

BEFORE THE RECOVERY OFFICER, AHMEDABAD
SECURITIES AND EXCHANGE BOARD OF INDIA

Attachment proceeding No.1062

in

Certificate No. 291 of 2014

Defaulter : Shri Sanjay Biyani

Notices : Shri Govind Das Biyani

Appearance : Shri Govind Das Biyani

Order under under Rule 9 & 11 of Part I of Schedule II and Section 226(3) of Income Tax Act, 1961 r.w. Section 28A of SEBI Act, 1992.

1. Recovery Certificate No.291 of 2014 against Shri Sanjay Biyani (hereinafter referred to as "Defaulter") for recovery of Rs.10,00,000 (Rupees Ten Lakhs Only) towards penalty imposed by the Adjudicating Officer vide order No. AP/AO-17/2006-07 dated September 14, 2006 along with interest, all costs, charges and expenses. Under the said Recovery Certificate, the Recovery officer had issued Notice of attachment no. 1062 of 2014 dated July 16, 2014 in respect of the bank accounts of the Defaulter.
2. Shri Govind Das Biyani, father of defaulter (Noticee) vide his letter dated August 12, 2014 submitted that his Saving Account No.00361930000718 with HDFC Bank Ltd., Trade House Branch, Indore is jointly held with the Defaulter and operations in the said account has been stopped due to recovery proceeding against the Defaulter. The Noticee also submitted that the aforesaid bank account is his salary account and he is the sole owner of the said account and the Defaulter has no financial involvement in these accounts and none of the entries in the said bank account relates to Defaulter and all credits in the said bank account are shown in his Income Tax Returns being filed since 1966.
3. Further, the Noticee, vide letter dated September 06, 2014 requested that if required he may personally come to SEBI office and explain in the matter. The Noticee, vide his email dated September 15, 2014 provided copy of ledger account



in respect of the said bank account for the year 2011-12 to 2012-14 and from April 01, 2014 to September 05, 2014.

4. In view of the submission of the noticee a notice dated September 23, 2014 was issued to the Noticee directing him to appear before Recovery Officer on October 08, 2014 and submit objections, if any to the attachment of bank account and also to establish his interest in the said Bank account. The Noticee vide his email dated September 24, 2014 requested to postpone the hearing to 9th/10th October, 2014. Accordingly, the hearing was rescheduled on October 09, 2014.
5. The Noticee appeared before the Recovery Officer on October 09, 2014 and made his submission. The major submission of the Noticee are as under:
 - a. He is father of Shri Sanjay Biyani against whom SEBI has initiated recovery proceedings. He has a Saving Bank Account No.0361930000718 and Fixed Deposit Receipts(FDR) A/c No.00364410036080 & 00364410036090 (FDRs of Rs.3.00 lacs each) with HDFC Bank Ltd. Trade house branch, Indore. Shri Sanjay Biyani is a joint account holder in the said bank accounts and therefore as per SEBI order the said bank accounts have been freezed for debit by the bank.
 - b. He is the sole owner of the said bank accounts and Shri Sanjay Biyani has no financial involvement in these accounts and therefore he requested vide his letter dated August 12, 2014 to release said accounts. He further submitted the followings:
 - I. Bank statement of HDFC bank Account No. 0361930000718 for the period 01.04.2011 to 07.08.2014.
 - II. Confirmatory letter dated September 27, 2014 from HDFC Bank Ltd. confirming that the said account is a salary account mapped for receipt of salary from M/s. Scientific Mes-Technik Pvt. Ltd., Indore.



