Order No. RO/NRO/2/2024

BEFORE THE RECOVERY OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
NORTHERN REGIONAL OFFICE, NEW DELHI
BEFORE THE RECOVERY OFFICER

Order against M/s. VAANI FABRICS (PAN: AATHR5899F) – Noticee - In the matter of Ajay Gupta in Recovery Certificate no. 5844 of 2022

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

1. Securities and Exchange Board of India (***'SEBI'***) had vide WTM Order No. WTM/AB/IVD/ID1/17702/2022-23 dated July 06, 2022 under section 11(1), 11(4) and 11B of Securities and Exchange Board of India Act, 1992 ('SEBI Act') in the matter of Supreme Tex Mart Ltd. (hereinafter referred to as 'Supreme Tex'), *inter alia* directed Mr. Ajay Gupta to disgorge the illegal gains made by him along with interest amounting to Rs. 2,05,29,603 (Rupees Two Crore Five Lakh Twenty-Nine Thousand Six Hundred Three Only) along with further interest of 12% per annum from the date of impounding order dated March 05, 2019 till the date of actual payment within a period of 45 days from the date of service of the order failing which SEBI may recover the same in accordance with section 28A of the SEBI Act, 1992.

2. Since Mr. Ajay Gupta failed to disgorge the aforesaid illegal gains, Recovery proceeding under Section 28A of SEBI Act, 1992 read with Second Schedule to the Income-Tax Act, 1961 was initiated vide Recovery Certificate No. 5844 of 2022 dated October 26, 2022 against Mr. Ajay Gupta (hereinafter referred to as 'Defaulter') with a demand of Rs. 2,75,94,363.29/- (Rupees Two Crore Seventy-Five Lakh Ninety-Four Thousand Three Hundred Sixty-Three and Twenty-Nine Paisa Only) along with interest, all costs, charges and expenses in respect of the proceedings in the matter of Supreme Tex Mart Ltd. for recovering the said sum. A Notice of Demand (hereinafter referred to as 'NoD')

dated October 26, 2022 was drawn demanding the aforesaid amount of disgorgement within 15 days of the receipt of the NoD failing which the recovery officer shall proceed to recover the amount due in accordance with the provisions of SEBI Act, 1992 read with sections 220 to 227, 228A, 229 and 232 of the Income Tax Act, 1961 and the Second Schedule to the Income Tax Act, 1961 and rules made thereunder. The said NoD was delivered to Mr. Ajay Gupta on October 31, 2022.

3. Since no payment was made within 15 days of receipt of aforesaid NoD, the Recovery Officer proceeded to recover the amount due and accordingly, vide its Attachment proceeding Nos. 9299 of 2022 and 9300 of 2022 dated November 15, 2022, attached bank a/cs, demat a/cs, lockers and mutual fund folio of Ajay Gupta in matter of Supreme Tex Mart Ltd. under section 28A (1)(b) of SEBI Act, 1992 read with section 226 and the Second Schedule to the Income Tax Act, 1956. The Recovery Officer issued letter dated November 15, 2022 to all the Banks, Depositories and Mutual Funds, advising to ensure compliance with aforesaid Attachment order.

4. Pursuant to the said attachment proceedings, remittance advice dated December 16, 2022 was issued by the Recovery Officer to all Banks and Mutual Funds directing to remit the amount to the extent of dues lying in the account of the Defaulter's bank account or mutual fund folios to SEBI. This directive instructed them to remit any amounts due in the defaulter's accounts directly to SEBI, thereby facilitating the recovery of outstanding dues.

5. Subsequently, the Recovery Officer received information regarding a bank account held by Mr. Ajay Gupta in IndusInd Bank. On April 24, 2023, the Recovery Officer sent an email to IndusInd Bank, requesting detailed information about this account and any transactions relevant to the recovery efforts.

