

BEFORE THE RECOVERY OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA

Attachment Proceeding Nos. 86 to 94 of 2013

In

Recovery Certificate No. 001 of 2013

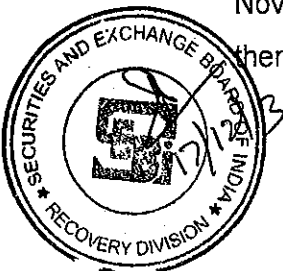
Defaulters	- Mr. Dushyant Natwarlal Dalal & Ms. Puloma Dushyant Dalal
Noticees	- Ms. Aashni Dushyant Dalal Ms. Yuti Kunal Jhaveri alias Yuti Dushyant Dalal Mr. Natwarlal Takordas Dalal (deceased) Mrs. Rasila Natwarlal Dalal (deceased) Mrs. Smita Ajit Shah Mr. Ajitkumar Natwarlal Shah Mrs. Gita Shishir Rokadia Mr. Ullas Ganpati Mehta Dushyant Natwarlal Dalal HUF Natwarlal Takordas Dalal HUF M/s Puloma Dalal & Co.

Appearance for Noticees  
& Defaulters

- Mr. Ravichandra Hegde, Advocate  
Mr. Dushyant Natwarlal Dalal  
Ms. Aashni Dushyant Dalal

**Order 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 (as amended by the Securities Laws (Amendment) Second Ordinance, 2013)**

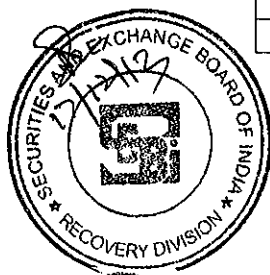
In execution of Recovery Certificate No. 001 of 2013 against Mr. Dushyant Natwarlal Dalal and Ms. Puloma Dushyant Dalal (hereinafter referred to as the "Defaulters"), the Recovery Officer had initiated Attachment Proceeding Nos. 86 to 94 of 2013 dated October 18, 2013 in respect of the bank accounts of the Defaulters. On receipt of the responses from various banks, it was observed that some of the bank accounts so attached are held by the Defaulter/s jointly with the Noticees. After ascertaining the details of the joint holders, their addresses, etc. from the banks, separate notices dated November 25, 2013 were issued to such joint holders(Noticees) directing them to appear before the Recovery Officer on December 5, 2013 and submit



objections, if any, to the attachment and also to establish their respective interests/rights in the said bank accounts. The Noticees vide letter dated December 4, 2013 requested for adjournment on the ground the appeal filed by them challenging the attachments of their bank accounts was listed for hearing before the Hon'ble Securities Appellate Tribunal (SAT) on December 6, 2013. The Hon'ble SAT, during the hearing of the Appeal No. 199 & 200 of 2013 on December 6, 2013 directed the Noticees to appear before the Recovery Officer and submit their objections on December 11, 2013. The said hearing was rescheduled to December 12, 2013 on request of the counsel for the Noticees. On behalf of all the Noticees and the Defaulters, their Counsel Shri Ravichandra Hegde, Advocate, J. Sagar Associates along with Ms. Aashni Dushyant Dalal (Noticee) and Mr. Dushyant Dalal (Defaulter) appeared before the Recovery Officer on December 12, 2013 and made their submissions. During the hearing the Counsel has also submitted a reply dated December 11, 2013 along with copies of documents relied on by the Noticees.

2. In response to the Attachment Proceedings, various banks have reported that the following accounts were held by the Defaulters and some are jointly with some of the Noticees as per the details below:

<b>HDFC Bank</b>			
<b>Sr.No.</b>	<b>Account No.</b>	<b>Name of A/c Holders (Mr/Ms)</b>	<b>Amount (Rs)</b>
1	601000210611	Dushyant Dalal/ Puloma Dalal	688434.82
2	604000008876	Dushyant Dalal	347978.91
3	11000035969	Dushyant Dalal	55843.45
4	2401000056297	Dushyant Dalal	1772.64
5	51000032267	Dushyant Dalal	9302.80
6	5011000049512	Dushyant Dalal	2775.08
7	5421000004612	Dushyant Dalal	1868.56
<b>Bank of Baroda</b>			
8	12460400000026	Puloma Dalal	15734.64
9	12460400000027	Dushyant Dalal	28859.32
10	12460400007534	Dushyant Dalal/ Vilal Nagardas Shah/ Bharat B Vora/ Shashikant K vakil	3599.00
11	1246040006907	Puloma Dalal/ TORS of ST Dalal	2586.58
<b>State Bank of India</b>			
12	31314208380	Puloma Dalal / Ullas G.	195568.00



