



भारतीय प्रतिभूति
और विनिमय बोर्ड
**Securities and Exchange
Board of India**
Order No. ERO/RO/11/2022-23

BEFORE THE RECOVERY OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

EASTERN REGIONAL OFFICE

**Recovery Certificate no. RC4064 of 2021 in the matter of Greater Kolkata Infracon
Limited ("GKIL")**

<u>Sl. No.</u>	<u>Name and address of the entity</u>
<u>1</u>	Mr. Amitava Sarkar 87/29, Bose Pukur Road, Kolkata- 700042

**Order on the submissions of Mr. Amitava Sarkar ("defaulter") praying for release of
his bank accounts attached by the Recovery Officer**

Background:

1. The Securities and Exchange Board of India ("SEBI") has passed an order dated March 21, 2018, under Sections 11, 11(4), 11A and 11B of the SEBI Act against Greater Kolkata Infracon Limited ("GKIL") and its directors and debenture trustee. Mr. Amitava Sarkar ("defaulter") was a Director of GKIL and was one of the entities against whom the directions contained in the said order is applicable. The said order while inter alia directing GKIL and its directors to refund the monies collected from the public, further directed that:

"(a) Mr. Amitava Sarkar, Mr. Himangshu Mukherjee, Mr. Sutanu Sarkar, Mr. Paramasish Bhadury, Mr. Anil Kumar Mishra, Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla and Mr. Bimalendu Rakshit shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of NCDs including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any,





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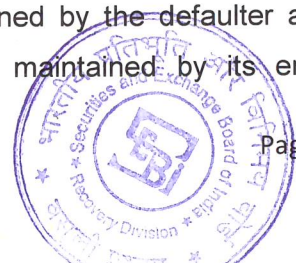
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with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.

(j) In case of failure of GKIL, Mr. Amitava Sarkar, Mr. Himangshu Mukherjee, Mr. Sutanu Sarcar, Mr. Paramasish Bhadury, Mr. Anil Kumar Mishra, Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla and Mr. Bimalendu Rakshit to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order may recover such amounts, from the company and the directors liable to refund as specified in paragraph 52(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws."

[emphasis supplied]

2. Due to the non-compliance of the aforesaid directions, a recovery certificate dated August 3, 2021 was issued *inter alia* against the defaulter, followed by attachment of bank and demat accounts of GKIL and its Directors, including the defaulter. Aggrieved by the said orders of attachment, the defaulter had made several representations for releasing of his bank accounts, primarily on the ground that the money contained in such accounts had been earned by him prior to joining GKIL and that he requires such money for his subsistence and medical care. Subsequently, the defaulter was provided opportunity of personal hearing on May 11, 2022, May 18, 2022 and August 10, 2022. During the said hearings and vide written representations of various dates (May 18, 2022, July 15, 2022, August 3, 2022 and August 19, 2022 etc.) wherein the submissions as stated in the following paragraphs, were made.
3. The submissions were made seeking defreezing of five bank accounts on the ground that the money kept therein were earned prior to the defaulter joining GKIL and the sources for the money kept in the said accounts are as described in the subsequent paragraph.
4. The amount lying in the bank accounts *inter alia* comprise of:
 - a) Maturity amount from the PPF account maintained by the defaulter and the accumulated amount from the provident fund maintained by its erstwhile





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employer. In this regard, the defaulter submitted that the maturity amount of Rs. 95,262/- from the State Bank of India PPF Account was received by him on April 2, 1993. Further, on June 13, 2008, an amount of Rs. 23,04,075.02 was received by him as Final Settlement of Provident Fund.