6. IndusInd Bank vide its email dated April 28, 2023 has informed SEBI that an amount of Rs. 1,79,62,000/- (Rupees One Crore Seventy Nine lakhs Sixty Two Thousand Only) has been transferred from account number 201015975028 in

the name of AK Traders, Proprietor Ajay Gupta in 7 tranches to the bank account no. 50200023922133 held with HDFC Bank (Branch - Sunder Nagar Chowk) in the name of M/s. Vaani Fabrics, post issuance of abovementioned Notice of Attachment of Bank Accounts of Ajay Gupta dated November 15, 2022. This series of transactions indicates a significant deliberate attempt by Mr. Gupta to siphon funds out of his account to obstruct compliance with the recovery proceedings. Details of such transfer are as under:

Date	Description	Amount (Rs.)
05/12/22	INDBR32022120500527159	11,00,000.00
05/12/22	INDBR32022120500530977	21,00,000.00
05/12/22	INDBR32022120500535504	32,00,000.00
06/12/22	INDBR32022120600553889	16,00,000.00
06/12/22	INDBR32022120600562313	34,00,000.00
07/12/22	INDBR32022120700577785	28,50,000.00
08/12/22	INDBR32022120800599044	37,12,000.00
Total		**1,79,62,000.00**

7. Upon reviewing the bank account statements, it is evident that Mr. Ajay Gupta made a deliberate attempt to siphon funds from his proprietorship account to M/s. Vaani Fabrics. This action appears to be aimed at evading compliance with the WTM Order dated July 6, 2022, as well as avoiding the obligations outlined in the Notice of Demand dated October 26, 2022, which required him to pay the disgorgement amount to SEBI.

8. Any transfer of property, including bank transactions, made after the issuance of a notice of demand is deemed void under Section 226(3) of the Income Tax Act, 1961. In light of this provision, a Notice of Demand was issued to M/s. Vaani Fabrics on December 13, 2023, for an amount of ₹1,79,62,000 (Rupees One Crore Seventy-Nine Lakh Sixty-Two Thousand Only). The notice *inter alia* directed M/s. Vaani Fabrics to pay the specified amount within seven days of receiving the notice. Failure to comply would result in the Recovery Officer proceeding to recover the amount in accordance with Section 28A of the SEBI

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Act, 1992, as well as Sections 220 to 227, 228A, 229, and 232 of the Income Tax Act, 1961, along with the Second Schedule to the said Act.

9. As no response was received from M/s. Vaani Fabrics regarding the Notice of Demand, there was reasonable cause to believe that the Noticee might attempt to dispose of the funds in their bank accounts. Such actions could obstruct the recovery of the amount due. Consequently, attachment proceedings were initiated, along with a debit freeze, under Attachment Proceeding No. 9299/1/2022 and 9300/1/2022, dated January 15, 2024, immediately for the amount of ₹1,79,62,000 (Rupees One Crore Seventy-Nine Lakh Sixty-Two Thousand Only).

10. Pursuant to the aforementioned attachment proceedings, M/s. Vaani Fabrics, vide email dated February 11, 2024 forwarded an advance copy of the writ petition titled as CWP 3408/2024 - Vaani Fabrics and others vs. Securities and Exchange Board of India and others filed before Hon'ble Punjab and Haryana High Court at Chandigarh.

11. The above matter was listed before the Hon'ble Punjab and Haryana High Court on February 21, 2024. Vide order dated February 21, 2024 the Hon'ble Court *inter alia* directed that the fresh hearing be conducted within a week's time before the Recovery Officer.

12. In accordance with the directions of the Hon'ble Punjab and Haryana High Court, an opportunity for a hearing was provided to M/s. Vaani Fabrics via email on February 21, 2024. The hearing took place as scheduled on February 27, 2024. Following this, an email dated March 1, 2024, was sent to the Noticee requesting the following information:

    a. Total amount received from Ajay Gupta, Proprietor, A.K. Traders [PAN: ABMPG0822F] during the period November 15, 2022 to December 16, 2022.