		Mehta	
<b>Shamrao Vithal Co-op Bank Ltd.</b>			
13	16643	Dushyant Dalal HUF	8565.16
14	11465	Yuti Dalal/ Dushyant Dalal /Puloma Dalal	12677.52
15	16636	Smita A. Shah / Natwarlal T. Dalal / Dushyant Dalal/ Rasila N Dalal	23458.89
16	17209	Aashni Dalal / Puloma Dalal / Natwarlal Dalal / Dushyant Dalal	8574.91
17	30132	Rokadia Gita Shishir / Dushyant Dalal / Natwarlal Dalal	19657.80
18	31721	Ajitkumar N. Shah / Smita Shah / Dushyant Dalal	3615.10
<b>Bank of India</b>			
19	128200000159	Natwarlal Takordas/ R N Dalal/ Dushyant Dalal	577176.16
<b>ICICI Bank</b>			
20	03560550948	Puloma Dalal & Co	242888.87
21	000401158137	Yuti Dalal, Aashni Dalal, Puloma Dalal	64695.56
22	035601001861	Dushyant Dalal HUF	508766.20
23	035601002230	Dushyant Dalal/ Puloma Dalal/ Yuti Dalal	372176.00
24	035601504859	Ajitkumar Natverlal Shah, Dushyant Dalal	122253.81
25	623505379216	Rasila Natwarlal Dalal, Puloma Dalal	52587.73
26	623505379213	Natwarlal T Dalal, Puloma Dalal	2289330.98
27	623505379212	Dushyant Dalal, Puloma Dalal	4620.54
28	035601504885	Yuti Dalal, Puloma Dalal	12966.52
29	035601505709	Puloma Dalal, Dushyant Dalal	12233.00
30	035601507503	Dushyant Dalal	8244.00
31	035601507591	Aashni D Dalal, Dushyant Dalal	33003.05
32	035601001862	Natwarlal Takordas Dalal HUF	18154.00
33	035610001538(FD)	Ajitkumar Natverlal Shah, Dushyant Dalal	1000000.00
34	035610001539(FD)	Ajitkumar Natverlal Shah, Dushyant Dalal	1000000.00
35	035614004379(FD)	Yuti Dalal, Puloma Dalal	2243.00
36	035614005745(FD)	Puloma Dalal, Dushyant Dalal	169153.90



3. It is noted that an aggregate amount of Rs.11,39,902.64 held in the first four accounts referred above with HDFC Bank by the Defaulters have been remitted to SEBI towards execution of the Recovery Certificate. HDFC Bank has reported that the other three accounts held by the Defaulters are already under "No debit" status before SEBI's attachment order due to regulatory reasons. The details of joint holders in respect of the bank accounts referred at sl.no.10 & 11 are yet to be received from Bank of Baroda. The bank accounts referred at sl.no.27, 29 and 30 are held by the Defaulters and no objection has been raised in respect of the said attachments.

4. Pursuant to order of the Hon'ble Securities Appellate Tribunal dated December 6, 2013 in Appeal No. 199 of 2013 the following attachment of bank accounts were released;

Account No.	Name of the Bank
31314208380	State Bank of India, Santacruz Branch
1044990555	Central bank of India, Santacruz Branch
035605000948	ICICI Bank, Tardeo Branch

Therefore, it is not necessary to examine the objections raised by the Defaulters and Noticees in respect of the above accounts.

5. The Noticees in their reply dated December 11, 2013 inter alia submitted the following:

- a) The attachment of the bank accounts was illegal, unconstitutional and done without complying with the principles of natural justice.
- b) The Noticees are not connected with the recovery proceedings and their account should not have been attached. Section 28A does not authorise the Recovery Officer to proceed against the Noticees who are unconnected with the matter.
- c) The amounts available in the said accounts are the sole property of the Noticees and the names of the Defaulters who were personally/



professionally related to the Noticees were added in these accounts as a matter of practice and convenience.

