

**BEFORE THE RECOVERY OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
MUMBAI**

Recovery Certificate Nos. 211, 231 & 288 of 2014

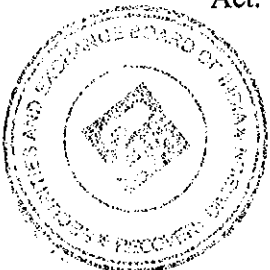
**Defaulter : Mr. Vinod Hingorani,
aged 58, S/o Mr. Ramchand Rochiram Hingorani
D-63, Punarvasu Srushti, Sector - 3,
Mira Road, Thane - 401104.
(In the matter of Adam Comsof Limited and Kolar Biotech Limited)**

Order under Section 28A of the SEBI Act, 1992, r.w. Section 222(1)(c) of Income Tax Act, 1961 and Rule 73 and 76 of Part V of Schedule II.

1. The Defaulter Mr Vinod R Hingorani was the Chairman & Managing Director of Adam Comsof Limited and Kolar Biotech Limited and was director of many other companies. SEBI has passed following three separate orders imposing monetary penalty on the defaulter for his various fraudulent activities in the securities market:

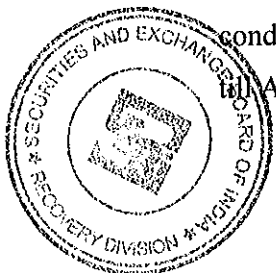
Date of order	Penalty	In the scrip of
April 28, 2010	Rs. 25,00,000/-	Adam Comsof Limited
April 28, 2010	Rs. 30,00,000/-	Kolar Biotech Limited
June 10, 2010	Rs. 55,00,000/-	Adam Comsof Limited

2. All the aforesaid orders became final and the defaulter was well aware of his liability to pay the dues which are outstanding and had become due since April/June 2010. In spite of reminders by SEBI, the defaulter failed and neglected to pay any of the dues either in full or part.
3. As the defaulter failed to pay the dues since 2010, three recovery proceedings vide Certificate nos. 211, 231 & 288 of 2014 dated 11.07.2014, 11.07.2014 and 16.07.2014 have been initiated against him and Notices of Demand were issued under Rule 3 of Part I of Second Schedule to the Income Tax Act, 1961 r/w Section 28A of Securities and Exchange Board of India, 1992. In the said Notices of Demand, the defaulter was directed to pay the dues of Rs.37,62,644/-, Rs.81,98,863/- and Rs.45,19,904/- {aggregate Rs.1,64,81,411/- (Rupees One Crore Sixty Four Lacs Eighty One Thousand Four Hundred Eleven Only)} along with further interest and expenses, failing which dues shall be recoverable by one or more modes specified under Section 28A of SEBI Act.



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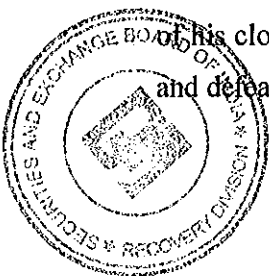
4. As the defaulter failed to pay the said amount nor responded to the Notice of Demand, vide letter dated November 03, 2014, the defaulter was directed to appear in person before the Recovery Officer on November 11, 2014 and was directed to furnish documents relating to movable/immovable assets, bank statements, etc. The defaulter has vide letter dated November 11, 2014 replied stating his inability to attend the hearing and that he was Non Executive Chairman of Adam Comsof Limited and Kolar Biotech Limited and had no role in the matter and he was an employee Director in Kolar Sharex Pvt. Ltd. and he did not receive any monetary benefit except salary. He mentioned that he has no movable or immovable properties and his bank accounts have been frozen by EOW and SEBI.
5. As the defaulter has failed to take any steps to pay the said amount for the last four years and only an amount of Rs 5160.82/- was available in his bank/demat accounts, a show cause notice under Rule 73 Part I of Second Schedule r.w. Section 222(1)(c) of the Income Tax Act, 1961 and Section 28A of the Act was issued to the Defaulter on November 21, 2014 calling upon him to appear before the Recovery Officer to show cause as to why he should not be committed to Civil Prison for his default in payment of the said dues to SEBI. The defaulter after taking an adjournment appeared before the recovery officer on December 18, 2014. No cause was established by the defaulter except stating that he was not liable to pay the dues to SEBI as the violations were committed by Mr. Rajkumar Basantani and that the defaulter himself admitted that he is residing in a flat on rent which he was owning and sold in 2013 (where rental value is Rs 15,000/- pm) and he has been doing interior decoration, civil, electrical contracts, real estate agency business, etc. but failed to pay the dues. The Recovery Officer after being satisfied that the defaulter shall be arrested and commit to Civil Prison, in exercise of the powers conferred under Rule 76 Part V of Schedule II r.w. Section 28A of SEBI Act, 1992, ordered for civil imprisonment of the defaulter for a period of six months and he was lodged in civil prison on December 18, 2014.
6. The defaulter has challenged the order dated December 18, 2014 before the Hon'ble High Court of Bombay in which the Hon'ble Court vide order dated March 10, 2015 while releasing the defaulter remitted the matter to the Recovery Officer, SEBI for conducting inquiry and pass fresh order within three weeks which has been extended till April 20, 2015.



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SHOW CAUSE NOTICE, REPLY AND HEARING

7. As the time for completing the inquiry as directed by the Hon'ble Court was very short, a show cause notice dated March 10, 2015 and was served on the defaulter on March 11, 2015 in which SEBI has reserved right to issue supplementary notice, if required, and directed the defaulter to be present for recording his statement in the matter. In response to the said notice, the defaulter has vide letter dated March 16, 2015 sought time till March 25, 2015 which was granted to him. However, the defaulter has vide letter dated March 24, 2015 expressed his inability to attend the proceedings and requested that his statement may be recorded at his residence. Accordingly, after giving due notices statements of the defaulter and his mother were recorded by SEBI officials at his residence on March 30, 2015 and copy of the same was provided to him. A supplementary notice dated April 01, 2015 along with complete set of copies of documents relied has been issued to the defaulter which was duly served on April 02, 2015 requiring him to show cause as to why the defaulter should not be arrested and committed to civil imprisonment in execution of the said Recovery Certificates under Rule 73 and 76 of Schedule II of Income Tax Act, 1961 r.w. Section 28A of SEBI Act, 1992.
8. It has been alleged in the aforesaid notices that while the penalties imposed by SEBI on the defaulter was due since April 28, 2010 (Rs. 25,00,000/- and Rs. 30,00,000/-), and June 10, 2010 (Rs. 55,00,000/-) which were duly served on him and his name was published in the Defaulters list uploaded on SEBI's website and prosecution cases were filed by SEBI in June 2011 & March 2014 before the Magistrate Court & Sessions Court respectively in Mumbai, in order to escape from recovery of the said amounts and also to evade fine that may be imposed, the defaulter has dishonestly transferred his flat at D-63 Punarvasu D Cooperative Housing Society Limited to his close relative and except Agreement to Sell dated 30-01-2013, neither actual transfer took place either in the society or in the municipal records or in the maintenance charges bill and the defaulter continues to reside in the same flat and the society is also not charging non-occupancy charges and no document has been filed in the society showing that he is the tenant or licensee of the said flat. It is alleged that the circumstances show that the defaulter had dishonestly executed the Agreement for Sale dated 30-01-2013 in favour of his close relative Mr Suresh Basantani (brother of Mr Rajkumar Basantani) to delay and defeat any claims of SEBI against the defaulter.



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9. It is alleged that the defaulter has ensured that the consideration recorded in the Agreement is not received by him but was received in the names of his mother Mrs Mohini Hingorani and wife Mrs Pimmy Hingorani under the guise of an un-registered Deed of Assignment of the said flat dated 30-01-2013. It is alleged that the part of sale consideration of Rs 22 lacs diverted to his wife was deposited in her account with Punjab National Bank on February 1, 2013 which was used for purchase of Flat in A-1101, Dev Paradise, Beverly Park Road, Mira Road East, Thane 401104 booked by him on 28/12/2012 for a documented cost of Rs 42 Lacs in his wife's name with M/s SDC Properties Pvt. Ltd., Mumbai. The defaulter was one of the witnesses in the said agreement of sale which was registered on March 2, 2013. The remaining consideration was paid by cash and through loans obtained from NKGSB Co-operative Bank Limited in March 2013 in the name of his wife for which the defaulter & his sister Mrs. Gunjan Changrani was co-applicant/ co-obligant/ Guarantor/surety. Even though the loan availed from NKGSB was for tenure of 180 months the same was repaid in full by July 2014, i.e. within a span of 15 months. There has been huge cash/ cheque deposits on various dates in the savings account maintained with NKGSB bank, which were mainly used for foreclosing the aforesaid loan with NKGSB. It is also alleged that with a dishonest intention to conceal the assets of the defaulter, his wife Mrs Pimmy Hingorani has executed an Agreement of Sale 19/01/2015 (Regd.No. 959 of 2015) in respect of Flat A-1101 in Dev Paradise in favour of Ms. Rinki Suraj Singh, Ms. Damini Suraj Singh and Ms. Sarika Suraj Singh who are daughters of Mr Suraj Singh(brother of Mrs Pimmy Hingorani) for an amount of Rs 45 lacs, particularly when the market value of the flat in the area is more and the Government Ready Reckoner value itself is about 54 lacs.
10. It is alleged that the contention the defaulter that the payment of Rs 22 lacs to his wife Mrs Pimmy Vinod Hingorani on sale of his Flat D- 63, Punarvasu was for her separation was not supported by any valid documentary evidences. It is alleged that the defaulter has opened a bank account with Sahebrao Deshmukh Cooperative Bank (SDC) on 02/01/2012 in the name of Ms. Pimmi Hingorani with his introduction, phone number & KYC documents, Ms. Pimmi has also changed her address with PNB using the residential address, phone number, KYC documents etc of the defaulter on 07/09/2012 which was registered by PNB on 18/12/2012, i.e. just a few days before alleged payment to Ms. Pimmi for his separation with her. Even after alleged payment



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of Rs. 22 lacs for so called separation, in bank accounts with SDC and PNB held by the defaulter and his wife Mrs Pimmy Hingorani, the nominations continue to be in each other's name and in all the three accounts opened with NKGSB in March 2013 the name of the defaulter has been shown as husband and also his residential address and phone number are used by her in KYC documents and even in the recent Sale Agreement dt 19/01/2015 the name of the defaulter has been shown as husband. It is also alleged even after so called separation, Mrs Pimmy Hingorani has been continuously using name, address, phone number etc. of the defaulter for opening bank accounts, property purchase transactions and for all other practical purposes, and both of them had a number of financial transactions between them and the defaulter has associated with Mrs Pimmy for booking the new flat, documentation, possession, etc. Hence, it is alleged that the contention of the defaulter that payment of sale proceeds directly to Mrs Pimmy Hingorani for separation is nothing but concocted for the purpose of diversion of funds through her to defeat and delay the recovery process. It is also alleged that the payment of sale proceeds directly to the wife of the defaulter was not for adequate consideration. It is alleged that the entire diversion of funds by the defaulter and booking of flat in the name of his wife and thereafter dishonestly attempting to sell the said flat and realising money are the activities covered under section 28A of SEBI Act r.w. Section 222 of Income Tax Act and the said properties are deemed to be the properties of the defaulter in terms of the said provisions. It is alleged that the defaulter had dishonestly concealed the said transactions of diversion of money through his wife's accounts, bought flat in his wife's name and thereafter attempted to sell the same which shows mala fide intention of the defaulter to defeat and delay payment of the dues.