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b. Receipt of goods and services provided to A K Traders for which the abovementioned amount was received from Ajay Gupta, A K Traders.

c. Relationship of Vaani Fabrics vis-à-vis Ajay Gupta, Proprietor, A K Traders.

13. As no response was received from M/s. Vaani Fabrics, a follow-up email was sent on March 14, 2024, reminding them to respond to the earlier email dated March 1, 2024, regarding the requested information.

14. In an email dated March 14, 2024, the advocate of M/s. Vaani Fabrics sought relied upon document/statement, in order to send response. Accordingly, bank statement of account no. 50200023922133 of M/s. Vaani Fabrics held with HDFC Bank was immediately provided vide email dated March 14, 2024.

15. On March 15, 2024, another email was sent to the advocate of M/s. Vaani Fabrics, urging them to submit their response at the earliest. Subsequently, on April 8, 2024, a reply in the form of an affidavit was received from the advocate. This affidavit included various documents supporting their claims, and M/s. Vaani Fabrics *inter alia* made the following submissions:

a) The relationship of M/s. Vaani Fabrics with A K Traders is purely a business relationship being in the same profession and in the same city. There is no personal relationship of any kind with A K Traders.

b) During the course of business relationship, in the month of December 2022, AK Traders had made an order of knitted clothes (GSM 135-150) @ 220 per kilogram and for this purpose made a total advance payment of Rs. 1,60,53,268/-.

c) Thereafter, M/s. Vaani Fabrics started procuring knitted clothes and sent multiple samples of knitted cloth to AK Traders.

d) On March 29, 2023, AK Traders rejected the samples sent to them on the pretext that the quality has not matched as per the deal. Samples of knitted cloth were sent time and again and the same were rejected by A K Traders.

e) During the Interim Resolution Process (IRP) of Supreme Tex Mart Limited, the sister concerns of M/s. Vaani Fabrics had supplied material to Supreme Tex Mart Limited on the request of Mr. Ajay Gupta (proprietor of A K Traders) and Gautam Gupta, who were directors in Supreme Tex Mart Limited and payment for same is pending since 2018.

f) M/s. Vaani Fabrics communicated to A K Traders that they are retaining Rs. 1,60,53,268/- in lieu of non-receipt of the amount during the IRP process despite approval of the claim for quite substantial time.

g) A K traders was putting pressure on M/s. Vaani Fabrics for supply of goods as per the orders regarding which advance amount was paid to them failing which they shall initiate recovery through legal means.

h) M/s. Vaani Fabrics submitted Balance Sheet as on March 31, 2023 showing advance received from different customers including A K Traders.

i) M/s. Vaani Fabrics submitted letters dated January 12, 2023, March 29, 2023 and July 10, 2023 in the form of acknowledgement of A K Traders for amount outstanding towards M/s. Vaani Fabrics.

j) Subsequently, A K traders exerted pressure through other businesses in the same industry and assured that the amount for goods supplied through IRP process shall be received from liquidator of Supreme Tex Mart Limited and asked M/s. Vaani Fabrics to supply any other material if they are unable to supply desired quality of knitted cloth. In response, M/s. Vaani Fabrics supplied Binola Khal of cotton worth Rs. 1,63,41,516/- to A K Traders *via* multiple invoices in December, 2023 which was duly accepted by A K Traders. M/s. Vaani Fabrics submitted copy of invoices and GST return for December, 2023 as well.

k) M/s. Vaani Fabrics was unaware of any proceeding between Mr. Ajay Gupta and SEBI or Supreme Tex Mart Limited before receipt of Notice of Demand.

16. The submitted information was analyzed, revealing that the copies of invoices included with the reply were unsigned and unstamped. Consequently, further queries were raised, requesting signed copies of the invoices by April 25, 2024, through an email dated April 22, 2024.

17. In response to the previous email, the advocate for M/s. Vaani Fabrics stated that information regarding certain queries had already been provided. For the remaining queries, they indicated that explanations and available documents would be submitted in due course.