- d) Hindu Undivided Family (HUF) is a separate legal entity and the individual members have no specific interest/ right in the assets held by the HUF.
- e) Section 28A of the SEBI Act cannot be applied retrospectively to recover the disgorgement amount directed to be paid by the Defaulters.
- f) The lockers of the Noticees were attached without notice to them and no opportunity of hearing in respect of the same is granted by the Recovery Officer.
- g) The reasons stated by the Recovery Officer to attach two bank accounts of Ms. Yuti Dalal and her husband wherein the Defaulters are not joint holders were not maintainable.

6. I have considered the objections raised by the Noticees to the attachment of bank accounts and the documents submitted by them in support of the submissions. Before dealing with the specific bank accounts, I deal with the aforesaid objections raised by the Noticees.

**As regards the submissions of the Noticees at Para 5(a) (b) and (c) above:**

7. Section 28A of the SEBI Act, 1992 and Section 226 (3) of the Income Tax Act, 1961 empowers the Recovery Officer to attach bank account of the Defaulters, even if the accounts are held jointly with any other person. I note that all accounts attached by the Recovery Officer (except two bank accounts of Ms. Yuti Dalal and her husband Mr. Kunal Jhaveri and the bank accounts held in the name of HUF, which are dealt separately in this order) are held by the Defaulter/s either singly or jointly with any other persons. I observe that the attachment of bank accounts were 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



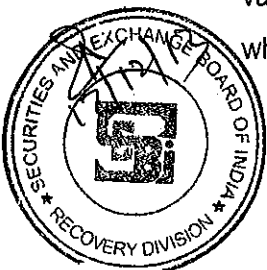
emphasises that the shares of the joint holders in a joint account shall be presumed, until the contrary is proved, to be equal. The present notices dated November 25, 2013 were issued for the purpose of assessing the exact shares of the Defaulters in the joint accounts which were attached.

**As regards the submissions of the Noticees at Para 5(d) above:**

8. It is submitted by the Noticees that HUF is a separate legal entity and the individuals who are members of an HUF does not have any separate right or interest in the assets of the HUF. However, it is noted that the interest of a coparcener in an HUF property is determinable, but the same devolves on him upon partition of the HUF assets. The Hon'ble Rajasthan High Court in *Prakash Chand Lunia vs. TRO (2000 107 Taxman 181 Raj)* while dismissing the Writ Petition filed by the karta of HUF, held that by attaching the share of the coparcener in HUF it cannot be said that the Tax Recovery Officer has committed any illegality. Therefore, the share of a coparcener, even though undivided is liable for attachment in execution of recovery certificate issued by the Recovery Officer.

**As regards the submissions of the Noticees at Para 5(e) above:**

9. The submissions made by Noticees on the retrospective operation of Section 28A of the SEBI Act are not maintainable. The liability of the Defaulters to disgorge the illegal gains was imposed vide order dated July 21, 2009 and has been upheld by the Hon'ble SAT and Supreme Court way back in 2011. Therefore, no additional obligation or liability is created by section 28A. It is a settled position of law that amendments to procedural law operates retrospectively. Section 28A of the SEBI Act (inserted by Securities Laws (Amendment) Second Ordinance, 2013) only creates a mechanism/procedure and the steps to be followed for recovery of various dues to SEBI. As such the recovery modes and procedures is a procedural law as held by various courts. It does not create any new obligation on the entities against whom the orders were already passed by SEBI. Therefore, the objections of



the Noticees do not merit consideration. Moreover, the recovery proceedings are not initiated against the Noticees hence are not the affected parties.

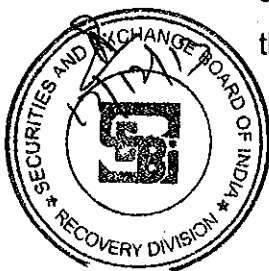
**As regards the submissions of the Noticees at Para 5(f) above:**

10. Even though no bank has so far reported details of any lockers, the attachment of lockers, if any held by the Defaulters, albeit jointly with the Noticees is not illegal. At this stage it is for the Noticees to establish that the lockers (if any attached) are the exclusive properties of the Noticees and that the Defaulters have no rights over the same. Since, the Noticees failed to furnish any details in this aspect, it would not be possible for the Recovery Officer to give any direction to the banks.