11. It is alleged that the other part of sale consideration of Rs 22 lacs pertaining to the Flat D-63 was dishonestly diverted through the mother of the defaulter viz., Mrs Mohini Hingorani in the bank account maintained in her name with ICICI Bank. Immediately two pay orders for Rs 9.50 lacs each were obtained on February 02 2013 which were realised in the bank accounts of Miss Juhi A Vazirani and Miss Kashish A Vaziranni in Bank of Maharashtra, Pune accounts. The said Ms. Juhi and Ms. Kashish were daughters of Mr. Anoop Vazirani (brother in law of the defaulter). It is alleged that Flat No. D-63 was purchased by the defaulter for consideration of Rs 7,08,190/-, while he was working and earning in Sharjah, UAE by paying most of the consideration for the



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said flat from his bank account maintained with Vysya Bank (Rs. 1,21,638 by cheque no. 131202 dated February 2, 1994 and Rs. 2,73,727 by cheque no. 542652 dated October 5, 1995) and the rest were paid from the accounts from Bank of Baroda (Rs 92,825 on June 15, 1994) Sangli Bank (Rs 20,000 by cheque no. 056285 dated December 31, 1993) and by cash. It is alleged that the defaulter had bank account No. SB 1290 in his name along with his then wife Mrs Deepali Vinod Hingorani in Vysya Bank Ltd. While most of the consideration was paid from his source of income, the Agreement to Sell dated March 23, 1994 was entered in the name of Mr. Vinod Hingorani(through Mr. Rajkumar Basantani) as his Power of Attorney Holder and the mother of the defaulter Mrs Mohini Hingorani who was dependent on him and not having any source of income was added as joint holder of the said flat as per the prevailing practice in Maharashtra and no consideration appears to have been paid by her for purchase of the said flat. It is also alleged that the builder has sent various letters during that period in the name of defaulter and not in the joint names, the Share Certificate, maintenance charges, Mira Road Municipality tax assessed, etc for the said flat were in the exclusive name of the defaulter and neither his mother appears to have contributed for purchase of said flat nor her name is figuring anywhere except as second name in the Agreement for sale. Hence, it is alleged that the defaulter was the exclusive owner of the said flat purchased out of your sources and the part of the sale consideration (Rs. 22 lacs) was dishonestly diverted through his mother's account. It is alleged that these circumstances show that the defaulter had dishonestly diverted and routed the funds to the accounts of your mother and wife to delay and defeat any claims of SEBI.

12. It is alleged that the defaulter has been doing the business in the name and style as "Kunal Beer Shop" at No. B-22, RNA Broadway Avenue, Mira Road, opened a Current Account with Punjab National Bank in the name of "Kunal Beer Shop" by him and his close relative i.e., Suresh Vazirani (husband of defaulter's sister) being the authorised signatories. It is alleged that even though the shop is located in the above address, in order to keep the said business within the control of the defaulter the bank account was opened with his residential address at D-63 Punarvasu, Mira Road and furnishing his KYC documents. It is alleged that the defaulter has made number of financial transactions with Kunal Beer shop from his bank accounts, he had two telephone connections, No. 69925055 in the name of Mr. Sunil Shantaram Jadhav with whom he

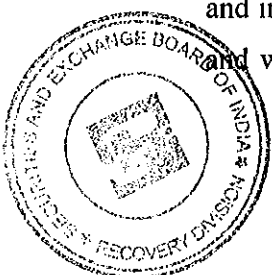


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had financial & contractual dealings and telephone no. 28131215 which are registered/listed with Justdial about the business activities for Kunal Beer Shop on 18/06/2010 and the said entries on Justdial was also accessed and updated on 11/10/2013. It is alleged that the beer shop is named after Mr. Kunal Vazirani who is nephew of the defaulter and son of his brother in law Mr Suresh Vazirani and his sister. It is alleged that the defaulter had flourishing business in the said shop till the same has been shifted to an anonymous place after sale of the said premises to Dr Arun P. Dubey in July 2014. It is alleged that the before selling the said shop No.22 in RNA Broadway Avenue to Dr. Arun P. Dubey, the same was owned in the name of defaulter's sister Mrs Gunjan Ruby Changrani which was sold in October 2012 to Mr Suresh Basantani who is brother of defaulter's brother in law Mr Rajkumar Basantani. It is also observed that Mr. Suresh Basantani has bought two properties in Mira Road namely the defaulter's flat at D-63 Punarvasu, Shrishti Complex and the shop in RNA building. All these circumstances leads to suspicion that the said shop No.B-22 in RNA Building was also owned by the defaulter but held in the name of his sister, which was thereafter sold in October 2012 to evade his dues arising out of his fraudulent activities in the securities market.

13. It is alleged that the defaulter has been admittedly doing civil contracts, interior decoration works, real estate brokerage, etc. with the name and style as "Om Sai Interiors" RNA Broadway, B-22, Shop No.22, Near Jangid Circle, Mira Road East, specialised in civil works, electrical, plumbing, plaster of paris, woodwork and painting works business, the said business has been advertised through BizzLead, Justdial, etc with his address, personal mobile numbers 9821181716 & 9167542286 etc printed on his business card. It is alleged that the defaulter has registered his business activities with Justdial on June 25, 2014 which was updated by him on August 19, 2014 on that date the defaulter has informed the Justdial officials that he has been doing the business as Om Sai Interiors for the last three years and recently shifted to Shop No.13, Indralok Building, near Axis bank, Om Shanti Om Chowk, Opp: Poonam Residency, Mira Road East.

14. It is alleged that all the business activities of the defaulter are admittedly done on cash basis and noted from the bank transactions of the accounts maintained by the defaulter and in the names of his mother & wife that most of the transactions were by depositing and withdrawing in cash. It is alleged that Mrs Pimmy Hingorani is a housewife, not



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having much educational qualification and admittedly dependant on the defaulter, but in her bank accounts huge cash transactions are noted. It is also alleged that the names of the persons appearing in defaulter's bank statements are appearing in the bank accounts of his wife and the defaulter admittedly operating the bank accounts of his wife. Similarly it is alleged that Mrs. Mohini Hingorani(mother) was a housewife, not having much educational qualification and admittedly dependant of the defaulter, but in her bank accounts huge cash transactions are noted and the names of the persons appearing in the defaulter bank accounts are also appearing in the bank accounts of his mother and the defaulter was admittedly operating the bank accounts of his mother. It is alleged that the cash transactions made in all the bank accounts shows that the defaulter has substantial income earning business activities from the Beer shop, real estate agency business, interior, civil contract works, etc.

15. It is also alleged that the defaulter has been paying rent to Mr. Suresh Basantani in cash. It is learnt that the rent for a similar flat in the area is more than Rs. 15,000/-, his mother has reportedly stated to the Business Standard in December 2014 that the rent for his flat is Rs 12,000 a month whereas the defaulter in his statement stated rent as Rs. 5,000/- . Neither the defaulter nor Mr. Suresh Basantani has shown the exact rent for the said flat in any of the tax returns, bank accounts etc. Similarly, the defaulter has also taken shop no. 13, Indralok Building in Mira Road on rent. It is alleged that mother of the defaulter has reportedly told the Business Standard that he has taken a shop on rent and that the rent for a similar shop in the area is more than Rs. 10,000/- It is alleged that the defaulter has the capacity to pay an amount of Rs. 15,000/- towards rent for flat and Rs. 10,000 for the shop shows that he has been earning a sizeable income out of various activities. Further, the defaulter in the capacity as Chairman & Managing Director of many companies collected crores of Rupees as deposits, etc. which were allegedly not paid to the innocent investors and thereby concealed the said proceeds. Therefore, it is alleged that continuously from the date the penalty became due to SEBI which are remittable to Consolidated Fund of India and also after initiating recovery proceedings, the defaulter had substantial means and source to repay all three or any of the penalty dues or substantial part thereof, but had been continuously evading and failed to pay the dues.

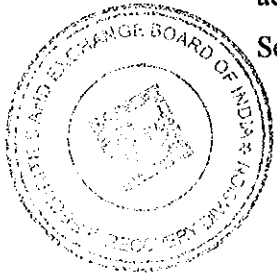
It is alleged that the defaulter has stated that he does not have any bank account except in Punjab National Bank and an earlier account in Vysya Bank, which was attached by



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Economic Offences Wing and do not hold any demat account or any assets. However, it is observed that the defaulter has been presently holding Account No. SB/774 in SDC Co-operative Bank, Mira Road and Account No 03110100021496 (Old A/c No. SB/4719) in DCB and A/c Folio No.5834 in Muthoot Capital Services Ltd., which was later on converted to demat account. The defaulter and his wife Mrs Pimmy Vinod Hingorani also availed gold loans, home loan, top up loan etc. on various occasions and repaid the same within few months and recently redeemed back the gold pledged with SDC Bank. It is alleged that on September 28, 2013, gold loans were taken in the name of the defaulter and his wife from SDC Bank for repair of his house, which has also been repaid in February 12, 2014. It is alleged that as the defaulter has availed gold loan from SDC Bank, he possess gold worth more than Rs. 15 lacs, which was deposited with the bank. It is alleged that the defaulter has concealed all the said accounts, the assets in the form of gold etc. since day one, to delay and defeat the recovery of dues by SEBI.

17. It is alleged that the business dealings of the defaulter as Kunal Beer Shop, Om Sai Interiors, real estate agency business, enormous cash dealings in the bank accounts maintained in his name, his wife's & mother's name and the concealment of money realised in the sale transactions of flat at D-63 and shop No.B-22 and purchase of flat No. 1101 in Dev Paradise, etc. clearly show that the defaulter has been continuously in possession of substantial means and source to pay the dues or substantial part thereof, but the defaulter had continuously concealed, evaded and failed to pay the dues.
18. It is alleged that the aforesaid actions of dishonest disposal of flat at D-63, Punarvasu, diverting of the money through the accounts of your mother and wife under unregistered documents and concealing booking of flat at A-1101, in Dev Paradise, Mira Road, developed by SDC Properties Private Limited and concealing your true and fair earnings, certain bank accounts, gold etc, are nothing but dishonest concealment of assets and sources of income of the defaulter to delay and defeat recovery of money by SEBI from you which are remittable to Consolidated Fund of India, make him liable for action under Rule 73 and 76 of Schedule II and Section 222 of the Income Tax Act r/w Section 28A of SEBI Act.



D.V. Sharma

Reply of the defaulter

19. The defaulter has vide reply dated March 16, 2015 and April 9, 2015 denied the allegations in the SCNs and relying on his contentions in his statement dated March 30, 2015 submitted the following:

(a) The defaulter cited three case laws and contended that arrest should be normally avoided and also reproduced the observations made in the order dated March 10, 2015 of the Hon'ble Bombay High Court .

