by SEBI vide the impugned order. While disposing of the first writ, i.e., W.P. (C) No. 10558 of 2021, it was specifically observed that: "... If necessary, the petitioner may then take its alternative statutory remedies. The rights and contentions of the parties on all points are left open." However, instead of filing an appeal, the Petitioner has once again invoked the writ remedy.

6. Counsel for Petitioner, emphasises that a writ would lie before this Court as there is a jurisdictional error in the impugned order. The Court is however unable to agree. The Petitioner's primary objection, is that the attached property belongs to Kuber Floritech Ltd. [Petitioner] and not Kuber Planters Ltd., against whom the recovery certificate has been issued. This objection was raised in the representation referred above, but not accepted for reasons mentioned in the impugned order, which reads as follows: -

"a. Kuber Floritech Limited vide letter dated December 09, 2021 was advised by SEBI to submit the certified copies of the title deeds of the immovable assets under consideration on which Kuber Floritech Limited claiming the ownership. However, Kuber Floritech Limited vide letter dated December 14, 2021 provided only the photocopies of the title deeds which were annexed with the letter dated December 14, 2021. Further, during the course of hearing representatives have mentioned that these are the true copies of the respective original sale deeds. However, inspite of having-sufficient-opportunity. Kuber Florech Limited has neither provided certified copies of the sale deeds produced the original sale deeds-for-verification in order to substantiate its objections, nor provided any plausible reasons for not providing the same.

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e. Kuber Floritech Limited vide letter dated December 09, 2021 was advised to provide the information on source of funds utilized to purchase the immovable assets under consideration. However, Kuber Floritech

Limited failed to provide any relevant documents/submissions showing the source of funds to purchase the immovable assets under consideration. Vide letter dated December 14, 2021 and during the hearing on December 16, 2021 the only information provided by Kuber Floritech Limited was that all the payments to purchase the immovable assets were made through cheques by Kuber Floritech Ltd. (Earlier known as Kuber Plantation Ltd.).

f. Also, during the hearing on December 16, 2021 the representatives of Kuber Floritech. limited were asked to submit the details of directors of Kuber Plantation Ltd (Kuber Floritech Ltd) and Kuber Planters Ltd since inception to SEBI. In this response the representatives submitted that the name of the directors are available on MCA website and that are in public domain. Further, it was submitted that even otherwise it has nothing to do with the representation made by the company. That they are not in a position to submit the same as the details are very old. Kuber Floritech Limited was further advised vide email dated December 31, 2021 to provide the information in this regard. Vide email dated January 01, 2022, Kuber Floritech Limited provided the following documents with respect to Kuber Planters Limited and Kuber Floritech Ltd respectively

- *Copy of certificate of incorporation of Kuber Planters Limited dated April 21, 1995 alongwith it a copy of relevant pages of the MoA showing the first directors of the company as Mr. Pradyuman Kumar Sharma 2. Rowena Sharma 3. Mr. Ajit Edwin.*
- *Copy of the Annual returns for 1996 showing the same directors as mentioned above.*
- *Copy of the master data from MCA website showing the current directors as 1. Rowena Sharma 2. Ram Prasad 3. Chandra Pal Singh. Copy Certificate of incorporation of Kuber Plantations Limited for the change of name of the company dated 1993-1994 along with a copy of relevant pages of the MoA showing the first directors of the company viz. Mr. Pradyuman Kumar Sharma 2. Mukesh Mohan Sharma 3. Mr. Nina Shipstone*
- *Copy of Form 32 along with the copy of Linutes showing the directors as Mr. P. K.Sharma 2. Mr. M.M. Sharma 3. Mr. Nina Shipstone 4. Mr. R.K. Kaul 5.Mrs. Rowena Sharma.*
- *Copy of the master data from MCA website showing the current directors as 1. Rowena Sharma 2. Ram Prasad 3, Chandra Pal Singh.*

It is observed that the current directors of both the companies are same viz. 1. Rowena Sharma 2 Ram Prasad 3. Chandra Pal Singh. It is also observed from the present representation of Kuber Floritech Limited the company has been shown as "a unit of Kuber Group". Thus, Kuber

Floritech Limited and Kuber Planters Limited are part of Kuber Group of companies having same directors (as on date).”

[Emphasis Supplied]

7. The above extract reveals that SEBI was not satisfied with Petitioner’s claim on merits and therefore this Court does not find any jurisdictional error to entertain the petition. Moreover, as pointed out by Ms. Anand, Rule 11 of the Second Schedule of the Income Tax Act, 1961, applicable to the proceedings under dispute, provides complete mechanism of investigation by the Tax Recovery Officer for adjudication of any claim or objection to attachment or sale of any property in execution of a certificate. The afore-said Rule is a complete code in itself.

8. Moreover, as acknowledged by the Petitioner and recorded in the order dated 16th November, 2021, in W.P. (C) No. 10558 of 2021, there is an alternate statutory remedy, available with the Petitioner under Section 15T read with Section 28A of the SEBI Act, 1992 and Rule 26 of the Second Schedule to the Income Tax Act, 1961.

9. In light of the above, the Court is not inclined to entertain the present petition.

10. Dismissed along with other pending applications.

11. All the rights and contentions of the parties are left open. The Court has not examined the merits of the case and, in the event, the Petitioner were to take recourse to alternate statutory remedy, the concerned authority shall

adjudicate the claim of Petitioner, uninfluenced by any of the observations made above.

SANJEEV NARULA, J

AUGUST 2, 2022

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