**As regards the submissions of the Noticees at Para 5(g) above:**

11. In response to the attachment notice dated October 18, 2013, ICICI Bank vide e-mail dated October 29, 2013 informed the Recovery Officer that an amount of Rs. 40,00,000/- (Rupees Forty Lakh only) was transferred on October 18, 2013 from account no. 035601505709 of the Defaulters to account no. 035601507595 of Ms. Yuti Kunal Jhaveri (daughter of the Defaulters) and Mr. Kunal Jhaveri (husband of Ms. Yuti) and further an amount of Rs. 9,50,000/- (Rupees Nine Lakh Fifty Thousand only) was transferred from account no. 000401158137 of Ms. Yuti Dalal, Ms. Aashni Dalal and Ms. Puloma D Dalal (Defaulter) to account no. 035605001171 of Ms. Yuti Dushyant Dalal on October 21, 2013.

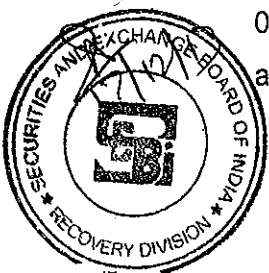
12. It is noted that as on the date of attachment of the bank accounts by the Recovery Officer, both the Defaulters were holding many Fixed Deposits with ICICI Bank. It is observed that immediately after issue of the Notices of Attachment, the Fixed Deposits were closed prematurely and the money was credited in the savings account of the Defaulters (Account No. 035601505709). Since the pre mature closure of FDs procedure was taking some time, the Defaulters had, in the meanwhile, transferred Rs. 40 lakhs to the account of Ms. Yuti Dalal after which the proceeds of the foreclosed Fixed



deposits were credited to their account thereby leaving a small balance of approximately Rs. 12,000/- in the said account. Similarly, an amount Rs. 9.5 lakhs was transferred on October 21, 2013 from the account of Ms. Yuti Dalal, Ms. Aashni Dalal (daughter of the Defaulters) and Ms. Puloma D Dalal to account no. 035605001171 of Ms. Yuti Dushyant Dalal Therefore, it was observed that the aforesaid amounts have been transferred with an intention to delay and defeat the execution of the Recovery Certificate. The ICICI Bank has alerted itself about this and placed lien over the bank account of Ms. Yuti Dalal to the extent of the amounts so transferred as above.

13. The Noticees have submitted that the bank accounts of Ms. Yuti Dalal and Mr. Kunal Jhaveri cannot be attached in execution of the Recovery Certificate as section 28A of the SEBI Act and explanation-1 to section 28A stipulates that the Recovery Officer may proceed against either the properties of the Defaulter or in case of a transfer without adequate consideration the property so transferred to his minor child etc. and the Noticees are not covered under either of the above category.

14. It is noted that as per section 226 (3) (v) of the Income Tax Act, 1961 any claim in respect of any property in relation to which a notice under Section 226 (3) has been issued arising after the date of the notice shall be void as against any demand contained in the notice. The counsel for the Noticees did not make any submissions regarding the applicability of section 226 (3) (v) of the Income Tax Act in the matter. Hence, it is observed that the money transferred to the accounts of Ms. Yuti Dalal as aforesaid after issue of the Notice of Demand dated September 25, 2013 and Attachment Notice dated October 18, 2013 is liable for attachment in execution of the Recovery Certificate against the Defaulters. Therefore, the Recovery Officer has vide order dated November 1, 2013 attached only the amount of Rs. 40,00,000/- and Rs. 9,50,000/- in the accounts bearing nos. 035601507595 and 035605001171 respectively and not directed complete freeze of the said accounts. Therefore, the attachment of the said accounts are within the



jurisdiction of the Recovery Officer. However, in view of the conclusion arrived in respect of account no. 000401158137 of Ms. Yuti Dalal, Ms. Aashni Dalal and Ms. Puloma D Dalal at para 25 & 26 of this order, I hereby partially modify the attachment dated November 01, 2013 in respect of bank account no. 035605001171 of Ms. Yuti Dushyant Dalal and direct the ICICI Bank to attach only an amount of RS. 3,16,666/- (Rupees three lacs sixteen thousand six hundred sixty six) i.e., share of Ms. Puloma Dushyant Dalal instead of Rs 9.50 lacs already attached.