(b) The SCN dated March 10, 2015 served on him on March 11, 2015 even before receipt of the order are illegal and invalid as the copy of the order was uploaded on the website on March 13, 2015 and did not reveal any fresh cause of action.

(c) The defaulter was shocked and surprised that SEBI was acting in vengeance and sent officials at his home on March 30, 2015 to record statement of him and his mother which had put them in great difficulty and the witnesses were called after the statements were over.

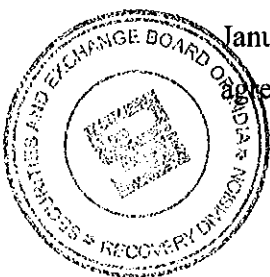
(d) Section 28A was inserted w.e.f. July 18, 2013 and the SCNs are invalid as they did not deal with any new facts or dealt with any transactions done by him after enactment of section 28A or after the certificates were drawn up.

(e) The flat at D-63 was purchased by his mother out of sale proceeds of Andheri flat bought by his father, which was later on sold by her through sale deed dated January 30, 2013 and his name was inserted by his mother out of natural love and affection when he was in employment abroad.

(f) Relying on the letters of SEBI dated October 23, 2013, November 26, 2013 and December 18, 2013 contended that no prosecution was filed by SEBI in 2011, as in the said letters stated that prosecutions will be filed if he fails to pay the dues.

(g) Mr. Suresh Basantani, who purchased the flat D-63 Punarvasu was not his close relative and the said flat was sold by his mother for valuable consideration and the buyer has lodged the documents in the society for transfer.

(h) The defaulter contended that the money of Rs. 22 lacs was paid to his wife towards legal dues as per Para (xviii) and (xix). of the deed of assignment dated January 30, 2013 and non registration of the same does not invalidate the agreement.



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(i) The defaulter is not aware or concerned about the utilization of Rs. 22 lacs by Ms. Pimmi Hingorani or about the cheques of Rs. 15 lacs and 5 lacs issued to SDC Properties and denied booking of flat in A 1101, Dev Paradise in the name of Ms. Pimmi Hingorani.

(j) His wife has been living separately and an amount Rs. 22 lacs was paid under the deed of assignment and till separation is formalized through divorce, Ms. Pimmi Hingorani continues in law as his wife.

(k) The defaulter is neither aware not concerned with the sale of flat A 1101, Dev Paradise.

(l) Even after making discrete enquiries with his neighbours, relatives etc. about his relationship with Ms. Pimmi, SEBI has contended that the deed of assignment was concocted for the purpose of diversion of funds.

(m) Opening of bank accounts and nominations with SDC Bank and PNB accounts by Ms. Pimmi took place when Ms. Pimmi was not living separately.

(n) The defaulter has not usurped the sale proceeds of Rs. 22 lacs through ICICI Bank account of his mother, Ms. Mohini Hingorani.

(o) The defaulter was not doing the business as Kunal Beer Shop and that he was only sitting in the said shop and assisting in the accounts for a salary.

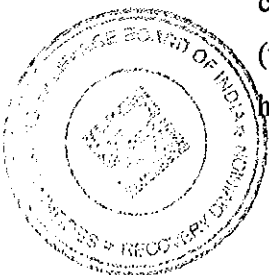
(p) The defaulter admitted that he was engaged in brokerage business for the last 8 years and civil contract work in Om Sai Interiors for the last 3 years and used to get clients on local contacts, used to receive consideration is cash, is not registered with Sales Tax, Service Tax etc. and Om Sai Interiors was not having bank accounts and he was earning Rs. 10,000-15,000 per month out of the said business.

(q) The allegation at Para 13 of the supplementary SCN regarding various interse transactions in the bank accounts were denied and contended that the allegations are vague.

(r) The defaulter has no means to pay the rent of Rs. 15,000/- for the residential flat and Rs. 10,000/- for the shop as he is not earning sizeable income.

(s) The accounts in SDC Bank were not disclosed to SEBI as the same is not operative since July 2014 and the balance therein is nominal and he has not concealed any accounts, assets or gold.

(t) The defaulter remained in jail for 85 days and SEBI is again trying to commit him to civil imprisonment.



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(u) Since the prosecution cases are pending, initiation of recovery proceedings and committal to civil imprisonment are violative of Article 20 of Constitution of India and contrary to SEBI's stand in the matter of Jitesh Pranlal Sheth.

(v) The defaulter requested to withdraw the SCNs.

20. The defaulter has not filed any documentary evidence to refute the allegations levelled in the Show Cause Notices except his bank statement in Punjab National Bank, Sale Agreement and Deed of Assignment in respect of Flat no D 63, Punarvasu, Shrishti Complex, Mira Road East, Thane 401107.

Consideration of allegations, reply and the evidence

21. The defaulter in his entire reply denied all the allegations levelled against him in both the Show Cause Notices. However, except bald denial of the allegations, the defaulter has neither furnished any document nor explained about various transactions undertaken by him which are specifically mentioned in the SCNs. The contention of the defaulter is that he was not provided with the copy of the statement of the secretary of Punarvasu D Cooperative Society. I note that SEBI has not relied on the statement of the Secretary of the society and whatever document pertaining to the flat D -63 have been obtained from the society were already provided to the defaulter and SEBI has not concealed any document and provided copies of all the relevant documents collected during the inquiry. SEBI has also relied on various documents furnished by the defaulter himself.
22. As regards the contention of the defaulter that both the SCNs dated March 10, 2015 and April 1, 2015 are illegal, it may be stated that the Hon'ble High Court, while releasing the defaulter vide order dated March 10, 2015 directed the Recovery Officer to complete the inquiry and pass fresh order within three weeks. The order was pronounced by the Hon'ble High Court at 3:00 p.m. on March 10, 2015 in the open court wherein the counsel for SEBI and an officer from SEBI were present. Keeping in view the time available for inquiry and fresh order, the first SCN was issued on the same day which was served through the prison authorities on March 11, 2015. No prejudice is caused to the defaulter by serving the Show cause notice dated March 10, 2015 before receipt of the copy of the order of the Hon'ble High Court of Bombay. In the said Notice, SEBI has also reserved the right to issue supplementary notice, if



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required and called upon the defaulter for inquiry on March 17, 2015. As the defaulter sought time till March 25, 2015 for his appearance, the same was granted, however the defaulter did not attend the proceedings but stated that SEBI may depute its officials for recording his statement at his residence. Accordingly, as desired by the defaulter, after giving prior notices in writing to him and his mother, the officials of SEBI recorded the statement of the defaulter and his mother at his residence in the presence of society office bearers, nephew of the defaulter and one Mr. Vikas Bengani. Therefore, the question of vengeance by SEBI does not arise. Further, the contention of the defaulter that the officials of SEBI has asked irrelevant questions to his mother, which has put her into depression is not correct as it has been reported that whatever questions and the reply of the defaulter and his mother were properly recorded by the officials, read over the same and the defaulter and his mother voluntarily signed on all the pages of the statement in the presence of the aforesaid persons. Therefore, the contention of the defaulter is not correct. After analysis of the statement and the documents available, a supplementary SCN along with copies of all the documents that are relied on by SEBI has been issued on April 1, 2015. Since the SCNs are issued as a part of fresh inquiry directed by the Hon'ble High Court, I do not find any illegality in the same and there is no requirement for any fresh cause of action as his continuing default in spite of having means to pay the dues itself is the cause of action. Further, time was granted till April 9, 2015 for his reply and also an opportunity of personal hearing was granted to the defaulter on April 13, 2015 for which he failed to attend. Therefore, based on the documents, SCNs and the replies of the defaulter, I proceed to consider the matter.

23. I have examined the case laws cited by the defaulter i.e. Joginder Kumar v. State of U. P. and others and Bhim Singh MLA vs State of J&K and others to contend that arrest is to be resorted only in cases of heinous crimes. The said case laws are relating to arrest by police officers in a criminal offence and the same are not applicable for the present case, which is not a criminal offence and civil imprisonment is not punishment as held by courts. As regards the case law of Lucknow Development Authority vs. M K Gupta cited by the defaulter, the same will be applicable only in case where the public servant act malafidely, in oppressive and capricious manner etc. In the present case, the proceedings are initiated for recovery of dues which the defaulter failed to pay since 2010 in exercise of the statutory powers conferred under the SEBI Act and Income Tax



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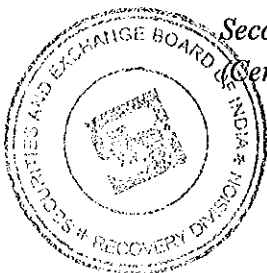
Act. Further, the present inquiry is conducted pursuant to the directions of the Hon'ble High Court, therefore, the said case law cited by the defaulter is misplaced.

24. The defaulter has in his reply contended that prosecution has already been initiated by SEBI against him for non-payment of penalty and simultaneous initiation of prosecution and recovery proceedings are against the principles of double jeopardy and violation of Article 20 (2) of the Constitution of India. In this connection, filing of prosecution for non-payment of penalty is in respect of an offence committed by the defaulter u/s 24 (2) of the SEBI Act and recovery of the dues u/s 28A is not barred because prosecution has been filed. The Hon'ble Apex Court has in **Standard Chartered Bank vs. Enforcement Directorate (AIR 2006 SC 1301)** held that both prosecution and adjudication for the same violation is permissible under the law. Further, the reference to the matter of Mr. Jitesh Pranlal Sheth by the defaulter is not applicable for the present case as both prosecution and recovery proceedings were already initiated against Mr. Jitesh Pranlal Sheth.
25. I note the following provisions govern recovery of dues including by arrest and detention of the defaulter which reads as under:

Section 28A (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to 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



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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.

Explanation 1.— For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

Rule 73 of the Second Schedule to the Income Tax Act reads as under

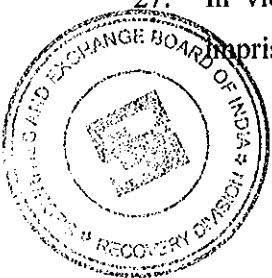
Rule 73. (1) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Tax Recovery Officer, for reasons recorded in writing, is satisfied

(a) that the defaulter, with the object or effect of obstructing the execution of the certificate, has, after the drawing up of the certificate by the Tax Recovery Officer, dishonestly transferred, concealed, or removed any part of his property, or

(b) that the defaulter has, or has had since the drawing up of the certificate by the Tax Recovery Officer, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

26. I note from the first part of section 28A that arrest and detention is one of the modes of recovery. The Andhra High Court in **Kapurchand Shrimal v. Tax Recovery Officer**, Hyderabad highlighted that "Rule 73 only provides the mode of recovery which is evident if we read this rule along with Rule 77, which relates to detention and release from prison. The purpose of arrest under Rule 73 is not punishment but it is one of the modes of execution".

27. In view of the above, I hold that recovery proceedings including arrest and civil imprisonment u/s 28A of SEBI Act r/w rule 73 of 2nd Schedule to Income Tax Act and



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launching prosecution u/s 24 (2) of SEBI Act is not double jeopardy hit under Article 20 (2) of the Constitution.

