

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

**Recovery Certificate Nos. 847 of 2015**

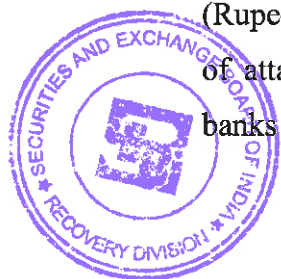
**ORDER**

**Under Section 28A of the Securities and Exchange Board of India Act, 1992 read with Section 222(1) of the Income Tax Act, 1961 and Second Schedule to Income Tax Act, 1961**

**In respect of –**

**Ion Exchange Enviro Farms Ltd. (Defaulter)**

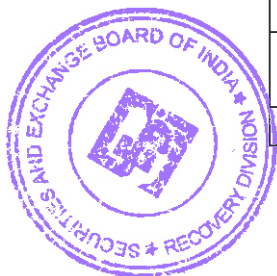
1. The Securities and Exchange Board of India (SEBI) vide order dated November 27, 2003 directed Ion Exchange Enviro Farms Ltd (Defaulter) to refund the money collected under the unregistered collective investment schemes floated by the Defaulter along with returns to the investors within a period of one month from the date of the order. The Hon'ble Securities Appellate Tribunal vide order dated May 05, 2006 while partly allowing the Defaulter's appeal held that the order of SEBI in so far as it directs the company / its directors and officers to refund the amount to the investors is upheld. The Hon'ble Tribunal at para 5 of the said order directed the Defaulter to wind up the scheme and refund the amount to the investors as directed by the Board. Further, the Hon'ble Supreme Court vide order dated February 26, 2013 dismissed the Defaulter's appeal filed against the order of the Hon'ble SAT.
2. The Defaulter has failed to comply with the directions of SEBI as upheld by the Hon'ble SAT and Hon'ble Supreme Court. Therefore, recovery proceedings have been initiated against the Defaulter on December 30, 2015 under section 28A of the Securities and Exchange Board of India Act, 1992 (SEBI Act) read with section 222 (1) of the Income tax Act, 1961 vide recovery certificate no. 847 of 2016 for recovery of Rs. 20,06,42,109/- (Rupees Twenty Crore Six Lakh Forty Two Thousand One Hundred Nine Only). Notices of attachment of bank/locker/mutual fund folios/demat account have been sent to all banks in India, NSDL, CDSL and all mutual fund houses in India.



*D.V. Sankar*

3. Pursuant to receipt of notice of demand dated December 30, 2015 for recovery of Rs. 20,06,42,109/- the Defaulter vide letter dated January 14, 2016 sought opportunity of hearing with SEBI to discuss the modalities of repayment. Accordingly, a hearing was held on February 03, 2016 wherein the Defaulter's authorized representatives and lawyers have contended that the Defaulter has repaid the money in the form of transfer of lands to most of the investors and only a few investors are yet to be handed over possession of the lands. Hence, the Defaulter was advised to submit all the details along with required documentary evidences, etc. to which they sought time from time to time. Thereafter, the Defaulter vide letter dated March 23, 2016 submitted certain information, details etc., and stated that they were in the process of collecting some more information in the matter. The Defaulter has also vide letter dated June 22, 2016 submitted certain more information, details etc.
4. The sum and substance of the claims of the Defaulter towards repayment of most of the investors is as under:
- (a) The investors have deposited money to the Defaulter for two purposes: (a) towards purchase of land and (b) towards development and maintenance of land purchased. The Defaulter provided a summary of the project wise amount paid by the farm owners/ investors and expenses incurred by the Defaulter.
- (b) The Defaulter also submitted a project wise list of present farm owners/ investors.
- (c) Prior to the passing of the order dated November 27, 2003 the Defaulter had transferred the land to its investors. Further, prior to and after passing of the aforesaid order some of the investors did not wish to continue with the arrangement, therefore, the Defaulter repurchased the land conveyed to them or arranged for sale of the same to a third party.
- (d) The details of repayment claimed to have been repaid by the Defaulter is as under:

Sr. no.	Amount (in Rs.)	No. of investors	Status
1	6.56 Cr.	198	Repaid as they did not want lands provided.
2	2.60 Cr.	62	Repaid in the form of land allotted. Discharge letters/ No dues certificate received
3	2.50 Cr.	Not provided	Discharge letters/ no due certificate to be received in the next 8 weeks
<b>Total</b>	<b>11.66 Cr.</b>		



*D.V. Suman*

August 12, 2016

<b>1+2+3</b>			
<b>Balance</b>	<b>11.79 Cr</b>	Not provided	In the process of obtaining Discharge letters

In the said letter the Defaulter has proposed the following with respect to the balance Rs. 11.79 Cr.:

- (i) Deposit Rs. 3 Cr. in an escrow account within eight weeks from the date of approval of the proposal;
- (ii) Deposit with SEBI title deeds of property in Goa held by the Defaulter and valued at Rs. 5.95 Cr.
- (iii) SEBI may thereafter make a publication in the newspapers calling for claimants to forward their claims to SEBI.
- (iv) The company may be called to make submissions on such claims and if the claims made are proven, the Defaulter will make payment to such claimants.
- (v) In the event the Defaulter fails to make the repayment, SEBI may utilize the properties at 4(d) (i) and (ii) to pay such claimants.
- (vi) If no claims are received by SEBI for a period of three months from the date of such newspaper publication, the said deposits shall then be reverted to the Defaulter.
- (vii) An order may also be passed stating no dues are pending against the Defaulter.