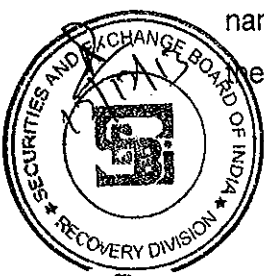
The objections raised by the Noticee's in respect of various bank accounts are dealt as under:

**Account No. 623505379213- ICICI Bank**

15. The ICICI bank has reported that the account is held jointly by Mr. Natwarlal Takordas Dalal and Ms. Puloma Dushyant Dalal. However, the Noticees submitted that the account is jointly held by Mr. Natwarlal Takordas Dalal, Ms. Puloma Dushyant Dalal and Mr. Dushyant Natwarlal Dalal.

16. The balance available in the said account was reported as Rs. 22,89,330.58/-. The Noticees have submitted at Annexure 2 that out of the said amount Rs. 22,82,480 has been credited as dividend received from Infosys Limited for the shares held in Demat Account No. IN302470/40033326. From the statement of account issued by Karvy Stock Broking Limited (DP), it is observed that the said demat account stands in the name of Mr. Natwarlal Takordas (deceased) jointly with Dushyant Natwarlal Dalal and Rasila Natwarlal (deceased) and not held by the Natwarlal Takordas Dalal HUF as claimed by the Noticees.

17. It was submitted by the Noticees that Mr. Natwarlal Thakordas and Rasila Natwarlal expired in 2006 and 2010 respectively. On the death of the above named persons, the shares held in the said demat account are vested with the survivor Mr Dushyant Natwarlal Dalal. In the absence of any documents



establishing the contrary, it may be presumed that Mr. Dushyant Dalal becomes the sole beneficial owner of the demat account as he is the sole surviving holder in the said account.

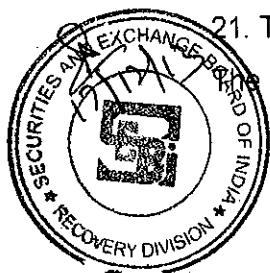
18. Similarly, on the death of Mr. Natwarlal Thakordas as a banking practice, unless the legal heirs join in the said joint account, the survivor/s will be exclusively entitled to operate the account. The Income Tax returns for F.Y. 2010-11 and unsigned ledger print of Natwarlal T Dalal HUF also does not establish that the said bank/ demat account pertain to the HUF. Therefore, in the absence of any documents establishing the contrary, it is concluded that the said bank account also pertain to both the Defaulters.

19. Based on the above discussions and as stipulated under section 226 (3) (ii) of the Income Tax Act, it is concluded that the entire money available in the abovesaid account is held by the Defaulters and is accordingly liable for attachment in execution of the Recovery Certificate. Hence, no relief is granted in respect of account no. 623505379213 held with ICICI Bank.

**Account No. 623505379216- ICICI Bank**

20. ICICI bank has reported that the account is held jointly by Ms. Rasila Dalal and Ms. Puloma Dushyant Dalal. However, the notices at Annexure 3 of the reply submitted that the account is jointly held by Ms. Rasila Dalal, Ms. Puloma Dushyant Dalal and Mr. Dushyant Natwarlal Dalal. Even if it is admitted that Mr. Dushyant N Dalal is also one of the joint holders, as a banking practice unless the legal heirs join in the account, the survivor/s will be entitled to operate the account. Therefore, in the absence of any documents establishing the contrary, it is concluded that the said bank account pertains to both the Defaulters.

21. The balance available in the said account was reported as Rs. 52,587.73/-  
Noticees have submitted that out of the said amount Rs. 45,195 has been



credited as dividend received from Tata Power Limited for the shares held in Demat Account No. IN301348/20004429.

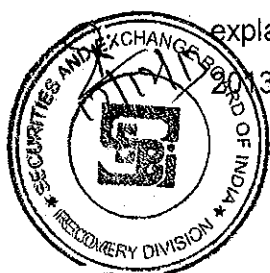
22. On the death of Ms. Rasila Natwarlal, the shares held in the said demat account are vested with the survivor Mr Dushyant Natwarlal Dalal. In the absence of any documents establishing the contrary, it is concluded that Mr. Dushyant Dalal becomes the sole beneficial owner of the demat account. Accordingly the entire credit of the dividend became the sole property of Mr Dushyant Natwarlal Dalal.