18. The Writ Petition No. 3408 of 2024 came up for hearing on April 30, 2024 before the Hon'ble Punjab & Haryana High Court and the matter was adjourned to July 10, 2024 on request of M/s. Vaani Fabrics and the documents as mentioned at para 16 above were received in the matter.

19. The said documents were analysed and it was observed that no information was received w.r.t. certain queries. Further information was sought vide various emails, however it is noted that complete information have not been provided.

20. Pursuant to the submission of documents, a hearing was conducted before Recovery Officer through video conference on July 25, 2024. Thereafter, vide email dated July 26, 2024, an opportunity was provided to submit written submissions by August 01, 2024.

21. I have thoroughly reviewed all documents submitted by M/s. Vaani Fabrics, along with other relevant materials on record. I now proceed to outline my observations. It is essential to first highlight the pertinent legal provisions as follows:

Section 28 A of the SEBI Act, 1992

"28A. (1) If a person fails to pay the penalty imposed 174[under this Act] or fails to comply with any direction of the Board for refund of monies or fails to

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comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—

(a) attachment and sale of the person's movable property;

(b) attachment of the person's bank accounts;

(c) attachment and sale of the person's immovable property;

(d) arrest of the person and his detention in prison;

(e) appointing a receiver for the management of the person's movable and immovable properties,

and for this purpose, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961."

"Section 226(3) of the Income Tax Act, 1961

(v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Assessing Officer or Tax Recovery Officer, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear of tax due from him, in the manner provided in sections 222 to 225 and the notice shall have the same effect as an attachment of a debt by the Tax Recovery Officer in exercise of his powers under section 222."

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"Rule 16 of the Second Schedule to the Income Act, 1961

Private alienation to be void in certain cases.

16. (1) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment."

22. It is noted that Recovery proceedings were initiated against Mr. Ajay Gupta (referred to as the "Defaulter") under section 28A of the SEBI Act, 1992, in conjunction with the provisions of the Income Tax Act, 1961, and its Second Schedule. This action was taken due to the Defaulter's failure to comply with the disgorgement order issued on July 6, 2022, by the Whole Time Member. A Notice of Demand dated October 26, 2022, was subsequently issued under Rule 2 of the Second Schedule to the Income Tax Act, 1961, along with section 28A of the SEBI Act, 1992. This notice directed the Defaulter to pay the outstanding amount specified in the recovery certificate within fifteen days of receipt. Failure to do so would allow the Recovery Officer to initiate further recovery actions as per the provisions of section 28A of the SEBI Act, 1992.

23. The Notice of Demand dated October 26, 2022, issued under Rule 2 of the Second Schedule to the Income Tax Act, 1961, was served on the Defaulter on October 31, 2022. According to Rule 16 of the Second Schedule to the Income Tax Act, 1961, once this notice is issued, the Defaulter becomes ineligible and incompetent to engage in any transactions concerning his properties, both movable and immovable. In this case, the Defaulter transferred an amount of Rs. 1,79,62,000/- to M/s. Vaani Fabrics on various dates. As stipulated by Rule 16, after the issuance of the Notice of Demand, the Defaulter is prohibited from

mortgaging, charging, leasing, or otherwise dealing with any of his properties unless he obtains permission from the Recovery Officer.

24. In this context, I refer to the observations made by the Hon'ble High Court of Andhra Pradesh in its order dated May 2, 2018, in the case of *Shriya Bhupal vs. The Assistant Commissioner of Income Tax and Others*. In this case, the court held that:

"Therefore, if a transfer had been made by a defaulter in contravention of Rule 16(1), it is automatically void."

25. Moreover, the Hon'ble Supreme Court in the case of *Tax Recovery Officer vs. Gangadhar Vishwanath Ranade (Decd.) (AIR 1999 SC 427)* — a precedent later followed in *Agasthiya Holdings Private Limited vs. The Commissioner of Income-tax* by the Hon'ble High Court of Madras has *inter alia* observed that the (Tax) Recovery Officer, while acting under Rule 11, must ascertain who possesses the property and the nature of that possession. The Recovery Officer is permitted to attach only those properties that are in the possession of the assessee in their own right, or those held by a tenant or third party on behalf of or for the benefit of the assessee.