- b) An amount of Rs. 3,50,000 was received as gratuity by the defaulter on March 1, 2008 and leave encashment amount, from the erstwhile employer of the defaulter before he had joined GKIL.
- c) Two fixed deposits amounting to Rs. 12,00,000/- from the amount received by the defaulter from his provident fund maturity and gratuity payment.
- d) Refund of Rs. 2,72,524/- received from Bajaj Allianz Life Insurance Company Limited under a pension policy, on August 30, 2021 and on October 20, 2021 for Rs. 1,07,491/-;
- e) Monthly pension amount of Rs. 1002/- received under a LIC Pension Scheme. The said scheme was subscribed to by the Noticee on August 7, 2000.

The defaulter vide his submissions dated July 15, 2022, has produced documentary evidences in support of his submissions stated herein above and pleads that all the aforesaid amounts were received by him at the time when he was not involved with Greater Kolkata Infracon Limited and seeks defreezing of all the said amounts. Vide the written submissions dated August 19, 2022, the defaulter has submitted on the points of law as to why the bank accounts as being sought by him, are entitled to be defreezed. In this context, the provisions of Section 60(1) of the Code of Civil Procedure have been referred to and relied upon by the Ld. Advocate for the defaulter, and he has submitted that Provident Fund, Pension, Life Insurance Policies, Payment of Gratuity are entitled to the exemptions contained therein.

Consideration and Findings





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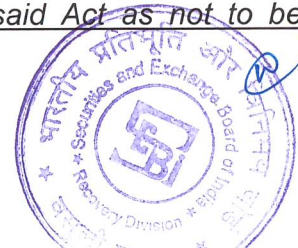
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5. I have perused and considered the submissions on both the points of facts and law, made on behalf of the defaulter. I observe that the procedure to be followed by a Recovery Officer of SEBI is as laid down in the Second Schedule to the Income Tax Act, 1961. I note that at serial no. 10 under the Second Schedule to the Income tax Act, 1961, it has been stated that *"All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale in execution of a decree of a civil court shall be exempt from attachment and sale under this Schedule."* Section 60(1) of the Code of Civil Procedure, 1908 exempts certain categories from attachment or sale in a recovery proceedings. It is imperative to note that there is no additional category which can be exempted by the Recovery Officer, other than the categories provided under the Section 60(1) of the Code of Civil Procedure, 1908.
6. I note that none of the types of funds as stated at serial nos. a-e in the paragraph no. 4 above, fall under any of the exempted categories under section 60(1) of the CPC for the following reasons:
- a) With respect to the Maturity amount from the PPF account maintained by the defaulter and the accumulated amount from the provident fund maintained by its erstwhile employer, after the receipt of the same in the bank account of the defaulter, the said money loses the character of a PF/PPF and is identical to any other amount being kept in a bank account. In this regard, the provisions of section 60(1)(k) and 60(1)(ka) of the CPC is reproduced herein below:

"(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, [1925], (19 of 1925), for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

°[(ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment;" [emphasis supplied]





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I observe that the PF Act, 1925 or the PPF Act, 1968, do not exempt the said amount of money received by the defaulter on the maturity of the PPF account maintained by the defaulter and the accumulated amount from the provident fund maintained by its erstwhile employer after the receipt of the same by the defaulter, from attachment. In this regard, reference may be drawn to the following judgments:

In *Union of India v. J.C. Fund & Finance* [AIR 1976 SC 1163] the Supreme Court held:

"So long as the amounts are provident fund dues, pensions and other compulsory deposits then, till they are actually paid to the government servant who is entitled to it on retirement or otherwise, the nature of the dues is not altered. The government is a trustee for those sums and has an interest in maintaining the objection in court to attachment."

We may state without fear of contradiction that provident fund amounts, pensions and other compulsory deposits covered by the provisions we have referred to, retain their character until they reach the hands of the employee."

This position was again affirmed by the Hon'ble Supreme court in *Union of India (UOI) and Ors. vs. R.R. Hingorani* [AIR 1987 SC 808]

The Hon'ble Madras High Court in *Sathiyabama and Ors. vs. M. Palanisamy and Ors.* [(2004) 1 MLJ 43] while relying upon the aforementioned judgment of the Hon'ble Supreme Court, *inter alia* held that:

"A reading of the judgment of the Supreme Court reveals that there is no doubt that the provident fund amount, pension and other compulsory deposit retain such character, until they reach the hands of the employee."