23. Similarly, on the death of Ms. Rasila Natwarlal as a banking practice, unless the legal heirs join in the account, the survivor/s will be entitled exclusively to operate the account. Therefore, in the absence of any documents establishing the contrary, it is concluded that the said bank account pertains to the Defaulters.

24. Based on the above and as stipulated under section 226 (3) (ii) of the Income Tax Act, it is concluded that the entire money available in the above said account is held by the Defaulters and is accordingly liable for attachment in execution of the Recovery Certificate. Hence, no relief is granted in respect of account no. 623505379216 held with ICICI Bank.

**Account No. 000401158137- ICICI Bank**

25. The said account is jointly held by Ms. Yuti Dushyant Dalal, Ms. Aashni Dushyant Dalal and Ms. Puloma Dushyant Dalal. The Noticees have at Annexure 4 of reply submitted that all the deposits into the said account are exclusively of Ms. Yuti Dushyant Dalal and Ms. Aashni Dushyant Dalal. The Noticees have produced details of 12 deposits into the account on account of dividends paid to either Ms. Yuti Dushyant Dalal or Ms. Aashni Dushyant Dalal. However, it is observed that certain deposits into the account were not explained by the Noticees, such as a deposit of Rs. 50,000/- on October 12, 2013 from "565258 SVC", Rs. 1,20,000/- October 12, 2013 from "Dushyant



Natwarla 076928 SVC", etc. Therefore, I am inclined hold that the deposits into the said account are not exclusively from the sources of Ms. Yuti Dushyant Dalal and Ms. Aashni Dushyant Dalal and there were transactions relating to the Defaulters.

26. Based on the above, as stipulated under section 226 (3) (ii) of the Income Tax Act, it is concluded that two third share of the money available in the said account belongs to Ms. Yuti Dushyant Dalal and Ms. Aashni Dushyant Dalal and one third to Ms. Puloma Dushyant Dalal. The total balance available in the said Account was Rs.64,695.56 and the notices have contended that the present balance is Rs.1,21,195.56. Accordingly, I hereby direct ICICI Bank to release two third share i.e. Rs.80,797/-(Rupees Eighty Thousand seven hundred ninety seven) from account number 000401158137 on the request of Ms. Yuti Dushyant Dalal and Ms. Aashni Dushyant Dalal. However, the Bank may note that NO DEBIT shall be permitted in the said account until further orders from the Recovery Officer as the said account is jointly held with the Defaulter.

**Account No. 035601504859- ICICI Bank**

**Fixed Deposit Nos. 035610001538 and 035610001539-ICICI Bank**

27. ICICI bank has reported that the said three accounts are held jointly by Mr. Dushyant Natwarlal Dalal and Mr. Ajitkumar Natwarlal Shah. However, the Noticees at Annexure 5 submitted that the accounts are jointly held by Mr. Dushyant Natwarlal Dalal, Mr. Ajitkumar Natwarlal Shah and Ms. Smita Ajit Shah. However, no document was produced by the Noticees in respect of the said submissions that Ms. Smita Ajit Shah is also joint holder in the said accounts. Even the bank statement furnished by the Noticees does not establish that Ms. Smita Ajit Shah is also one of the joint holders in the said accounts. Where ever, there is more than one joint account holder in the account, the ICICI Bank used to mention specifically the term "JT" followed by the number of joint holders. As the per the statement of bank account in respect of these accounts it is mentioned as JT which indicates that there is



one joint holder for the said account which admittedly is the Defaulter and not two joint holder as contended by the Noticee in their submissions.

28. The balance available in the said SB account as on the date of attachment was Rs. 1,22,253.81. Further, two Fixed Deposits were also linked to this account bearing nos. 035610001538 and 035610001539 of Rs. 10 lakh each. The Fixed Deposit Certificates issued by the Bank also shows that the said accounts are joint accounts. Further, the Noticees have enclosed a copy of Form 16A issued by ICICI Bank showing remittance of TDS of Rs. 4125/- on account of Mr. Ajitkumar Natwarlal Shah.