26. Additionally, it is pertinent to cite the observations of the Hon'ble High Court of Judicature at Madras in the case of *D. S. Senthivel vs. Tax Recovery Officer – 2 [W.P. (MD) No. 2932 – 2939/18]*, delivered on March 7, 2028, as follows:

"...............

12. In this case, the property belonged to the defaulter – assesse. He has been served with notice under Rule 2. The moment such a notice was served on the defaulter- assesse, by virtue of Rule 16(1) of the second schedule, he became incompetent to deal with the property. In Rule 16(1) it is expressly stated that the defaulter assesse shall not be competent to deal with the property. If the vendor was not competent to deal with the property, he could not have passed any valid or legal title to the purchaser.

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This serves to establish the invalidity of any transfers made by the defaulter post-notice.

27. It is evident from Rule 16 of the Second Schedule of the Income Tax Act, 1961, that the defaulter, Mr. Ajay Gupta, is prohibited from engaging in any transactions concerning his properties following the issuance of the Notice of Demand dated October 26, 2022, under Rule 2 of the same Schedule. Consequently, the transfer of Rs.1,79,62,000/- from Mr. Ajay Gupta to M/s. Vaani Fabrics is deemed 'void' in accordance with Rule 16 to the Second Schedule of the Income Tax Act, 1961. Furthermore, Rule 16(2) states that any private transfer or delivery of property that has been attached, or any interest therein, made in contravention of the attachment, shall be void against all claims enforceable under that attachment.

28. I also observe that under section 226(3)(v) of the Income Tax Act, 1961, any claim related to property for which a notice under section 226(3) has been issued is rendered void if it arises after the date of that notice, in relation to the demand notice dated October 26, 2022. It is noteworthy that the counsel for M/s. Vaani Fabrics did not address the applicability of section 226(3)(v) in this matter.

29. In the instant matter, Mr. Ajay Gupta has transferred funds to M/s. Vaani Fabrics. M/s. Vaani Fabrics claims that their relationship with A K Traders is a business one and that they received Rs.1,60,53,268/- as an advance for supplying knitted clothing. Even if we accept, for the sake of argument, that M/s. Vaani Fabrics had a legitimate business relationship with A K Traders, it is crucial to note that Mr. Ajay Gupta transferred this money after the issuance of the Notice of Demand on October 26, 2022, and the attachment notice on November 15, 2022. This action violates Rule 16 of the Second Schedule to the Income Tax Act and cannot be overlooked. Consequently, any transfer of property to any person after the issuance of the Notice of Demand and the attachment notice is void under section 226(3)(v) of the Income Tax Act. Therefore, such transfers by the Defaulter are subject to attachment in execution of the Recovery Certificate. The notices of demand and the

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attachment proceedings are initiated against M/s. Vaani Fabrics to enforce Recovery Certificate No. 5844 of 2022 dated October 26, 2022.

30. Additionally, M/s. Vaani Fabrics claims that its sister concerns supplied materials to Supreme Tex Mart Limited during the Interim Resolution Process (IRP) at the request of Mr. Ajay Gupta and Mr. Gautam Gupta, directors of Supreme Tex Mart Limited. They assert that they retained Rs.1,60,53,268/- (received as an advance from Mr. Ajay Gupta) due to non-receipt of payment during the IRP, despite the approval of their claim.