5. I note that the Defaulter vide its letters has submitted details/ information only in the form of tables/lists without any supporting documents. I also note that there are many discrepancies in the aforesaid details submitted by the Defaulter, some of which have been provided in the table below.

Sr. no.	Discrepancy	Letter	Page no. in the letter submitted by the Defaulter
1	Details of sale deed not provided	23/03/2016	1. Entry no. 39 of Annexure A (Bhale Project) at pg. 2 2. Entry no. 68 of Annexure A (Bhale Project) at pg. 3 3. Entry no. 167 & 172 of Annexure A (Bhale Project) at pg. 6 4. Entry no. 103 of Annexure A (Dapoli Project) at pg. 4. 5. Entry no. 2,9-12, 24-44, 46 & 48 of Annexure A (Goa Project) at pg. 1 & 2. 6. All the entries at Annexure A (Khapri Project) at pg. 1.
2	Investor details, amount invested, sale deed details missing	14/01/2016 23/03/2016	1. Entry no. 66 & 67 of Annexure A (Bhale Project) at pg. 2 & 3. 2. Entry no. 66 & 67 of Annexure A (Bhale Project) at pg. 2 & 3.
3	Total amount	23/03/2016	1. Entry no. 130 of Annexure A (Bhale Project) at



*D.V. Selvam*

	paid missing		pg. 4. 2. Entry no. 63 of Annexure A (Dapoli Project) at pg. 3. 3. Entry no. 103 of Annexure A (Dapoli Project) at pg. 4. 4. Entry no. 45 of Annexure A (Goa Project) at pg.2.
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I note that at sr. no.2 of the aforesaid table, the entry of investors is blank. Therefore, there is an error in the computation in the number of investors of Bhale Project which is purported to be 215 whereas in view of the discrepancy, the number of investors is 213 thereby bringing the total number of investors down to 889. Further, amount paid by some investors is also not provided.

6. I note that the Defaulter has submitted that the lands were purchased by the Defaulter in the name of its nominees and agreement to sell the lands has been entered into between the nominees and investors. It is pertinent to note that admittedly the Defaulter as a company mobilized the funds from public by advertisements in newspapers etc. Admittedly, there are no assets held by the Defaulter in its name except one asset submitted by the Defaulter vide letter dated June 22, 2016 situated at Goa. This clearly shows that the Defaulter intentionally diverted the funds to create assets in the name of third parties. The documents submitted by the Defaulter submitted only contain description of sale deeds entered into between the nominees and investors and no copy of sale deeds was provided.
7. The Defaulter submitted that part of the funds pooled by the Defaulter was utilized as consideration for purchase of land in the name of third parties and part of the funds were used towards maintenance of the said land. The Defaulter stated that total 891 investors subscribed Rs. 3,59,99,936/- towards land and Rs. 19,83,65,108/- towards development and maintenance expenses. The claim of the Defaulter is that the lands have been transferred to all the 891 investors, and that out of said 891 investors, 198 investors did not wish to continue and therefore, the Defaulter repurchased the land conveyed to them and effected repayment of Rs 6,54,50,584/-. However, no proof of payment viz., date, amount, mode of payment etc have been furnished by the Defaulter. For the rest of the 693 investors, the Defaulter stated that though sale deeds have been executed in the name of the investors, the lands are in the possession of the Defaulter for maintenance. The



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Defaulter has submitted that in addition to the 198 investors, repayment has been made to additional 62 investors for which discharge letters are available with the Defaulter. I note that the Defaulter has submitted discharge letters only in respect of 62 investors and not in respect of the 198 investors who the Defaulter claims to have been repaid. Further, I note that said discharge letters are silent regarding the repayment of money mobilized towards development and maintenance of land and it speaks of only of the land held in their names but the possession continues to be with the Defaulter. The authenticity of the said discharge letters dated 2016 is not proven.