29. It is observed that none of the above documents conclusively establish that the amounts available in the said three accounts are ~~not~~ exclusively belonging to Mr. Ajitkumar Natwarlal Shah. Further, the sources of the money of Mr. Ajitkumar Natwarlal Shah and Ms. Smita Ajit Shah are not explained by the Noticees. I observe that the Gross Total Income declared by Mr. Ajitkumar Natwarlal Shah in the Income Tax Return for the F.Y. 2010-11 was Rs. 85,398/-. Similarly, the Gross Total Income declared by Ms. Smita Ajit Shah in the said Income Tax Return was Rs. 1,75,662/-.

30. Based on the above and as provided under section 226 (3) (ii) of the Income Tax Act, it is concluded that the joint holders have equal rights over the money available in the said accounts. Accordingly the ICICI Bank is directed to release 1/2 (half) of the amount available as on October 18, 2013 in the aforesaid accounts to Mr. Ajitkumar Natwarlal Shah on his request. However, the Bank may note that NO DEBIT shall be permitted in the said account until further orders from the Recovery Officer as the said account is jointly held with the Defaulter.

**Account No. 100903130031721- Shamrao Vithal Co-op. Bank**

31. The said account is admittedly jointly held by Mr. Ajitkumar Natwarlal Shah, Ms. Smita Ajit Shah and Mr. Dushyant Natwarlal Dalal. The balance



available is Rs. 3615.10. It is claimed by the Noticees that the amounts available in the said accounts is exclusively beneficially held by Mr. Ajitkumar Natwarlal Shah and Ms. Smita Ajit Shah. The Noticees have submitted copies of the Income Tax Returns for F.Y. 2010-11 of Mr. Ajitkumar Natwarlal Shah and Ms. Smita Ajit Shah and also the dividend payment advise from Thermax Limited and Dabur India Limited for Rs. 3500 and Rs. 5100 (Rs.850/- + Rs.4250/-) respectively.

32. In view of the above, the Shamrao Vithal Co-op. Bank is directed to release the entire balance of Rs.3,615.10 (Rupees Three thousand six hundred fifteen paise ten) to Mr. Ajitkumar Natwarlal Shah and Ms. Smita Shah on their request. However, the Bank may note that NO DEBIT shall be permitted in the said account until further orders from the Recovery Officer as the said account is jointly held with the Defaulter.

**Account No. 035601001861 with ICICI Bank & Account No. 100903130016643 with Shamrao Vithal Bank by Dushyant Natwarlal Dalal HUF and Account No.0356011001862 with ICICI Bank by Natwarlal Thakordas Dalal HUF.**

33. Admittedly, the first two of the above accounts are held by Dushyant Natwarlal Dalal HUF and the last account is held by Natwarlal Thakordas Dalal HUF. The amounts available in the said accounts are Rs. 5,08,766.20, Rs. 8,565.16 and Rs 18,154/- respectively. The Noticees have contented at Annexure 6 & 7 that the money available in the said accounts belong to the HUF, which is a separate legal entity and the constituent members have no specific share in it. The Noticees have submitted dividend payment advises/ intimation issued to Dushyant Natwarlal Dalal HUF in support of its claim that the entire money available in the said first two accounts belongs to the Dushyant Natwarlal Dalal HUF.



34. The coparceners of a HUF have determinable interest in the property of the HUF, even though undivided till partition of the HUF assets. This share of the coparceners are liable for attachment in execution of any recovery proceedings initiated against a Defaulter who is a coparcener in such HUF as discussed herein above. Admittedly, the coparceners in both the HUFs are Mr. Dushyant Natwarlal Dalal, Ms. Puloma Dushyant Dalal, Ms. Yuti Dushyant Dalal and Ms. Aashni Dushyant Dalal and the former two coparceners are Defaulters.

35. Based on the above and as provided under section 226 (3) (ii) of the Income Tax Act, half of the money available in the said account belong to the Defaulters. Accordingly, the ICICI Bank and Shamrao Vithal Co-op Bank are directed to release an amount to the extent of 1/2 (half) of the money available in account number 035601001861 and 0356011001862, 100903130016643 respectively as on the date of attachment i.e. October 18, 2013 on the request of the Dushyant Natwarlal Dalal HUF, if any. However, the Bank may note that NO DEBIT shall be permitted in the said account until further orders from the Recovery Officer as the Defaulters have an interest in the said accounts.