31. I note that the Corporate Insolvency Resolution Proceedings (CIRP) for Supreme Tex Mart Limited were initiated by the Hon'ble National Company Law Tribunal (NCLT), Chandigarh, with an order dated September 29, 2017, which imposed a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016. Subsequently, on August 8, 2018, the NCLT ordered the liquidation of Supreme Tex Mart Limited. It is crucial to emphasize that any dues arising from transactions with a company in the Insolvency Resolution Process (IRP) must be settled by the appointed Resolution Professional or Liquidator, rather than through private arrangements between Mr. Ajay Gupta and M/s. Vaani Fabrics. According to M/s. Vaani Fabrics' affidavit dated April 8, 2024, the Liquidator of Supreme Tex Mart Limited is responsible for the release of any funds. Therefore, any attempt to adjust advance payments from Mr. Ajay Gupta against amounts owed by the Liquidator is invalid and deemed null and void.

32. It is important to clarify that the claims made by M/s. Vaani Fabrics regarding their transactions with Supreme Tex Mart Limited do does not pertain to the facts and transactions of the present case. These claims appear to have been presented solely to mislead the Recovery Officer and divert attention from the primary issue of the unauthorized transfer of funds by Mr. Ajay Gupta. Such assertions do not alter the validity of the recovery proceedings initiated against M/s. Vaani Fabrics.

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33. From the submissions made by M/s. Vaani Fabrics, it is understood that they claim to have received an advance for materials supplied to Supreme Tex Mart Ltd. during the year 2017-2018. However, it appears that under pressure from Mr. Ajay Gupta, M/s. Vaani Fabrics provided different materials and subsequently adjusted this against the original supply. This raises serious concerns about the credibility of M/s. Vaani Fabrics' claims regarding the amount received from Ajay Gupta. The basis for these assertions appears to be fabricated and likely an afterthought, designed to justify the siphoning off of funds in violation of the applicable laws.

34. Additionally, during the hearing on July 25, 2024, M/s. Vaani Fabrics asserted that their transactions with Mr. Ajay Gupta were legitimate business transactions and that the funds received were an advance for goods. They were asked to provide documentation to support this claim and submitted extensive records over time to substantiate that the funds were indeed part of a genuine business transaction. However, I note that the order against which Ajay Gupta made payments to M/s. Vaani Fabrics was only placed in December 2022, following a Notice of Demand dated October 26, 2022, and a Notice of Attachment dated November 15, 2022, against Mr. Ajay Gupta. This timeline raises significant concerns about the legitimacy of the transactions and suggests they were executed to undermine the recovery proceedings.

35. The submissions and documents provided by M/s. Vaani Fabrics clearly depict a connivance between Mr. Ajay Gupta and M/s. Vaani Fabrics. The timing and nature of the transactions, particularly the transfer of funds following the issuance of the Notice of Demand and Attachment, suggest a coordinated effort to circumvent recovery proceedings. This collaboration indicates a deliberate attempt to misappropriate funds while attempting to legitimize these actions through misleading documentation and explanations.

36. It is essential to highlight that the Attachment Order against M/s. Vaani Fabrics concerns the amount of ₹1,79,62,000, which was unlawfully transferred to them by Mr. Ajay Gupta following the issuance of the Notice of Demand on October 26, 2022, and the Notice of Attachment on November 15, 2022. Given that this

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transfer occurred after these notices were issued, there is no need to investigate the business transactions between Mr. Ajay Gupta and M/s. Vaani Fabrics. The timing of the fund transfer, occurring after the Notice of Demand, clearly violates Rule 16 of the Second Schedule to the Income Tax Act, rendering the transfer void.

37. Mr. Ajay Gupta transferred ₹1,79,62,000 from account number 201015975028, held under the name of A K Traders (a proprietorship of Ajay Gupta), in seven installments to the bank account number 50200023922133 at HDFC Bank (Sunder Nagar Chowk branch) in the name of M/s. Vaani Fabrics. This transfer occurred after the service of the Notice of Demand, and no permission was obtained from the Recovery Officer as required by Rule 16(1) of the Second Schedule to the Income Tax Act. This action appears to be a deliberate attempt by Mr. Ajay Gupta to siphon off funds from his proprietary account to M/s. Vaani Fabrics, thereby effectively evading the disgorgement amount owed to SEBI and delaying the recovery proceedings. Such actions not only undermine the compliance requirements set forth by SEBI but also obstruct the ongoing recovery proceedings. Therefore, the transfer is deemed void, and the attachment of the funds is justified to ensure the enforcement of the recovery certificate.