28. I note that SEBI has passed following three orders imposing monetary penalty on the defaulter for his various fraudulent activities in the securities market:

Date of order	Penalty	In the scrip of
April 28, 2010	Rs. 25,00,000/-,	Adam Comsof Limited
April 28, 2010	Rs. 30,00,000/-	Kolar Biotech Limited
June 10, 2010	Rs. 55,00,000/-	Adam Comsof Limited

29. The aforesaid orders were duly served on the defaulter. As per the said orders, the defaulter was directed to pay the aforesaid penalties with 45 days from the date of receipt of the respective orders. All the aforesaid orders became final and the defaulter was well aware of his liability to pay the dues which are outstanding and had become due since June 2010 onwards. In spite of repeated reminders by SEBI, the defaulter failed and neglected to pay any of the dues either in full or part. The defaulter in his statement dated March 30, 2015 admitted that he has been receiving reminders from SEBI, but ignored and not responded to the same. It is clear from the said orders that the aforesaid money had become due since June 2010, which the defaulter neglected and failed to pay inspite of repeated reminders from SEBI. I also note that SEBI has filed prosecution against the defaulter before the Ld. 9th ACMM Court, Bandra on June 29, 2011 for his involvement in various fraudulent activities, which is punishable u/s 24 (1) of SEBI Act. I also note that SEBI has filed prosecution against the defaulter before the Hon'ble Sessions Court, Mumbai on March 28, 2014 for his failure to pay the penalty of Rs. 30 lacs, which is punishable u/s 24 (2) of SEBI Act. Both the offences are punishable with imprisonment upto 10 years and fine upto Rs 25 crore. Filing of two other prosecutions for non-payment of penalty of Rs. 25 lacs and 55 lacs in Adam Comsof Limited are in the process. I also note that the name of the defaulter has been published periodically in both prosecution database of cases and defaulters' list by SEBI on its website, wherein the defaulters' failure to pay the aforesaid dues has continuously been put to the public notice. The defaulter has in his reply dated April 9, 2015 relying on some of the letters issued in October 23, 2013, November 26 2013 & December 18, 2013 contended that no prosecution has been filed by SEBI. Therefore, the contention of the defaulter that no prosecution has been filed by SEBI is not correct.

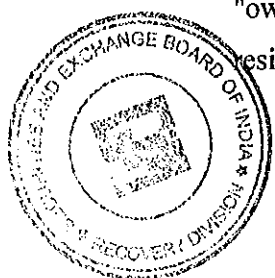


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As regards defaulter's alleged disposal of his residential flat at D-63 Punarvasu

30. I note that when the aforesaid dues to SEBI, which are remittable to Consolidated Fund of India u/s 15JA of the SEBI Act are pending and outstanding, the defaulter, in order to escape from recovery of the said amounts and also to evade fine that may be imposed in the prosecution cases filed by SEBI dishonestly transferred his flat at D-63 Punarvasu D Cooperative Housing Society Limited to one of his close relatives Mr Suresh Cheinrai Basantani for a consideration of Rs. 44 lacs remitted from Habib Exchange LLC, UAE. Even though the defaulter in his reply contended that Mr. Suresh Basantani is not his close relative, on perusal of documents, it is noted that Mr. Suresh Basantani is none other than own brother of Mr Rajkumar Chainrai Basantani (husband of defaulter's sister Ms. Seema Basantani). I also note that except the execution of Agreement to Sell on 30-01-2013, actual transfer did not take place either in the society or in the municipal records, the maintenance charges continue to be levied in the name of the defaulter and he has been residing in the same flat. I also note that the society is also not charging non-occupancy charges for the said flat which otherwise the society charges where actual owner of the flat is not residing therein. No document has been filed in the society nor furnished by the defaulter, showing that the defaulter is a tenant or licensee of the said flat and no final sale deed after payment of entire sale consideration and handing over of the flat to Mr Suresh C Basantani is available in the records of Society. The defaulter has denied dishonest execution of agreement and contended that the buyer had lodged papers with the society for transfer of the flat in his name. I note that the defaulter and his wife have availed two separate gold loans of Rs.4,85,000/- & Rs 2,00,000/- from SDC Bank on march 26, 2013 and September 28, 2013 respectively and the purpose has been stated in the application as "house repair". The defaulter has also admitted that in the board displaying the names if owners of flats in the Punarvasu Society, the name of the defaulter continue to appear as the owner of flat no. D-63.

31. I note from the papers submitted by the defaulter and his wife to NKGSB Co-operative Bank on September 23, 2013 for availing loan of Rs. 5 lacs jointly for 'renovation and furniture work', that the defaulter and his wife has stated that the Flat No.D-63, Punarvasu in which they are staying and the status of the said residence is shown as "owned" by them. If the contention of the defaulter is accepted that he sold his only residential flat at D-63, Punarvasu in January 2013 to Mr. Suresh Basantani, where is



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the necessity for the defaulter and his wife to take loan for repair of their house, that too to the extent of Rs. 6.5 lacs from SDC bank and Rs 5 lacs from NKGSB bank.

32. As regards the contention of the defaulter that he has been residing in the said flat as a tenant, I note that the defaulter is well aware of the requirement of registered leave and licence or lease deed and also police clearance to occupy a flat as a tenant. The defaulter has not furnished rent receipts to show that he is not owner but tenant of the flat. The requirement of leave & licence agreement, its registration and police verification are mandatory under Maharashtra Rent Control Act, Maharashtra Cooperative Societies Act and the Registration Act. However, no such document has been furnished either by the defaulter or available with the society. It has been reported that neither the defaulter nor the alleged owner Mr. Suresh Basantani has anywhere namely Income Tax Returns, Bank Accounts etc. shown the rental expenditure or income as the case may be in respect of the said flat. In order to ascertain the details relating to the flat No. D-63, Punarvasu, Mr. Suresh Chainrai Basantani was directed to appear before The Recovery Officer on April 7, 2015 along with required documents. A notice of hearing dated April 01, 2015 was sent to the last known address mentioned in the aforesaid agreement to sell dated January 30, 2013 by hand delivery at Flat No 301, Pushp Shelter, 10th Khar Road, Khar West, Mumbai, which was acknowledged by his brother-in-law Mr. Ramesh Dadlani However, Mr. Suresh Basantani failed to appear before the Recovery Officer on the said date nor submitted any reply.
33. In view of the above, I observe that the alleged transfer of the flat is nothing but with ulterior motive to the close relative of the defaulter to conceal his property and under the guise of the said agreement to sell an amount of Rs. 44 lacs has been received by the defaulter from Habib Exchange LLC, UAE.

As regards the money diverted by the defaulter through his wife

34. Without prejudice to the aforesaid observations, I note that the defaulter had ensured that the sale consideration was not received by him but was managed to get the same in the name of his wife Mrs Pimmy Hingorani and mother Mrs Mohini Hingorani of Rs. 22 lacs each. The defaulter has contended that Rs. 22 lacs was paid to his wife as per the deed of assignment executed between Mr. Vinod R Hingorani and Mrs Mohini R Hingorani (vendors/assigners) and Mr Suresh C. Basantani (Purchaser/ Assignee) and



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Mrs. Pimmi Vinod Hingorani (Consenting Party) dated January 30, 2013 and relied on Para (xviii) (xix) of the said deed of assignment, which reads as under.

"(xviii) The party of the third part is the consenting party and recipient for and towards a part of the actual consideration which the consenting party has demanded and the Vendor have unequivocally agreed to.

(xix) The Vendors being in need of funds to settle their legal dues towards the consenting parties named herein as the legal dues have been demanded by the consenting party who is the daughter in law of Vendor No. 2 and wife of Vendor no. 1 hence these Vendor agree to transfer/sell/assign their respective right, title and interest in the Flat No.63-D in the Building "Punervashu" in the favour of the Purchaser who was ready and willing to pay true and correct price &/or consideration for and towards the flat no.63-D and the membership and shares held in name of vendor in "Punervashu Co Op Housing Society Limited."

35. I note that Ms. Pimmi Hingorani is neither the owner of Flat at D-63 nor contributed towards purchase of the said flat in 1993 by the defaulter. Therefore, her consent in the deed of assignment has no relevance for transfer. I find that the said deed of assignment has been executed on the very same day as the agreement to sale executed by the defaulter and his mother in favour of Mr. Suresh Basantani. Neither during the examination of the defaulter, his mother or in reply to the Show Cause Notice, the defaulter has established any details or the nature if the legal dues, which was sought to be paid under the guise of the said deed of assignment. In the statement dated March 30, 2015 at point no. 62 the defaulter has stated that Rs. 22 lacs received towards part of sale consideration was paid to Ms. Pimmi Hingorani for settlement for the separation.

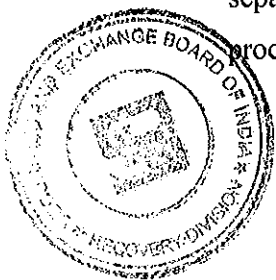
36. I find that the said deed of assignment is neither registered, nor speaks about the separation of the defaulter with his wife or furnishes any details of the court/ tribunal proceedings for his separation with his wife. I also note that a bank account was opened with Sahebrao Deshmukh Cooperative Bank (SDC) on 02/01/2012 in the name of Ms. Pimmi Hingorani with the introduction, phone number & KYC documents of the defaulter and the defaulter is the nominee for the said account. Even today the said account is continuing with the same status namely in the name of Ms. Pimmi Vinod Hingorani with the address as D-63, Punarvasu, Sector 3, Shrishti Complex, Mira Road (E), Thane and the defaulter is continued to be the nominee for the said account. Similarly, the defaulter has also opened an account with SDC Bank in which Ms.



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Pimmi Hingorani continue to be the nominee for the same. I also note that Ms. Pimmi Hingorani has changed her address with PNB from his old address at Flat no. 501, Gaurav Galaxy - I, Mira Road (E), Thane to D-63, Punarvasu, Sector 3, Shrishti Complex, Mira Road (E), Thane & KYC (with Telephone Bill of the defaulter), PAN, etc. on 07/09/2012 which was registered by PNB on 18/12/2012, i.e. just few days before the alleged payment of Rs. 22 lacs to Ms. Pimmi for the alleged separation with her and the nomination in PNB for the accounts of the defaulter and Ms. Pimmi continue to be in each other's name. I also note that Ms. Pimmi Hingorani has opened three bank accounts with NKGSB on February 2013, March 2013 and September 2013, wherein the defaulter's name has been shown as husband and also the residential address, mobile number of the defaulter is used and the same is continuing till date.