- III. Certificate dated October 08, 2014 from M/s. Scientific Mes-Technik Pvt. Ltd. confirming that the salary of Shri Govind Das Biyani is being deposited in the said Bank Account with HDFC Bank.
- c. The copy of the ledger accounts submitted are not audited. Since he is an individual deriving income from salary, capital gains, interest, dividends etc. audit is not required. However, the transactions with Sanjay Biyani/Sanjay Biyani-HUF are traceable with the bank statements submitted. All transactions shown in the above ledger accounts of Shri Sanjay Biyani/ Sanjay Biyani-HUF (in his books) are towards loan given to him and repayment received from him against the loan. Throughout the period i.e. from 01.04.2006 to September 05, 2014 there was loan outstanding against him except a credit entry of Rs.4000/- on July 07, 2014.
- d. All transactions reflected in the said bank accounts belong to Shri Govind Das Biyani and shown in his Income tax returns. None of the credit/debit entries in the above accounts belongs to Sanjay Biyani. The FDRs referred above were made out of his sole income from the saving accounts referred above, interest shown in his I T Returns, TDS being deducted and deposited in his accounts only. Copies of Form -26AS for the A.Y. 2012-13 to 2014-15 were also submitted.
- e. The FDRs referred above can be redeemed only by joint signature. However, the saving accounts can be operated individually either by Govind Das Biyani or Sanjay Biyani. However, all the transactions so far have been made with his signature only. Since he is 69 years old and lost his wife in 2006, he added Shri Sanjay Biyani's name as joint holder just for convenience and for any unforeseen eventuality.
6. Further, Shri Sanjay Biyani, the defaulter vide his letter dated December 01, 2014 deposited the principal penalty amount through Demand Draft/FDRs/letter addressed to bank for transferring amount to SEBI. Accordingly, the principal penalty amount of Rs.10.00 lacs and Rs.8762.01 towards part payment of interest and other costs was recovered from the defaulter.



7. Thereafter, in respect of recovery of balance interest and other costs a hearing opportunity was given to Shri Sanjay Biyani, defaulter on February 02, 2015. However, the defaulter requested postponement of the hearing anytime after February 17, 2015 and accordingly hearing was postponed to February 20, 2015. The defaulter appeared before the Recovery officer on February 20, 2015 and submitted his letter dated February 17, 2015 requesting for waiver of interest under Section 220(2A) of Income Tax Act, 1961. He further submitted that he is planning to file an appeal before Hon'ble SAT against the recovery orders and requested to give him time upto March 05, 2015 to file the said Appeal failing which he will make payment of the dues to SEBI.
8. It is noted that inspite of the opportunity given to the defaulter, he has not paid balance dues towards interest, cost and expenses and has not filed any appeal till date.
9. Section 28A of the SEBI Act, 1992 and Section 226(3) of the Income Tax Act, 1961 empowers Recovery Officer to attach bank account of the Defaulter, even if the accounts are held jointly with any other person. I observe that the attachment of the bank account was made in accordance with the procedure laid down under the above provisions and hence do not suffer from any legal infirmity. Further, Section 226(3)(ii) of the Income Tax Act, 1961 provides that the shares of the joint holders in a joint account shall be presumed, until the contrary is proved, to be equal. The above notice dated September 23, 2014 was issued for the purpose of assessing the exact shares of the Defaulters in the joint account which was attached.
10. With respect to the submission of Noticee at Para No.5(a) to (d), I note that Further, observe from the copy of the bank accounts submitted by the noticee, there were certain payments/receipts to/from the Defaulter in the said bank account. The noticee has submitted copy of his ledger accounts showing these transactions as loan transactions between him and Defaulter. However, considering the fact that the said ledger accounts submitted by the noticee are not audited accounts and hence cannot be relied upon to establish that the



transactions of payments/receipts to/from the Defaulter in the said bank account are towards loan.

11. With respect to the submission of Noticee at Para No.5(e), I note that being a joint holder in the bank account, the Defaulter can operate the account singly or jointly and the FDR in the said account can only be redeemed by the joint signature. Although the noticee has submitted that the said bank account is solely owned by him and Defaulter has no financial involvement in these accounts, the mode of operation of the account shows that the Defaulter is equally entitled to operate the account and in case of redemption of the FDRs, his consent is required. This mode of operation of the bank account counters the other submissions of the noticee and establishes that the Defaulter has equal share in the bank account and as per Section 226(3)(ii) has equal right over the money available in the said bank account.

12. In view of the above, I hereby order that the HDFC Bank Ltd., Trade House branch, Indore, to release 1/2 of the balance available in the Saving Bank Account No. 00361930000718 and in FDRs Account No.00364410036080 & 00364410036090 to Shri Govind Das Biyani on his request. HDFC Bank Ltd. is directed that the attachment on the said three accounts shall continue till further orders except for the purpose of releasing half of the share to Shri Govind Das Biyani.

Date: April 30, 2015



Sudeep Mishra

Sudeep Mishra
Recovery Officer
Western Regional Office