38. In light of the above, the transfer of funds without the Recovery Officer's permission is considered void under Rule 16 of the Second Schedule to the Income Tax Act, 1961. Consequently, M/s. Vaani Fabrics is deemed an assessee in default regarding the amount transferred to them, as per Section 226(3)(i) of the Income Tax Act, 1961. Therefore, M/s. Vaani Fabrics is liable to repay ₹1,79,62,000 (Rupees One Crore Seventy-Nine Lakhs Sixty-Two Thousand Only) to SEBI.

39. In light of the comprehensive analysis presented, it is evident that the transfer of ₹1,79,62,000 from Mr. Ajay Gupta to M/s. Vaani Fabrics constitutes a calculated and deliberate attempt to siphon off funds, designed to obstruct and evade the ongoing recovery proceedings initiated by SEBI. This action occurred in direct violation of the legal stipulations set forth in Rule 16 of the Second

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Schedule to the Income Tax Act, 1961 read with SEBI Act, which explicitly prohibits such transactions following the issuance of a Notice of Demand.

40. The timing of these transfers conducted after both the Notice of Demand on October 26, 2022, and the Notice of Attachment on November 15, 2022 further underscores the intent behind this maneuver. It suggests not merely a casual oversight but rather a purposeful effort to manipulate financial resources and evade legal responsibilities. The systematic division of the transfer into seven installments raises additional red flags, indicating an attempt to obscure the transaction's true nature and scale, thereby complicating any potential tracking or accountability.

41. Moreover, the apparent connivance between Mr. Ajay Gupta, M/s. Vaani Fabrics, and the banking institution involved amplifies the severity of this situation. This collaboration reflects a disturbing pattern of behavior aimed at shielding assets from rightful claims, a tactic that undermines the integrity of recovery proceedings. The lack of transparency and the evasive responses from M/s. Vaani Fabrics only serve to reinforce the presumption of collusion.

42. In conclusion, the evidence clearly demonstrates that these funds were transferred with the explicit purpose of evading the legal repercussions associated with Mr. Ajay Gupta's debts. Such actions not only contravene established legal frameworks but also erode public trust in the regulatory processes designed to ensure accountability. Therefore, it is imperative that the attachment of M/s. Vaani Fabrics' bank accounts remain enforced until the full amount owed is recovered, thereby reaffirming the authority of the recovery proceedings and deterring future attempts to circumvent financial obligations.

43. In light of the facts and circumstances of this case, and in accordance with Rule 16 of the Second Schedule and Section 226(3) of the Income Tax Act, along with Section 28A of the SEBI Act, 1992, and established legal principles, I conclude that the transfer of funds from Mr. Ajay Gupta to M/s. Vaani Fabrics, made subsequent to the issuance of the Notice of Demand under Rule 2 of the

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Second Schedule to the Income Tax Act, 1961, is void. Consequently, I hereby declare the transfer of ₹1,79,62,000 as null and void, and it is therefore subject to recovery under Recovery Certificate No. 5844 of 2022, dated October 26, 2022. The attachment of the bank, demat accounts and mutual fund folios of M/s. Vaani Fabrics vide Attachment Proceeding nos. 9299/1/2022 and 9300/1/2022 will remain in effect until the full amount of ₹1,79,62,000 is paid to SEBI.

Date October 29, 2024

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Kshama Wagherkar

Recovery Officer

क्षमा प्र. वाघरकर / Kshama P. Wagherkar
वसूली अधिकारी एवं महाप्रबंधक
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भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board
उत्तरी प्रादेशिक कार्यालय / Northern Regional Officer
नई दिल्ली / New Delhi