37. I also note that after the so called separation on January 30, 2013, Ms. Pimmi Hingorani has booked a flat with SDC Properties Pvt. Ltd. and in the agreement to sell dated December 28, 2012 entered with the builder, registered on March 2, 2013, Ms. Pimmi has used the name of the defaulter as husband and his residential address. Moreover, the defaulter was one of the witnesses in the said agreement. I also note that in the agreement to sell entered by Ms. Pimmi Hingorani registered on January 19, 2015 she has used her name as Mrs Pimmi Vinod Hingorani. I also note that even after the alleged separation, there are a number of financial transactions between the defaulter and Mrs. Pimmi Hingorani, even though the defaulter has contended that he has paid the money on January 30, 2013 for his so called separation with his wife. The defaulter has been taking contradictory stands as regards the date of his separation with his wife Ms. Pimmi Hingorani. At question no. 62 the defaulter has stated that Rs. 22 lacs was paid (on January 30, 2013) to Ms. Pimmi Hingorani was towards settlement for the separation. However at question no. 89, the defaulter stated that the separation was in December 2013. The defaulter has not furnished any documentary proof to show that he has actually separated/ divorced his wife either in January 2013 or in December 2013. I also note that there is no order by any competent court of law directing the separation or the divorce between the defaulter and his wife Ms. Pimmi Hingorani or the defaulter has furnished or referred to any such an order. It is not the case that the defaulter is not aware that there should be an order from a competent court for the separation or divorce for the simple reason that the defaulter was the party to a divorce proceedings filed by his former wife, where he has entered into a settlement before the

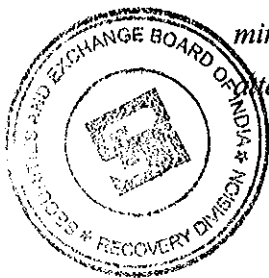


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Family Court. The defaulter has contended that SEBI made enquiries with neighbours, relatives etc. about his separation with his wife which is not correct as the separation has to be established based on valid documentary evidence which the defaulter failed to furnish.

38. As per sections 10, 13 & 13A of Hindu Marriage Act, all separation, divorce, etc shall be through a competent court of law. The Hon'ble Supreme Court in **Rameshchandra Rampratapji Daga v. Rameshwari Rameshchandra Daga** (Civil Appeal Nos. 1774 and 1775 of 2001, delivered on 13/12/2004) observed that a Hindu marriage can be dissolved only in accordance with the provisions of the Act by obtaining a decree of divorce from the Court. Therefore, it is clear from the above that in order to cover up the alleged diversion of part of the sale consideration and to conceal his assets, earnings etc inter alia, through his wife, the defaulter has adopted such a frivolous contention and in the absence of any documentary evidence, it is not believable as even after the alleged separation in January 2013, the defaulter had a number of financial transactions with his wife, associated with her for booking a new flat at Dev Paradise, was a witness in the agreement of sale entered by Ms. Pimmi with SDC Properties Limited on March 02, 2013, jointly applied a loan with NKGSB bank etc. Therefore, the said contention of payment of sale proceeds directly to Mrs Pimmy Hingorani is nothing but concocted for the purpose of diversion of funds through her to defeat and delay the recovery process. Therefore, the payment of sale proceeds directly to the wife of the defaulter was not for adequate consideration. I note that in order to protect the dishonest transfer of assets by the defaulters, a safeguard has been imbibed in the Explanation to section 28A which reads as under:

Explanation 1.— For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred, directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may



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be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

39. As the defaulter has not only dishonestly sold his residential flat at D-63 to his close relative, but half of the sale consideration of Rs. 22 lacs has been diverted through the account of his wife Ms. Pimmi Hingorani. The defaulter has contended that section 28A has been inserted in SEBI Act on July 18, 2013 and hence the said diversion of funds to his wife which took place on January 30, 2013 is not vitiated. In this connection, I have carefully read Explanation to section 28A of SEBI Act and I find that the intention of the legislature is clear from the words "*after the date when the amount specified in certificate had become due*". I note that the principal amount mentioned in all the three Certificates are due since June 2010 onwards as explained in the previous paragraphs. I also note that the intention of the legislature is to prevent the defaulters from diversion of assets after his liability is crystallised and had fallen due. This explanation is not only applicable in cases of penalty levied by SEBI but also in respect of money illegally collected from the public by certain entities which becomes due either on the date on which the defaulter was supposed to repay the investors or on the date on which SEBI directs such entities to refund the money to the investors. The defaulter is also liable to pay interest from the date of the order for the reason that the amount mentioned in the SEBI order became due on his failure to pay within the time stipulated in the respective orders. It is also possible to compare that a SEBI order imposing monetary penalty has a pedestal of a decree of a civil court and the recovery proceedings by the Recovery Officer has a pedestal of execution of such decree/order on failure of the defaulter to discharge the dues therein.

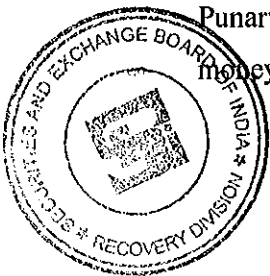
40. I also note that Explanation to section 222 of Income Tax Act, which has been adopted with slight modification u/s 28A of SEBI Act trace back the transfer of assets without adequate consideration to the specified relatives done on or after 1st day of June 1973, even the said Explanation in section 222 was inserted by The Taxation Laws (Amendment) Act 1975 on 01/10/1975. This clearly shows the intention of the legislature to invalidate certain dishonest transfers in favour of kith and kin of the defaulters which had taken place from the date when the amount had become due. I also note from the words "referred to the amount due under this Act instead of to income tax under the Income Tax Act" that the dues under the SEBI Act, inter alia,



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arises from the date of imposition of penalty by order of adjudication under Chapter VI A of SEBI Act. In this case, the dues arise from April/ June 2010 which the defaulter continuously failed to pay which are recoverable u/s 28A. Therefore the contention of the defaulter that he had disposed of the assets and the sale consideration has been paid to Ms. Pimmi Hingorani much prior to introduction of section 28A in SEBI Act has no merit.

41. I also note that the defaulter in his statement has taken contradictory stands in respect of payment of sale consideration of Rs. 22 lacs to his wife. At question No. 62 the defaulter stated that "Rs. 22 lacs were paid to Ms. Pimmi Hingorani towards settlement for the separation". At question No. 77, 79 & 80 the defaulter stated that "I also used to borrow money from Pimmi and others. Payment was made partly to satisfy her dues and partly as separation money". The defaulter has not established any details regarding his borrowings from Ms. Pimmi. Moreover, at question no. 83 the defaulter has categorically stated that his wife Ms. Pimmi Hingorani did not have any independent source of income. Therefore, the so called borrowings from her is not believable.
42. The defaulter has contended that his wife Ms. Pimmi Hingorani is a housewife and she does not have any independent source of income or assets in her name and he used to borrow money from his wife and a part of the sale consideration given to his wife was towards her separation and also repayment of amounts borrowed by him from her. However, I find from the papers filed by the defaulter and his wife with NKGSB Cooperative Bank for availing a loan for renovation of house on September 23, 2013 that the wife of the defaulter has shown in her balance sheet for the period ended March 31, 2013 that she had a liability of Rs. 9 lacs to the defaulter. The said liability has been shown after defaulter claiming to have paid part of sale consideration of Rs. 22 lacs on January 30, 2013 towards discharging his liability to Ms. Pimmi Hingorani. From these papers it is revealed that the defaulter is entitled to receive money from Ms. Pimmi and not vice versa. Ms. Pimmi has also not shown the receipt of Rs. 22 lacs towards compensation for her separation in her tax returns.
43. Based on the above discussions, I conclude that payment of part of the sale consideration of Rs. 22 lacs pertaining to the flat owned by the defaulter at D-63 Punarvasu to his wife Ms. Pimmi Hingorani is nothing but dishonest diversion of money to defeat the claims of SEBI and the said amount continues to be the property of



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the defaulter within the meaning of section 28A of SEBI Act and the defaulter has continuously concealed all the aforesaid transactions in the entire proceedings.

Purchase of flat in Dev Paradise in the name of wife and attempted transfer

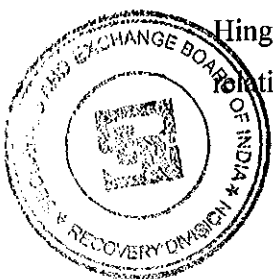
44. I note that a part of sale consideration of Rs 22 lacs diverted by the defaulter to his wife, which was deposited in her account with Punjab National Bank on February 1, 2013. Thereafter two cheques for Rs 15 Lacs and Rs 5 Lacs were issued to M/s SDC Properties Pvt. Ltd., Mumbai. Apart from the said amount of Rs 20 lacs (Rs 15 lacs and Rs 5 Lacs), there was transfer of funds/ cheques issued to a tune of Rs 2 lacs on 28th March 2013, Rs 15,777/- on 16th May 2013 and Rs 50,000/- on 2nd July 2013 from Mrs. Pimmi's account to the said SDC Properties Pvt Ltd. Thereby, the said SDC Properties Pvt. Ltd had received aggregate sum of Rs 22,65,777/- which include Rs 22 lacs dishonestly diverted by the defaulter to his wife's account and the rest of the said money to SDC Properties was deposited in cash in the PNB account of Ms. Pimmi Hingorani on various dates. It is also observed that the entire amount of Rs 22,65,777/- paid to SDC properties was for booking a flat in A-1101, Dev Paradise, Beverly Park Road, Mira Road East, Thane 401104 by the defaulter in the name of his wife Ms. Pimmi Hingorani for a documented cost of Rs 42 Lacs on 28/12/2012, which was registered on March 2, 2013. I also note that the defaulter was one of the witnesses in the said agreement of sale purchased in the name of his so called separated wife. I also note that the market value of the said flat as noted from the NKGSB bank records (as valued by bank's valuer on March 22, 2013) was Rs. 61.44 lacs and the defaulter and his wife in the application dated September 23, 2013 to NKGSB Bank stated the value of the said flat is Rs. 58.30 lacs. Therefore, the defaulter might have paid more than Rs 15 lacs in cash for purchase of the said flat.
45. I also note that after the alleged separation, the defaulter has obtained two loans, one for Rs. 20 lacs in the name of his wife Ms. Pimmi Hingorani from NKGSB Co-operative Bank Limited for in March 2013, for payment of the remaining consideration to SDC Properties Pvt. Ltd and Rs 5 lacs in the joint name of the defaulter and his wife in September/October 2013 for renovation and furnishing. It is noted that the defaulter and his wife Mrs Pimmi Vinod Hingorani jointly applied for the loan of Rs 5 Lacs, furthermore defaulter's name has been used as husband by Ms. Pimmi Hingorani in all the property documents and loan/ bank account documents. It is also noted that sister of



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the defaulter (Mrs. Gunjan Rubi Changrani) was a guarantor for the loans availed by Ms. Pimmi Hingorani for purchase of the said flat. It is also observed that though the loan was availed for a tenure of 180 months, the same was repaid in full by July 2014 by making payment of Rs 23.99 lacs in two loan accounts, i.e. within a span of 15 and 7 months respectively from availing loans. It is also observed that Ms. Pimmi Hingorani has opened a Savings Bank Account with NKGSB Co-operative Bank Ltd. wherein the defaulter has been shown as husband and also his phone bill was used as the proof of address at D-63 Punarvasu. It is also noted that there has been huge cash/ cheque deposits on various dates in the said savings bank account which were mainly used for foreclosing the aforesaid loans with NKGSB.