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In *Mettur Industries, Ltd., v. Velayutha Mudaliar* [1961 (1) LLJ 279] it was held that, so long as the amount does not cease to have the character of provident fund either by payment of the same to the employee or by removing it from his credit in his provident fund ledger, the immunity against attachment continues.

In *A. Subbian v. Thiruvenkataswami* [1971 L I.C. 1595] it has held that so long as the amount regarding employees provident fund is in deposit with the employer and has not been paid over to the employee even after his retirement, it does not become the employee's property and is exempt from attachment. The learned Judge held that the provident fund amount is a compulsory deposit and will continue to be a deposit and not the property of the employee, until it is paid.

In *Pearly Andrew v. Official Assignee* [AIR 1966 Bom 121] the Division Bench of the Bombay High Court held that even when the employee has become an insolvent, the amount standing to his credit, so long as it is with the Regional Provident Fund Commissioner and has not been paid to the insolvent, does not vest in the Official Assignee and the Official Assignee cannot lay any claim to it.

Therefore, on a reading of the aforesaid judgments of the Hon'ble Supreme Court and the High Courts cited above, it becomes clear that an amount standing credit to an employee is protected from attachment under the PF Act, 1925 and the PPF Act, 1968, *as long as the same is not paid to the employee.* Subsequent to the maturity of PF/ PPF amount and the receipt of the same in the bank account of the defaulter, the protection available under the PF Act, 1925/ PPF Act, 1968, is no more applicable on the same.

- b) With respect to the money which has been received by the defaulter from the leave encashment, as well as the fixed deposits maintained by him, there is no exemption from attachment under any law.
- c) With respect to the amount received by the defaulter on the payment of his gratuity, the following judicial position of the Hon'ble Andhra High Court in *Bandi*





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China Ramalinga Reddy vs Nalluri Srinivasulu And Anr. [2006 (2) ALD 734] may be referred to:

"Therefore, so long as pension, gratuity etc., are not received by the beneficiary only they are exempt from attachment in view of Section 60(1)(g) CPC. When once they reach the hands of the employee concerned, the exemption ceases to operate." [emphasis supplied]

- d) With respect to the money which has been/ which is being received by the defaulter under the aforesaid pension schemes/ plans, I note that the exemption under section 60(1) of the CPC covers only certain specific kinds of pension schemes as provided under clause (g) to section 60(1), the contents whereof is reproduced herein below:

"(g) stipends and gratuities allowed to pensioners of the Government [or of a local authority or of any other employer], or payable out of any service family pension fund notified in the Official Gazette by [the Central Government or the State Government] in this behalf, and political pensions."

In this context, I note that pension schemes named by the defaulter do not fall under any of the aforesaid categories and hence, are not exempt from attachment.

7. I further note that the relevant provisions of law as has been dealt with in the preceding paragraphs, do not distinguish between a defaulter's earnings from the directorship/ involvement with the company against whom recovery is directed or from any other source, for the purpose of recovery of the dues as mentioned in the Recovery Certificate. The funds which are exempt from the process of attachment are clearly mentioned in the legal provisions as already referred to in the preceding paragraphs and it is an established principle of interpretation of statutes that where the language of the statute is free from any ambiguity, the statute needs to be given an interpretation which does not go beyond the express words of the statute.





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8. In view of what has been stated herein above, I am unable to accept the submissions of the defaulter and his prayers for defreezing of his accounts cannot be allowed.

Date: September 29, 2022

Place: Kolkata



RAJKUMAR KALURI

RECOVERY OFFICER

राज कुमार कलुरी / Raj Kumar Kaluri
वसूली अधिकारी एवं उप महाप्रबंधक
Recovery Officer & Dy. General Manager
भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India
कोलकाता / Kolkata