

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

Recovery Certificate No. 68 of 2014

ORDER

Under Section 28A of the Securities and Exchange Board of India Act, 1992 read with Sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962

In respect of –

1. Ms. Anupama Suresh Motwani

2. Ms Rita Kishore Motwani

...Appellants

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1. The directors of M'Belle International Pvt. Limited ("MIL") including Ms. Anupama Suresh Motwani & Ms Rita Kishore Motwani were issued show cause notice by the Recovery Officer (RO) on March 21, 2016 as to why they should not be treated as an "Officer in default" in terms of Section 2(60) of the Companies Act, 2013 and be proceeded to recover the dues from them, for failure of payment of penalty of Rs. 1,00,00,000/- (Rupees One Crore only) levied on MIL vide AO order dated June 30, 2004.
 2. In December 2001, SEBI had initiated investigation in the matter of shareholding pattern of Roofit Industries Ltd. ("RIL") and price manipulation on the shares of RIL during October 1999 to December 1999. During the course of the investigation summons dated July 23, 2002 and reminder to the summons dated September 05, 2002 were issued to MIL. MIL failed to furnish the information sought in the said summons.
 3. A penalty of Rs.1,00,00,000/- (Rupees One Crore Only) was levied on MIL in the matter of RIL by the Adjudicating Officer ("AO") of SEBI vide order dated June 30, 2004 under Section 15A(a) of the Securities and Exchange Board of India 1992.
 4. The AO order was challenged by the defaulters vide Appeal no 154 of 2004 before the Hon'ble Securities Appellate Tribunal ("SAT" / "Tribunal"). However, Hon'ble SAT vide order dated 13th November, 2006 said that "*.....that the Adjudicating Officer was justified in imposing a penalty of Rs.1 Crore in the circumstances of the case and we find no ground to interfere with the impugned order. In the result the appeal fails and the same stands dismissed with no order as to costs*".



5. Recovery proceeding was initiated vide recovery certificate number 68 of 2014 on May 2, 2014 (“**Recovery Certificate**”) for failure of payment of penalty by MIL. The Notice of Demand and attachment letters were returned undelivered. Affixture was done at the office address of MIL at G/7, Sai Sangeet, 368 Linking Road, Khar, Mumbai – 400052.
6. MIL failed to pay the dues as demanded under Recovery Certificate no 68 of 2014. A show-cause notice dated March 21, 2016 was issued to the Directors of the company as to why they should not be treated as an “Officer in default” in terms of Section 2(60) of the Companies Act, 2013 and be proceeded to recover the dues from them.
7. The appellants filed an appeal before the Hon’ble SAT against the show-cause notice dated March 21, 2016. Hon’ble SAT vide order dated January 17, 2018 (copy attached) ordered “..... the RO is yet to consider the plea of the appellants and pass appropriate order. In these circumstances, proper course for the appellants is to wait till the RO passes appropriate order on their submissions and not to pursue the present appeal.”
8. The appellants made submissions vide letter dated August 27, 2018 along with copy of supporting documents and requested for a personal hearing in the matter. An opportunity of personal hearing before the RO was granted to the appellants and the appellants through their representative advocate Ms Rinku Valanju appeared for personal hearing on September 28, 2018. During the hearing the RO advised the appellants to present the Original documents. Original documents were presented before the RO on October 03, 2018 and the Documents submitted through letter dated August 27, 2018 were verified with the same.

REPLIES & SUBMISSIONS

9. The appellants in their submission dated August 27, 2018 and during the personal hearing has, *inter alia*, submitted the following:
 - a. The Adjudication officer had passed the order dated 30th June 2004 against the company M/s M’belle international (P) Ltd. The said AO’s order was against the company only. The said AO’s order was passed for failure to furnish certain information by the company in compliance of the summons issued against it. They have claimed that they were neither aware of the summons nor the party to adjudication proceedings as they had resigned from the company with effect from June 16, 1999.
 - b. They have also denied that they were directors during the period of issuance of summons by SEBI dated 23rd July, 2002, reminder to the summons dated



September 05, 2002 and AO's order dated 30th June 2004 against MIL and therefore there is no question of them being considered as Directors and in-charge in the affairs of the company or "Officer in Default" as set out in the said show-cause notice dated March 21, 2016 issued by the RO.

10. The appellants, in view of their above submissions, have requested the following:

- a. *The effect, implementation and operation of the impugned Notice of Attachment of bank Accounts in Attachment Proceeding No. 326 of 2014, Notice Of Attachment of Demat Accounts (NSDL) in Proceeding no. 327 of 2014, notice of Attachment of Demat Accounts (CDSL) in Proceedings No. 328 of 2014 and Attachment of bank Accounts (Karnataka bank) in Attachment Proceeding no. 329 of 2014 (Certificate No. 068 of 2014) be dropped, set aside, quashed and reversed qua me; and*
- b. *I be discharged from recovery proceedings of Certificate No. 68 of 2014 initiated by the recovery Officer, SEBI and pending at any stage and withdraw, rescind, cancel and treat the steps and proceedings as infructuous and Non-est:*
- c. *It be declared that I was not a director of the M/s. M'Belle International (P) Ltd. during the year 2002 and thereafter.*

CONSIDERATION OF SUBMISSIONS

11. I have carefully perused the submissions of the appellants and the documents available on record.
12. The Recovery Certificate seeks to recover the penalty of Rs.1,00,00,000/- (Rupees One Crore only) along with further interest and costs from MIL. On non-payment of the said penalty the Bank/Demat account of MIL was attached vide attachment proceeding no. 326, 327, 328 & 329 of 2014 dated May 02, 2014. A show cause notice dated March 21, 2016 was issued to the directors of MIL (including the appellants) as to why they should not be treated as an "Officer in default" in terms of Section 2(60) of the Companies Act, 2013 and be proceeded to recover the dues from them.
13. The appellants have claimed that they resigned from the directorship of MIL on June 16, 1999 and were not directors during the period of issuance of summons by SEBI dated 23rd July, 2002, reminder to the summons dated September 05, 2002 and AO's order dated 30th June 2004 against MIL. From the records available in MCA website it was observed that the appellants had resigned from MIL on June 16, 1999. There is no record available in the MCA website indicating the appellants as directors of MIL during the issuance of summons



dated 23 July, 2002, reminder of the summons dated September 05, 2002 as well as issuance of AO's order dated 30th June 2004. Therefore, the appellants cannot be held responsible for non-submission of information sought in the summons issued by SEBI and accordingly they may not be treated as directors in default in the instant matter.

Order

14. In view of the foregoing, I hereby order the following:

- (i) The recovery proceeding initiated against MIL shall continue to remain in force,
- (ii) The bank/demat accounts of MIL shall continue to remain attached.
- (iii) Show-cause notice dated March 21, 2016 issued to Ms. Anupama Suresh Motwani & Ms Rita Kishore Motwani is withdrawn and recovery proceedings shall not be initiated against them.
- (iv) Show-cause notice dated March 21, 2016 issued to the directors other than the appellants shall continue to remain in force.

Copy of this order shall be served on Ms. Anupama Suresh Motwani & Ms Rita Kishore Motwani

Given under my hand and seal at Mumbai on 26th day of December 2018.

Mumbai
December 26, 2018




Atanu Pan

Dy. General Manager & Recovery Officer

ATANU PAN / अतनु पान
Dy. General Manager & Recovery Officer
उप महाप्रबंधक एवं वसूली अधिकारी
Securities and Exchange Board of India
भारतीय प्रतिभूति एवं विनिमय बोर्ड
Mumbai / मुंबई