46. The defaulter has contended that he is not aware of purchase of flat by Ms. Pimmi Hingorani from SDC Properties nor is concerned about utilisation of Rs. 22 lacs by her. I note that at question no. 76 of his statement dated March 30, 2015 he stated that he has no idea about what Ms. Pimmi Hingorani did with Rs. 22 lacs paid by him. I note that the defaulter himself was a witness in the agreement to sell dated December 28, 2012 registered on March 2, 2013. Therefore the contention of the defaulter is nothing but misleading and concealment of the facts. I note that the said flat A-1101 in Dev Paradise, purchased by the defaulter in the name of his wife, was dishonestly attempted to be transferred under the guise of an agreement of sale on 19/01/2015 by Mrs Pimmi Hingorani to her close relatives Ms. Rinki Suraj Singh, Ms. Damini Suraj Singh and Ms. Sarika Suraj Singh who are daughters of the brother-in-law of the defaulter (Brother of Mrs Pimmi Hingorani) for an amount of Rs 45 lacs, particularly when the market value of the flat in the area is more than Rs. 75 lacs and the value as per Government Ready Reckoner is Rs. 54 lacs.
47. As discussed above, the amount of Rs. 22 lacs transferred by the defaulter to his wife Ms. Pimmi Hingorani is not for adequate consideration and continue to be the money of the defaulter which has been used for purchase of new flat at 1102, Dev Paradise in the name of his wife. I therefore hold that the said flat No. 1102 is the property of the defaulter within the meaning of section 28A of SEBI Act and the defaulter has continuously concealed all the aforesaid transactions in the entire proceedings. Further, the defaulter has also attempted to transfer the said flat for which his wife Ms. Pimmi Hingorani has entered into an agreement to sell January 19, 2015 with her close relatives. I note from the said agreement that there is no terms of payment of the sale



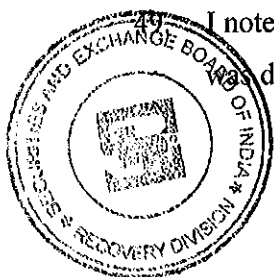
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consideration and even the advance of Rs. 6 lacs shown in the agreement is also referring back to the payments made more than six months back i.e. Rs 4 lacs on 22/05/2014 Punjab National Bank, (but no cheque details are available) and Rs. 2 lacs on 23/05/2014 Axis Bank cheque No. 082656. If we look at the advance payment, the defaulter and his wife had planned to transfer the new flat to their close relative in May 2014 itself for which they might have taken the aforesaid amounts for the reasons that SEBI started stringent actions against the defaulters under new powers granted in July 2013 and there had been continuous reports in the media of the same including recovery actions have been initiated against various entities including his brother-in-law Mr Rajkumar Basantani. I also note that there is another receipt for Rs. 4 lacs by cheque nos. 082659 and 159296 dated January 19, 2015 drawn on Axis Bank. As regards balance consideration, nothing has been mentioned in the said agreement. This clearly shows that it is an afterthought and in a hurriedly manner the defaulter and his wife attempted to transfer the flat in Dev Paradise in favour of their close relatives to obstruct the recovery process. In order to ascertain the details relating to the purchase and sale of flat at Dev Paradise, Ms. Pimmi Hingorani was called for hearing fixed on April 7, 2015 along with required documents. As the defaulter has stated that his wife Ms. Pimmi Hingorani is not staying in flat No. D-63 Punarvasu, a notice to the last known address mentioned in the aforesaid agreement to sell dated January 19, 2015 was sent by hand delivery at Flat No. 1101, 11th Floor, Dev Paradise, Mira Road (East). However, it has been reported that the said flat has been locked and the notice dated April 01, 2015 was affixed on the main door of the said flat in the presence of two witnesses and the proof of service is available on record. However, Ms. Pimmi Hingorani failed to appear before the Recovery Officer nor responded to the notice.

48. In view of the above, the diversion of funds by the defaulter, booking of flat in the name of his wife, thereafter dishonestly attempting to transfer the said flat are the activities covered under rule 73 (1) (a) of Second Schedule and Section 222 of the Income Tax Act read with section 28A of SEBI Act.

As regards the money diverted by the defaulter through his mother

I note that the other part of sale consideration of Rs 22 lacs pertaining to the Flat D-63 diverted in the name of mother of the defaulter Mrs Mohini Hingorani in the bank



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account maintained in her name with ICICI Bank. Immediately after deposit of the sale consideration, two pay orders for Rs 9.50 lacs each were obtained on February 02, 2013 in favour of Miss Juhi A Vazirani and Miss Kashish A Vaziranni who are nieces of the defaulter (sister's daughters). The said two nieces of the defaulter aged less than 18 & 22 years respectively opened bank accounts with Bank of Maharashtra in Pune on February 14, 2013 and encased the pay orders on February 16, 2013 in the said accounts. Thereafter, there are number of transactions in their bank accounts which raises suspicion.

50. I note that Flat No. D-63 was purchased for consideration of Rs 7,08,190/-. While buying the said flat the defaulter was working and earning in Sharjah, UAE. Most of the consideration for the said flat was paid from the defaulter's bank account maintained with Vysya Bank (Rs. 1,21,638 by cheque no. 131202 dated February 2, 1994 and Rs. 2,73,727 by cheque no. 542652 dated October 5, 1995) and the rest were paid from the accounts from Bank of Baroda (Rs 92,825 on June 15, 1994) Sangli Bank (Rs 20,000 by cheque no. 056285 dated December 31, 1993) and by cash. It is noted from the records that the defaulter had bank account Nos. SB 1290 (jointly with his the then wife Mrs Deepali Hingorani), 528010030790 and 528010032433 in Vysya Bank Ltd. (renamed as ING Vysya Bank and now as Kotak Mahindra Bank) which the defaulter did not deny. However, the Agreement to Sell was entered with the builder in the name of the defaulter (through his Power of Attorney Mr. Rajkumar Basantani) and his mother. It is observed that Mrs Mohini Hingorani was dependent on the defaulter and not having any source of income and no consideration appears to have been paid by her for purchase of the said flat. The defaulter has contended that the entire consideration was paid by his mother from the sale consideration received on selling her property at Andheri. However, the defaulter has not furnished any documentary evidence to this effect even when he was specifically asked at the time of recording his statement on March 30, 2015 nor disputed the aforesaid payments made from his bank accounts. The defaulter has also not established that the consideration stated to have been received from sale of his mother's Andheri flat only has been utilised for purchase of flat at D-63 Punarvasu or the entire consideration for purchase of the said flat is exclusively paid from the bank accounts including any account in Vysya Bank held by the mother of the defaulter in 1993-95. I note that the defaulter was having three bank accounts in Vysya Bank and Mrs Mohini Hingorani was not reportedly having account



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with Vysya Bank. I note that majority of the payment i.e. Rs. 3,95,365/- (1,21,638 and 273,727) was paid from Vysya Bank. The defaulter at Q No. 52 admitted that he and his mother entered into agreement for purchase of the flat directly with the builder. However, I note that the builder has sent various letters during the period in the name of the defaulter and not in the joint names. It is also noted that the Share Certificate in respect of the said flat issued by Punarvasu D Co-op Housing Society Ltd is even today held in the exclusive name of the defaulter. The maintenance charges, Municipal assessment, gas connection, name board displayed in the society etc. are in the exclusive name of the defaulter and nowhere Ms. Mohini's name is appearing.

51. The defaulter himself has admitted that the money transferred from his mother's ICICI Bank account was towards discharge of his borrowings/ debts. I note that an amount of Rs. 9.5 lacs each (19 lacs) out of 22 lacs have been paid to the nieces of the defaulter. However, the defaulter has not furnished any documentary proof of his borrowings to the tune of Rs. 19 lacs from his nieces. The defaulter has neither in the statement dated March 30, 2015 or in his reply mentioned about the details of his debts or liabilities and most particularly in respect of the debts to his nieces.
52. In view of the above, I hold that the defaulter has diverted part of the sale consideration (Rs. 22 lacs) through his mother's account which has been further diverted and retained in the names of his nieces, which has been dishonestly concealed for obstructing execution of the certificates.

As regards the defaulters owning Shop No. B-22 RNA Broadway Avenue and running Kunal Beer Shop

53. It is observed that the defaulter has been doing a business in the name and style as "Kunal Beer Shop" at No. B-22, RNA Broadway Avenue, Mira Road. The defaulter has also opened a Current Account with Punjab National Bank in the name of "Kunal Beer Shop" along with his brother-in-law Mr. Suresh Vazirani (husband of defaulter's sister) being the authorised signatories. Even though the shop is located in the above address, in order to keep the said business within the control of the defaulter, the bank account was opened with his residential address at D-63 Punarvasu, Mira Road by furnishing his residential KYC document, his phone bill, PAN etc. The defaulter has also made number of financial transactions with Kunal Beer shop from his bank accounts. Two telephone connections No. 69925055 and 28131215 are registered/listed



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with Justdial about his business activities for Kunal Beer Shop on 18/06/2010 showing the aforesaid shop address, the two telephone numbers, etc. and the said entries on Justdial was also accessed and updated on 11/10/2013. One of the aforesaid telephone connection 69925055 was obtained in the name of Mr. Sunil Shantaram Jadhav with whom the defaulter admittedly had financial and contractual dealings.

54. I note that the name for the said beer shop is named after Mr. Kunal Vazirani who is the nephew of the defaulter (sister's son). It is also observed that the said shop No.22 in RNA Broadway Avenue was earlier owned by the sister of defaulter Mrs Gunjan Ruby Changrani which was sold in October 2012 to Mr Suresh Basantani who is brother of the defaulter's brother in law Mr Rajkumar Basantani. Thereafter the said shop was sold to Dr. Arun P. Dubey on July 27, 2014. It is also observed that Mr. Suresh Basantani has bought two properties in Mira Road namely the defaulter's flat at D 63, Punarvasu and the shop no B-22 in RNA building. All these circumstances leads to suspicion that the said shop No.B-22 in RNA Building was also indirectly owned by the defaulter, held in the name of his sister, which was transferred in 2012 to evade his dues arising out of fraudulent activities in the securities market. The said shop has been shifted to an anonymous place after sale of the said shop on July 22, 2014 by Mr. Suresh Basantani i.e after initiation of recovery proceedings against the defaulter on July 11, 2014.

55. In response to question no. 49 the defaulter has admitted that he was using the premises at No. 22 RNA Broadway Avenue as his office space and he was not making any payments towards rent and there was a beer shop running in the premises in which he was assisting them in maintaining the accounts for a monthly salary of Rs. 5000/- to 6000/- and he used to sit in the evenings in the said shop. He also contended at Q No. 103 that the licence of the Beer Shop was in the name of Mr. Suresh Vazirani (brother-in-law of the defaulter & Pune resident) and not by him. However, I note that Mr. Suresh Vazirani was added as one of the authorised signatory in the bank accounts along with KYC documents, telephone number, residential address at D-63 Punarvasu of the defaulter. In response to question no. 100 the defaulter has stated that he does not have any connection with Kunal Beer Shop or with the establishment of the shop. I note that only after the PNB account opening form was shown to the defaulter, he has admitted that he was one of the authorized signatories to operate the accounts of Kunal Beer Shop since 2011 and the other authorised signatory was Mr Suresh Vazirani who



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is his brother-in-law and the defaulter's KYC, address at D-63 Punarvasu has been used for the inclusion of Mr Suresh Vazirani as authorised signatory in the Punjab National Banks account. However, he contended that he was not aware which address the bank account of Kunal Beer Shop was opened and he was not knowing that the said account was opened by him for Kunal Beer shop giving the address as D-63, Punarvasu Society and his telephone bill etc.

