Order No. RO/1/2024

BEFORE THE RECOVERY OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
NORTHERN REGIONAL OFFICE
RECOVERY CERTIFICATE 1011 OF 2016

ORDER

In respect of legal notice by Ms. Mithlesh Singh W/o Late Shri Jai Krishna Singh Rana in the matter of auction of immovable assets of KBCL India Limited

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1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') vide order no. WTM/PS/11/CIS/NRO/MAY/2014 dated May 26, 2014 under sections 11(1), 11B and 11(4) of the SEBI Act, 1992 read with Regulation 65 of SEBI (Collective Investment Schemes) Regulations, 1999 has interalia passed following directions against KBCL India Limited (herein after referred to as 'KBCL') and its directors namely Shri Rakesh Kumar, Shri Vishvnath Pratap Singh and Shri Shashi Kant Mishra:

   a) *KBCL India Limited shall not collect any money from investors or launch or carry any Collective Investment Schemes including the scheme which has been identified as a Collective Investment Scheme in this order.*

   b) *KBCL India Limited (PAN: AACCK1768N), and its directors namely Mr. Rakesh Kumar (PAN: BDXPK7192Q), Mr. Vishvnath Pratap Singh (PAN: BYYPS5946N) and Mr. Shashi Kant Mishra (PAN: AHYPM9076H) shall wind up the existing Collective Investment Schemes and refund the money collected by said Company under the schemes with returns which are due to investors as per the terms of offer within a period on three months from the date of this order and submit a winding up and repayment report to SEBI in accordance with SEBI (Collective Investment Schemes) Regulations, 1999.*

2. For non-compliance of the above order, SEBI has initiated recovery proceedings under section 28A of the SEBI Act, 1992 read with the provisions of Income Tax Act, 1961 vide recovery certificate No.1011 of 2016 dated November 10, 2016 against M/s. KBCL India Limited and its directors namely Shri Rakesh Kumar, Shri Vishvnath Pratap Singh and Shri Shashi Kant Mishra (hereinafter referred to as Defaulters) for failure to pay Rs.118.69 crore along with returns due to the investors with further interest, all costs, charges and expenses etc.

3. Pursuant to the issuance of recovery certificate, Bank and demat accounts of the Defaulters were attached vide Attachment Proceedings nos. 2741 and 2742 of 2026 respectively. Further, in exercise of the powers conferred under Rule 16 and 48 of the Second Schedule to the Income Tax Act, 1961 read with Section 28 A of the SEBI Act,

1992, SEBI vide prohibitory order nos. NRO/Rec/KBCL/113/2018 dated March 09, 2018, NRO/Rec/KBCL/138/2018 dated August 08, 2018 and RO/NRO/908/2024 dated January 09, 2024 prohibited all the persons from disposing, transferring, alienating or charging in respect of the properties mentioned in the said prohibitory orders.

4. In the aforesaid recovery proceedings, SEBI issued notice of sale dated June 11, 2024, for e-auction of immovable properties of the Defaulters. As per the said notice of sale, the last date for submitting the bid and EMD was July 05, 2024 and the e – auction is scheduled on July 16, 2024.

5. In the meantime, SEBI has received a legal Notice dated July 09, 2024 through email on July 09, 2024 from one Ms. Mithlesh Singh, w/o Late Shri Jai Krishna Singh Rana (hereinafter referred to as 'JKS Rana') through its Authorized Representative Adv. Mr. Rakesh Kumar Singh. Upon receipt of the said notice, an opportunity of personal hearing before the Recovery Officer was scheduled on July 11, 2024 wherein Advocate Shri Rakesh Kumar Singh, Authorised representative along with Mr. Mayank Singh Rana, son of Ms. Mithlesh Singh appeared and made oral submissions and sought time to file written submissions. Vide email dated July 13, 2024, additional written submission were filed.