8. I note that though the Defaulter claims to have transferred lands in the name of the investors. The payment towards development and maintenance of land as stated above to have been pooled by the Defaulter remains to be refunded. The aforesaid typed papers without any proof of authenticity submitted by the Defaulter clearly shows that the Defaulter is still continuing the schemes in respect of 693 investors which itself is illegal as it was directed to wind up its schemes in 2003 itself by SEBI which was upheld by the Hon'ble Supreme Court in 2013.
9. Without prejudice to the aforesaid observations on the documents submitted by the Defaulter, I note that all these claims of execution of sale deeds to the investors admittedly took place well before the SEBI order dated November 27, 2003. It is not clear as to how the Defaulter is now claiming that the sale deeds executed by some individuals (claimed to be nominees of the Defaulter) way back before the order of SEBI dated November 27, 2003 were relating to the repayments directed to be made in the aforesaid order which was upheld by the Hon'ble SAT vide order dated May 05, 2006 and by the Hon'ble Supreme Court dated February 26, 2013.
10. I note that SEBI vide order dated November 27, 2003 directed the Defaulter to refund the money collected under the schemes with returns to the investors within a period of one month from the date of order. I note that a proper hearing was given to the representatives of the Defaulter before passing the aforesaid order wherein it has been categorically mentioned that sufficient time was given to the Defaulter to repay the money to the investors and file repayment report in terms of Regulation 73 of CIS Regulations. Since the Defaulter failed to do so inspite of various reminders and Press Release, etc. Therefore, SEBI was constrained to pass the order dated November 27, 2003. The



*J.V. Sahu*

Auditor appointed by SEBI has vide report dated February 17, 1999 certified that as on the said date, the liability of the Defaulter was Rs. 20,06,41,109/-. The said report was also relied upon by SEBI while passing the order dated November 27, 2003. The said order was upheld by Hon'ble SAT vide order dated May 05, 2006 and the Hon'ble Supreme Court vide order dated February 26, 2013. The Defaulter has not furnished any details of claimed repayments in the form of transfer of title to the lands or payment towards development expenses, either before SEBI or before the Hon'ble SAT or the Apex Court and no finding regarding alleged refunds by the Defaulter either in the form of transfer of lands in the name of investors or payment towards development expenses was recorded. Therefore, the Defaulter's claim of any repayment prior to November, 2003 either in the form of money or transfer of title deeds or any other mode has no bearing on the order passed by SEBI on November 27, 2003 which has been upheld by the Hon'ble Supreme Court vide its order dated February 26, 2013. Further, the role of the Recovery Officer is that of Execution Court in a civil decree and it is settled principle of law which has been upheld by the Hon'ble Supreme Court in a number of cases including the judgment of the Hon'ble Supreme Court in *Rajasthan Financial Corporation v. Man Industrial Corporation Limited* [(2003) 7 SCC 522] that the Executing Court cannot go beyond the decree. Therefore, if the contentions of the Defaulter that they have repaid even before the order dated November 27, 2003 which has been upheld by the Hon'ble Supreme Court vide order dated February 26, 2013 is accepted, then the same would amount to negating the order of the Hon'ble SAT and Hon'ble SC. Further, the Defaulter has vide some of the letters and in the personal hearing contended that entire money was repaid to the investors in the form of transferring title to the lands even prior to passing of SEBI order dated November 27, 2003, however, the Defaulter itself in its letter dated June 22, 2016 at para 2 categorically admitted that as on the date of order dated November 27, 2003 a sum of around Rs. 23.44 Cr. was to be repaid to 891 farm owners/ investors. Hence the recovery certificate drawn towards the principal liability of Rs. 20,06,41,109/- is valid. Further, the documents, viz., furnished by the Defaulter do not establish that the company had ~~claiming~~ <sup>alleged</sup> payments repaid to the investors particularly in the absence of Winding up and Repayment Report (WRR) as contemplated in the CIS Regulations. @kash

11. As regards, the proposal of the Defaulter that based on the security to be furnished by it SEBI shall issue the advertisement in the newspaper calling the investors to submit their



*D.V. Sam*



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claims, if any, to SEBI and SEBI shall process such claims in consultation with the Defaulter, etc. I note that as per section 28A of the SEBI Act, the Recovery Officer shall proceed to recover the money which the Defaulter failed to repay to investors as directed by SEBI. Therefore, the question of issuing newspaper publication by SEBI as proposed by the Defaulter does not arise at this stage.

**Order:**

12. In view of the above, in exercise of the powers conferred on me under section 28A of the SEBI Act read with section 222 and Second Schedule to the Income-tax Act, 1961 the Defaulter is directed to:

- (i) Pay Rs. 3 Crore, as committed by the Defaulter, to SEBI within one week from the date of receipt of this order,
- (ii) Pay Rs. 5 Crore per month commencing from September 20, 2016 onwards till completion of entire balance dues along with assured returns, further interest, costs, charges etc.
- (iii) In the meantime, submit all original title deeds of all the properties owned by the Defaulter and/or held by the Defaulter in the name of its nominees or any other persons along with authorization from such nominees/ persons to deposit the title deeds with SEBI, PAN, asset statements, etc., within two weeks of receipt of this order.

Mumbai  
August 12, 2016



*D.V. Sekhar*

D.V. Sekhar  
General Manager & Recovery Officer

D.V. Sekhar  
डी. वी. शेखर  
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Mumbai  
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