56. I note that there were number of bank transactions by the defaulter from his and Ms. Pimmi's bank accounts with Kunal Beer Shop. In this connection, the defaulter had contended that he used to lend money to Kunal Beer Shop in the range of Rs. 15,000-25,000/- for short term and was repaid through cash/cheque. The defaulter, except denying his ownership of Kunal Beer Shop has not furnished any evidence to show that the shop was not owned by him and that his transactions with Kunal Beer Shop was in the capacity as money lender to the said shop. I note from the papers submitted by the defaulter and his wife to NKGSB Co-operative Bank on September 23, 2013 for availing loan of Rs. 5 lacs for renovation and furniture work, that the defaulter and his wife has stated that they are doing business in the name as Kunal Beer Shop at Shop No. 22, RNA Braoadway Complex and the status of the business office premises as "owned". If the defaulter and his wife admittedly owning Kunal Beer's business and Shop No. B-22 RNA Broadway in September 2013 filed with NKGSB Bank, the burden lies on the defaulter to show that at the subsequent dates what happened to the same, which the defaulter has failed to do so. Ms. Gunjan Ruby Changrani (sister of the defaulter) in whose name previously the said shop premises was held on behalf of the defaulter as stated above and the surety for the said loans has also confirmed the said statement of the defaulter and his wife made with NKGSB bank. This clearly shows that Shop No. 22, RNA Braoadway Complex was owned by the defaulter in the names of his sister and thereafter Mr. Suresh Basantani (brother of Rajkumar Basantani) till the same was sold on July 22, 2014 for Rs. 40 lacs. The defaulter has not disclosed these transactions except to state that he was not owning Kunal Beer Shop but was only sitting in the said shop.

57. Even though the defaulter is contenting that he used to lend money to Kunal Beer Shop which is claimed to be not owned by him, I observe that he has been otherwise stating that he used to borrow money from many persons for his expenses, it is not believable



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that a person who used to borrow money for personal expenses has been lending to the Shop unless he has any ownership interest therein.

58. In view of the above, I find that the act of the defaulter is not only concealment of his assets, business and earning but also dishonest transfer or removal of part of his property contemplated under rule 73 (1) (a) of Second Schedule to the Income Tax Act and hold that the defaulter is owning Kunal Beer Shop.

As regards the defaulter's professional activities, earnings and means.

59. The defaulter during the entire proceedings in various correspondence and also in the Writ Petition filed before the High Court of Bombay repeatedly stating that he is not liable to pay the penalty imposed under the three orders, which became final in 2010. I observe that the defaulter has been admittedly doing civil contracts, interior decoration works, real estate brokerage, etc. with the name and style as "Om Sai Interiors" RNA Broadway, B-22, Shop No.22, Near Jangid Circle, Mira Road East, specialised in civil works, electrical, plumbing, plaster of paris, woodwork and painting works business. The defaulter himself furnished a business card in the hearing held on December 18, 2014 stating that he has been doing the aforesaid professional activities. I note that all these details namely his name, professional activities referred above, his mobile number etc. are printed on the said business card. The defaulter has also advertised his business on BizzLead, Justdial, etc. which provide search services over phone, web, mobile, SMS, etc. for anybody who look for various types of services across the globe where millions of people access the database. The defaulter had registered his business details on Justdial database on June 25, 2014 which was updated by him on August 19, 2014, wherein the defaulter had informed the Justdial executives that he has been doing the business as Om Sai Interiors for the last three years and recently shifted to Shop No.13, Indralok Building, near Axis bank, Om Shanti Om Chowk, Opp: Poonam Residency, Mira Road East. The defaulter has neither denied all these details/ allegations nor furnished any documents contradicting the allegations. I also note that the defaulter, while furnishing the business card on December 18, 2014 concealed that his business address mentioned on the said card has been shifted by him to the said address at Indralok Building. By taking clue from Justdial, SEBI has found that he has taken the said shop on rent and has executed a registered leave and licence agreement on August 2, 2014. However, the defaulter has concealed the said transactions as he had at Q No.

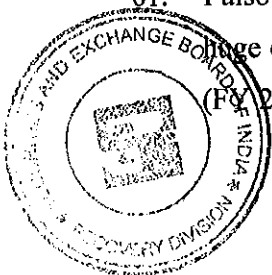


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65 in his statement contended that he "did not enter into any leave and licence agreement/ obtained police verification". While entering into the agreement, the defaulter had paid Rs. 50,000 in cash towards deposit to the owner of the shop and agreed for a monthly rent of Rs. 8500/-. I also note from the copy of the leave and licence agreement furnished to the society that on the police verification form it has been written as the said shop is for "courier service and estate agency". It is reported that as per Indralok society records, no termination or cancellation of lease has been filed.

60. It is observed that all the business activities are admittedly done by the defaulter on cash basis. The defaulter in response to Q No. 40 stated that he has local contacts as well as network with other brokers, on an average he used to earn Rs. 10,000-15,000 from civil contracts and brokerage business. At Q No. 41 and 42 he stated that he used to engage in all civil works in Om Sai Interiors and get clients on local contacts. From response to Q No. 43 and 96, I note that the defaulter also engages sub contractors including Mr. Sunil Jhadav to whom there were payments from the bank accounts of the defaulter and his wife. In response to Q No. 42 and 46, the defaulter failed to disclose his client details and how he make payments to suppliers and at Q No. 44 the defaulter has admitted that the consideration for his work were taken in cash. It is also observed from the bank transactions of the defaulter, his wife and mother that most of the transactions were by depositing and withdrawing cash. It is observed that Mrs Pimmy Hingorani (wife) and Ms. Mohini Hingorani (mother) are housewives, not having much educational qualification and admittedly dependant on the defaulter, however, in their bank accounts also huge cash transactions were noted. It is also observed that the names of the persons appearing in his bank statements are also appearing in the bank accounts of his wife and mother. In response to question no. 97 the defaulter has admitted that he used to give bearer cheques from the accounts of his mother and wife for withdrawing cash for his personal use. The defaulter has contended that cash transactions in the said accounts were his borrowings from various persons. However, he has not furnished any single document to show his borrowing which has been reported in the said bank accounts.

61. I also note from the bank statements of the defaulter, his wife and mother that there are huge cash transactions and the cash deposit itself in the said accounts are Rs. 2.97 lacs (FY 2011), 6.49 lacs (FY 2012), 12.63 lacs (FY 2013), 24.86 lacs (FY 2014) and 20.21



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lacs (FY 2015 till January '15). Apart from the said cash transactions, I also note huge deposits other than cash in the all the said bank accounts, i.e., Rs. 15.30 lacs (FY 2011), 8.88 lacs (FY 2012), 11 lacs (FY 2013), 7.12 lacs (FY 2014) and 23.86 lacs (FY 2015 till January '15). All these transactions are in addition to Rs. 44 lacs deposited in Jan-Feb 2013 in accounts of mother and wife of the defaulter towards the alleged consideration for sale of his flat D-63, Punarvasu. It is noted from the said details that the transactions in the bank accounts of the defaulter has slowly reduced after the orders imposing the penalties were passed in April/ June 2010 and the defaulter has diverted his transactions through the accounts of his mother and wife as SEBI has been taking actions for prosecution, recovery of penalties etc. I also note that the mother of the defaulter in her statement at Q No. 10 stated that the defaulter used to operate her account with ICICI Bank. The defaulter in his statement at Q No. 82 stated that his mother herself was operating her ICICI Bank account, however at Q. No. 86 and 97 stated that the cash deposits in her accounts were personal loans taken by him. There was a deposit of Rs. 2 lacs on January 31, 2014 by Jackith Healthcare Pvt. Ltd. in her ICICI Bank account but pleaded ignorance of the said name even after withdrawing the said money. I suspect that the defaulter conceals transactions with many people shown in the bank accounts, his mother and wife. Similarly at Q No. 87 and 88, the defaulter has stated that Ms. Pimmi herself was operating ICICI Bank account at Mira Road, however it is reported that she does not have any account with ICICI Bank. The defaulter has at Q No. 97 admitted that he used to give bearer cheques from the accounts of his mother and his wife for his personal use.

62. The defaulter has admitted that his mother and wife are housewives and do not have any independent source of income. Ms. Pimmi Hingorani has also stated in the bank account opening forms with PNB on January 25, 2007 and SDC Bank on January 2, 2012 that she is a housewife and not a self employed/ business/ professional. In this connection, the Hon'ble Supreme Court in *Surjit Singh v. M. T. N. L* (Civil Appeal No. 5354 OF 2002, decided on April 21, 2008) while interpreting rule 443 of Indian Telegraph Rules held at Para 22 that *"in case of a wife who is housewife and economically dependent on her husband, obviously the telephone bills in connection with the line in her name are being paid by her husband and not by herself. Hence we have to adopt a purposive construction in this case and not go by the literal rule of*

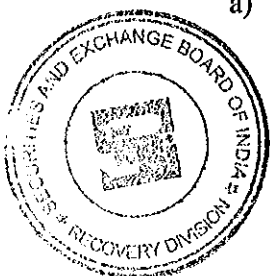


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interpretation." Therefore, I hold that the amounts lying in the bank accounts of both the mother and wife of the defaulter is also the transactions of the defaulter.

63. Without prejudice to the discussions in respect of the alleged sale of flat of the defaulter to Mr. Suresh Basantani, even as per the contention of the defaulter he has been staying on rent in the same flat and is admittedly paying rent to Mr. Suresh Basantani in cash. It is learnt that the rent for a similar flat in the area is about Rs. 15,000/- per month and the mother of the defaulter has reportedly stated to the Business Standard in December 2014 that the rent for the said flat is Rs 12,000. Even though the defaulter has stated that he has been paying rent of Rs. 5,000/- but no documentary evidence has been filed by the defaulter. Neither the defaulter nor Mr. Suresh Basantani has shown the exact rent paid by the defaulter for the said flat in any of the tax returns, bank accounts etc. I also note that the defaulter has also taken shop no. 13, Indralok Building in Mira Road on a monthly rent of Rs. 8500/-. Since the defaulter is able to pay more than Rs. 20,000/- per month towards rent for his residence and shop, I have no hesitation to conclude that the defaulter has been earning sizeable income out of his various activities and not Rs 15000 alone as contended by the defaulter, it is for the defaulter to show that he is not actually earning any money.
64. The defaulter's nature of providing misleading information is also patently noted from the personal hearing records dated March 10, 2010 before the Adjudicating Officer of SEBI wherein the defaulter has subscribed his signature in a different fashion and style from his usual signature. Further, in his statement dated March 30, 2015 he has stated his qualification as 12th pass, whereas in the police verification form submitted by him for taking the shop at Indralok Building on rent he has stated that his profession is business and his educational qualification is B.Com. I also note from the aforesaid orders imposing penalties that the defaulter in spite of his undertaking before the Adjudicating officer failed to furnish details, bank account statements etc.
65. Keeping the aforesaid discussions in the case, I note the following judicial pronouncements of various courts, which are relevant:

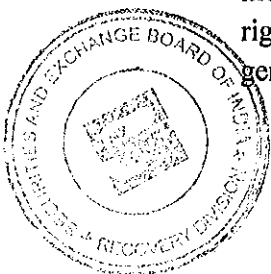
- a) The Hon'ble Andhra High Court in *Kapurchand Shrimal v. Tax Recovery Officer, Hyderabad* (1967 64 ITR 1 AP) observed that "the intention of the framers seems to be very clear that in cases coming under Rule 73(1)(a), any dishonest transfer, concealment or removal of any part of the property, would



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be sufficient to attract that provision, and in cases where Rule 73(1)(b) is attracted, since it relates to the means of the defaulter, it has insisted on the dishonest sale, transfer or concealment of a substantial portion of the property.”