6. On perusal of the said notice and the written submissions, it is noted that Ms. Mithlesh Singh has referred to the facts of various proceedings initiated against her and her late husband Shri JKS Rana before the Directorate of Enforcement (ED), crime branch etc. and has claimed her interest in the properties of KBCL and its group companies by virtue of being legal heir of late Shri JKS Rana. Following are her brief submissions:

i. Ms. Mithlesh Singh was a non-executive Director in some of the companies of Kalpatru Group of Companies including KBCL. She has resigned from the post of director of KBCL India Limited in 2007. Her tenure was from 15.08.2006 till 26.09.2007 and she doesn't hold any shares in KBCL.

ii. Ms. Mithilesh Singh is not only part and parcel of Kalpatru Group of companies but is also a legal heir of Late Shri JKS Rana and therefore has legal and emotional attachment to the properties of investors of Kalpatru group of companies. Late Shri JKS Rana is purportedly main promoter of Kalpatru Group of Companies of which KBCL India Limited is one of the company.

iii. The proposed e-auction scheduled on 16.07.2024 may be cancelled or deferred for a period of not less than one year. As a legal heir of Late Shri Jai Krishna Singh Rana, first chance should be given to legal heir to have the control of immovable properties to be attached or auctioned by the Govt. of India/its authorities either ED or SEBI and redress the grievances of the investors. By providing opportunity to Ms. Mithlesh Singh for repayment to the investors would maximize the recovery amount.

and ensure fair and equitable resolution. She further stated about the provisional attachment of ED dated 30.03.2023.

iv. SEBI orders have wrongly declared KBCL to be continuing a CIS and that KBCL was akin to builder/developer. Further, SEBI has passed orders without considering the role of Late Shri JKS Rana and Ms. Mithlesh Singh, sources of funds and the business model of Kalptaru Group of Companies of which KBCL India Limited is purportedly a part.

v. SEBI is selling the properties at potentially low prices which may not be adequate compensate the investors.

vi. ED in its investigation has found that KBCL was one of the group associated companies under the Kalpatru group of companies, however SEBI apparently had considered KBCL India Limited as a separate company and had passed orders treating KBCL as one company.

vii. During the tenure of Late Mr. Rana from 18.11.2002 to 7.10.2022, significant property acquisition were made by the company.

viii. The properties of KBCL India Limited which are put up for auction by SEBI vide the notice of sale are part of Kalpatru Group of Companies properties and cannot be dealt with in an isolated manner by the SEBI.

Consideration of Issues

7. On the basis of material / documents available on record and the written submissions of Ms. Mithlesh Singh, the objections raised is being dealt as under:

a. With respect to the contention regarding attachment of ED, I note that ED has issued the Provisional Attachment order No. 04/2023 dated 30.03.2023 for provisional attachment of the immovable properties of Kalpatru group of companies including KBCL India Limited for a period of 180 days. Reference is drawn to section 5(3) of the Prevention of Money Laundering Act, 2002, which states that every order of attachment made under section 5 (1) shall cease to have effect after the expiry of 180 days or on the date of an order made under section 8(3) whichever is earlier. From the records/documents submitted by Ms. Mithlesh Singh, it is observed that no order under section 8(3) confirming the provisional attachment has been placed before me. Even otherwise, it has been verified from the website of ED and I have not found any order confirming the said provisional attachment by ED. However, a press release dated 31.03.2023 has been issued by ED interalia stating that various properties have been provisionally attached and further investigation in the case pertaining to Kalpatru group of companies and other entities is in progress.

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b. I note that the proceedings against KBCL India Limited are under provisions of SEBI Act, 1992 read with SEBI (Collective Investment Schemes) Regulations, 1999. SEBI initiated recovery proceedings under section 28A of the SEBI read with Income Tax Act, 1961 against the Defaulters namely KBCL India Limited (herein after referred to as 'KBCL') and its directors namely Shri Rakesh Kumar, Shri Vishvnath Pratap Singh and Shri Shashi Kant Mishra for non compliance with the directions passed by SEBI against KBCL and its said directors.

c. I note that Section 28A of the SEBI Act, 1992 deals with the recovery of amounts and *inter-alia* holds that SEBI shall have precedence over any other claim against such person. The relevant extract of the said provision is reproduced herein below for ready reference:

"notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a recovery officer under section 28A(1), pursuant to the non-compliance with any direction issued by the Board shall have precedence over any other claim against such person."

Section 28A of the SEBI Act, 1992 was introduced with effect from July 18, 2013 giving overriding effect over all other claims of any other persons which includes institutions in respect of the defaulters who do not comply with the directions of the Board under section 11B.

d. Since the provisions of the SEBI Act, 1992, are primarily intended to safeguard the interests of the investors, therefore when recovery proceedings are initiated to execute/implement the directions of SEBI pursuant to the non-compliance, it is a remedial provision and safeguards interest of the investors who had invested their hard earned money in the schemes such as floated by KBCL. I further note that the recovery proceedings were initiated and two prohibitory orders (issued in 2018) were passed much before the provisional attachment of ED.