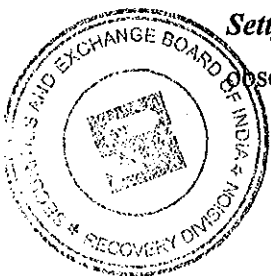
- b) In *Jolly George Varghese v. the Bank of Cochi* (AIR 1980 S.C. 470), the Hon'ble Supreme Court of India held that “...There must be some element of bad faith beyond mere indifference to pay, some deliberate or reculant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it.”
- c) In *V.P. Madhavan Nambiar v. Chaldean Syrian Bank Ltd. And Anr.* (2001 (91) FLR 914) the Hon'ble Madras High Court observed that “where there is sufficient material shown to warrant an inference that the judgment-debtor has actually been in the possession of substantial assets a few months prior to suit, an inference is perfectly justifiable that he has since the institution of the suit dishonestly concealed them, and furthermore, that he has since the date of the decree means to pay a substantial portion of it from assets he is concealing from the Court.”
- d) In *Kuppuswamy v. Dr. P. G. Menon* (1992 (2) KLJ 171) the Hon'ble Kerala High Court held that the requirement of Section 51 of the CPC will be satisfied if the judgment debtor has the means to pay the debt either from liquid resources or assets belonging to him which can reasonably furnish such resources. The Court also observed that “where it is proved or admitted or otherwise evident that the judgment debtor owns or posses a house or has got interest therein, the normal presumption is that he is able to pay the debt either by sake or mortgage or creating other encumbrance of the house.
- e) In *Sreejesh v. Canara Bank* OP (C) No. 3416 of 2013 (O) (decided on October 30, 2013) the Hon'ble Kerala High Court while relying on *Kuppuswamy v. Dr. P. G. Menon* held that “an auto rickshaw is a tangible asset. It is capable of being transferred to another person. The petitioner could have transferred the autorikshaw to another and utilized the funds to pay the decree debt. If the vehicle is hypothecated to the decree holder bank he could have allowed the bank to repossess the vehicle and sell it. In short, there was evidence before the court to enable it to conclude that notwithstanding the fact that the petitioner had the means to raise the funds to pay the decree debt, he had neglected or refused to pay the decree debt.”
- f) In *Aluru Venkata Rao v. Kodali Venkata Sri Krishna* (1994 (3) ALT 538) (para 5) the Hon'ble Andhra Pradesh High Court observed that “the dictionary meaning of “means” as a money resource or wealth of an individual (page 735 right column of the Concise Oxford Dictionary New Edn. reprinted 1992) is too general expression and the word “means” occurring in Section 51 of C.P.C. can



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only mean realisable assets viz., sufficient assets from out of which the necessary monies can be realised to pay up the decree amount."

66. The defaulter has contended that his wife Ms. Pimmi Hingorani is a housewife and she does not have any independent source of income or assets in her name and he used to borrow money from his wife and a part of the sale consideration of D-63 Punarvasu given to his wife was towards her separation and also repayment of amounts borrowed by him from her. However, I find from the papers filed by the defaulter and his wife with NKGSB Cooperative Bank for availing a loan for renovation of house on September 23, 2013 that the wife of the defaulter has filed income tax returns for F.Y 2010-11 onwards and continuously showing 4 to 5 lacs as her annual income from business and she has shown in her balance sheet for the period ended March 31, 2013 that she had a liability of Rs. 9 lacs to the defaulter. This liability has been shown after claiming to have received part of sale consideration of Rs. 22 lacs on January 30, 2013. In the said income tax papers she has not shown the receipt of Rs. 22 lacs towards compensation for her separation.
67. The defaulter has not been adjudged as an insolvent by a competent court of law nor the defaulter has furnished any evidence to show that he has been declared as insolvent. The defaulter was continuously from the date of initiation of recovery proceedings in July 2014 contending that he has no movable or immovable assets or bank accounts except a bank account with PNB. However, after initiation of the recovery proceedings, all the aforesaid transactions including various cash deposits, disposal of the properties, accounts with the other banks in the name of the defaulter and his wife and mother namely three accounts in Punjab National Bank, two accounts in SDC Co-operative and one account each in NKGSB Bank, ICICI bank etc, purchase of new flat in the name of wife in Dev Paradise, and attempting to transfer the said property to another close relative of the defaulter's wife, possession of gold worth more than Rs. 10 lacs, which were taken from SDC Bank on foreclosure of the gold loan, his business activities as Kunal Beer Shop, real estate agency, courier service, lease rights of the defaulter in shop at Indralok Building etc. have been unearthed by SEBI. Therefore, the act of the defaulter is nothing but dishonest concealment of his properties, sources of income etc. to defeat the recovery process. The Hon'ble Division Bench of AP High Court in *Somi Setty Bala Venkatasubaiiah v. P. Sreenivasulu Setty*, 2007 (1) ALD 685 para 10 observed that the defaulter has to establish with evidence that he is not receiving any



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income in the subsequent years, if he had income in the past. In this case, the defaulter except denying did not come out with any evidence for any of his denial. I also note that the defaulter and his wife have been continuously pre-paying the various loans availed by them in SDC bank and NKGSB Bank. All these circumstances show that the defaulter has sizeable income and source.

68. I note that generally in these type of cases the defaulters would not voluntarily disclose the properties directly or indirectly held by them and also their sources of income. Unlike the relationship between the lender and the borrower, where the lender before lending any money will make assessment of the borrower about his creditworthiness, his assets and his sources of income etc., in the case of recovery of regulatory dues, the regulator would not have the benefits of such assessment until the case is taken up for recovery. The regulator shall struggle to gather information, details, etc. of the defaulter from various sources and connect each piece of evidence scattered across even to establish prima facie that the defaulter's capacity to pay the dues, particularly when the defaulter runs his business/ profession on cash basis without routing his transactions through banking channels and not filing true and fair statements/ returns with authorities and persistently concealed the information. In this case, the defaulter has not only concealed all the above activities and when asked about details of certain persons from whom repetitive transactions were noted commonly in the bank accounts of the defaulter, his wife and mother, the defaulter pleads ignorance about the same, clearly show that the defaulter not only concealed his assets but also various sources of his income.

Conclusion

69. Keeping the above discussions, legal provisions and judicial findings of various courts, I hold that the defaulter after the dues under the SEBI Act had become due dishonestly with a view to prevent recovery of dues, done the following which attracts rule 73 (1) (a) of 2nd Schedule of the Income Tax Act;
- (a) disposed his flat at D-63, Punarvasu and shop No.B-22 in RNA Broadway;
 - (b) transferred part of the sale consideration to his wife under the guise of invalid assignment deed and part of the consideration through his mother and nieces;



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(c) purchased flat at 1101, Dev Paradise in wife's name having market value of Rs. 58 lacs (approx.), dishonestly concealed and attempted to further transfer the same in favour of relatives of his wife;

(d) concealed possession of considerable quantum and value of gold which were taken after foreclosure of gold loan from SDC Bank;

(e) concealed his business activities Kunal Beer Shop, courier service, lease rights in Indralok Building and payment of deposits, rent etc.; and

(f) concealed availing of loans from SDC Bank, NKGSB Bank and savings accounts etc. held by the defaulter, his wife and mother in various banks.

70. The defaulter, from initiation of adjudication proceedings by SEBI, orders imposing penalties, filing prosecutions, reminders for the dues, initiation of recovery proceedings continuously had sufficient assets, sources, means, income etc. including the following in terms of rule 73 (1) (b) of 2nd Schedule of the Income Tax Act:

(a) business earnings as Kunal Beer Shop;

(b) sale proceeds of at least 40 lacs in respect of sale of shop no. B-22, RNA Broadway Avenue held in the name of his close relative which was disposed on July 22, 2014;

(c) earnings in real estate agency business for the last eight years and courier service business;

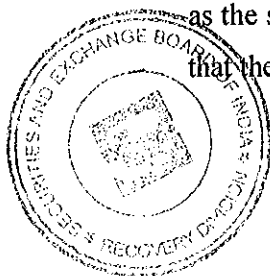
(d) earnings in Om Sai Interiors by doing various civil contracts, interior works etc for the last three years;

(e) has flat 1102, Dev Paradise;

(f) possession of gold of considerable value; and

(g) amounts lying in various bank accounts of the defaulter, his wife and mother.

71. In view of the above, I am satisfied that the defaulter with the object of obstructing execution of the certificate has dishonestly concealed, transferred some of his properties and also that the defaulter is having sufficient means to pay the aforesaid dues and has been continuously since 2010 and even after initiation of recovery proceedings, refusing and neglecting to pay the same, which is a loss to the exchequer as the same is remittable to the Consolidated Fund of India. Therefore, I am convinced that the defaulter shall be arrested and detained in civil prison.



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72. Having concluded that the defaulter is liable to be arrested, keeping in view that the defaulter has already served civil imprisonment for 85 days under the order dated December 18, 2014, it would serve the interest of justice and as observed by the Hon'ble Bombay High Court in *Kanaiyalal Prabhudas Maru v. R. P. F Commissioner* (2002 ILLJ, 297 Bombay), I am of the view that an opportunity may be given to the defaulter to pay the dues. Accordingly, I hereby direct the defaulter to pay at least Rs 30 lacs (Rupees Thirty lacs only) within four weeks from the date of receipt of this order, failing which steps will be initiated for his arrest in execution of the certificates. Upon receipt of the said amount from the defaulter, suitable instalments will be fixed for the remaining dues along with interest, cost, expenses etc. in the matter.

A copy of the order is being sent to the defaulter at his residential address.

Mumbai
April 20, 2015



D.V. Sekhar
20/4/15

D.V.Sekhar
Recovery Officer

D.V. Sekhar

डी. वी. शेखर

Dy. General Manager & Recovery Officer

उप महाप्रबंधक एवं वसूली अधिकारी

Securities And Exchange Board of India

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