In view of the above, the ED proceedings have no bearing on the action taken by SEBI.

e. It is the contention of Ms. Mithlesh Singh that SEBI has passed orders without appreciating either the role of Late Mr. JKS Rana or business model of Kalpatru group of companies. It is further contended that during the tenure of Late Mr. JKS Rana, significant property acquisitions were made by KBCL.

With regard to the above contentions, it is relevant to submit that SEBI order dated May 26, 2014 against KBCL was challenged in appeal No. 363/2014 before the Ld. Securities Appellate Tribunal which was dismissed vide order dated September 20, 2016 for want of prosecution as neither the appellants nor their representatives were present in Court on the date of passing of the order. It is pertinent to mention that the order passed by the Ld. SAT was not challenged by KBCL and its directors before the Hon'ble Supreme Court of India and therefore the said order of SEBI has now attained finality.

Further, as regards the contention that significant property acquisitions were made by KBCL during the tenure of Mr. JKS Rana, I note that the details of properties owned by KBCL India Limited were submitted by one of the defaulter director namely, Shri Rakesh Kumar vide letter dated July 30, 2018 which includes the properties under e-auction.

f. With respect to the contention that Ms. Mithlesh Singh has legal and emotional attachment to the properties and investors of KBCL and its group companies, it is submitted that the same has no legal basis as the non compliance of the SEBI directions is continuing and no effective steps have been taken or shown to have been taken to repay the innocent investors who have been duped by KBCL.

g. It is pertinent to note that the recovery proceedings initiated by SEBI are against KBCL India Ltd and its directors namely Shri Rakesh Kumar, Shri Vishvnath Pratap Singh and Shri Shashi Kant Mishra. Neither Late Shri Jai Krishna Singh Rana nor Ms. Mithlesh Singh are connected to the proceedings before SEBI. Further as noted from interim order dated September 12, 2013 and final order dated May 26, 2014 of SEBI, the directions were passed against KBCL and its directors holding position at that point of time. Further, SEBI had interalia held the abovementioned directors are liable for the violation committed by KBCL in not obtaining the registration to offer/launch CIS and accordingly interalia directed the above directors to refund the money to the investors. Therefore, I note that Ms. Mithlesh Singh and her late husband Shri JKS Rana do not have any locus in the present recovery proceedings initiated against KBCL and its defaulter directors.

h. With respect to the title of properties mentioned in the notice of sale dated June 11, 2024, upon perusal of the available copies of title deeds, I have noted that the sale deeds pertaining to properties at Sr. Nos. 3,4,5,7,8,10,11,12,13,14,15, 17 and 18 are executed in favour of M/s KBCL India Limited. Further, Ms. Mithlesh Singh has not submitted any documentary proof to substantiate her or her late husband's claim in respect of ownership of properties mentioned under the Prohibitory orders issued by SEBI. In absence of any other sale deed or any other document establishing the title of the said properties in the name of Ms. Mithlesh Singh and/or Late Shri JKS Rana, I am not inclined to accept any right of title of Ms. Mithlesh Singh and/or Late Shri J.K.S. Rana over the said properties. Hence the auction in respect of said properties will be conducted as per the notice of sale.

i. With regard to properties at Sr. No. 1,2,6,9,16 and 19, since objections/representation have been received hence auction of said properties have been put on hold pending investigation of the claim or objection till July 25, 2024 and the said auction is now tentatively scheduled on July 26, 2024. Corrigendum dated July 15, 2024 has been issued in this regard.

j. With respect to the contention that SEBI is selling properties at potentially low prices, I note that valuation of the said properties under e- auction is done by IBBI registered independent valuer. Further, the auction of the properties is being conducted on online e-auction platform which in itself is a fairly transparent platform for disposal of assets.

8. In view of the above, I find that –

   a. there is no merit in the representation dated July 9, 2024 and submission dated July 13, 2024 made by Ms. Mithlesh Singh for cancelling or deferring the e-auction in respect properties at Sr. Nos. 3,4,5,7,8,10,11,12,13,14,15, 17 and 18.

   b. With regard to properties at Sr. No. 1,2,6,9,16 and 19, the auction of said properties have been put on hold pending investigation of the claim or objection and separate order will be passed in respect of the same.

Given under my hand and seal at New Delhi this 16th day of July, 2024.

New Delhi
July 16, 2024

भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India
नई दिल्ली
New Delhi

Kshama Wagherkar
RECOVERY OFFICER

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