**Account No. 035601504885- ICICI Bank**

36. The account is held in the joint names of Ms. Puloma Dushyant Dalal and Ms. Yuti Dushyant Dalal. The amount available in the account as on the date of attachment is Rs. 12,966.52. The Noticees have submitted in Annexure 8 that this is an old account and there are no recent deposits in it. The Noticees have not submitted any documents demonstrating the interest of Ms. Yuti Dalal in the said account.

37. In the absence of any explanation offered by the Noticees as stipulated under section 226 (3) (ii) of the Income Tax Act, it is concluded that the joint holders have equal rights over the money available in the said accounts as of the date of attachment i.e. October 18, 2013. Therefore, half of the money



available in the said account belongs to Ms. Puloma Dalal, which is liable to be attached. Accordingly, I hereby direct ICICI Bank to release an amount of Rs.6,483.26 (Rupees six thousand four hundred eighty three and paise twenty six) in account number 035601504885, on request of Ms. Yuti Dalal. However, the Bank may note that NO DEBIT shall be permitted in the said account until further orders from the Recovery Officer as the said account is jointly held with the Defaulter.

**Account No. 035601002230- ICICI Bank**

38. The account is held jointly by Mr. Dushyant N Dalal, Ms. Puloma D Dalal and Ms. Yuti D Dalal. The balance available in the said account is Rs. 3,72,176/- as on the date of attachment. The Noticees have submitted at Annexure 9 that the balance in the account includes Rs.2,10,000/- and Rs.1,00,000/- transferred on April 4, 2013 and April 4, 2012 from account no. 000401158137 (held jointly by Ms. Yuti Dalal, Ms.Aashni Dalal and Ms.Puloma Dalal) and the said account was opened for effecting e-payments of tax deducted at source and service tax payments of Puloma Dalal & Co.

39. From the state of account, it is noted, it is not the only above said two transactions took in place in the account but there was already a opening balance of Rs.1,60,50,548/- and multiple transactions were taken place. hence it cannot be concluded that the said account is exclusively held by Ms. Yuti Dalal and Ms.Aashni Dalal. No other documents were produced by the Noticees in support of exclusively claiming the money available in the account.

40. Based on the above, as stipulated under section 226 (3) (ii) of the Income Tax Act, it is concluded that the joint holders have equal rights over the money available in the said accounts as on the date of attachment i.e. October 18, 2013. Therefore, two thirds of the money available in the said account belongs to the Defaulters. Accordingly, I direct ICICI Bank to release an amount to the extent of one third share, i.e., Rs.1,24,059/- (Rupees One



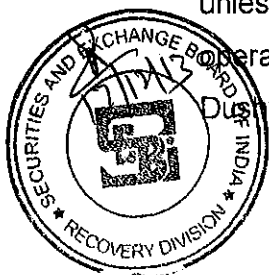
lakh twenty four thousand fifty nine) in account number 035601002230 as on the date of attachment i.e. October 18, 2013 on the request of Ms. Yuti Dushyant Dalal. However, the Bank may note that NO DEBIT shall be permitted in the said account until further orders from the Recovery Officer as the Defaulters have an interest in the said accounts.

**Account No. 000128200000159 (old no. 6592)- Bank of India**

41. Bank of India has reported that the account is held jointly by Mr. Natwarlal Takordas Dalal, Ms. Rasila Natwarlal Dalal and Mr. Dushyant Natwarlal Dalal. However, the Noticees submitted at Annexure 11 that Ms. Puloma Dushyant Dalal is also a joint holder in the account. Further, no document was produced by the Noticees in respect of the said submissions. The amount available in the bank account is Rs. 5,77,176.16.

42. It was submitted by the Noticees that the balance comprises of dividends received by Mr. Natwarlal Takordas Dalal, Ms. Rasila Natwarlal Dalal, Dushyant Natwarlal Dalal HUF, Mr. Dushyant Natwarlal Dalal and Ms. Puloma Dalal. The Noticees have also submitted certain dividend payment advices/intimations issued to Mr. Natwarlal Takordas Dalal, Ms. Rasila Natwarlal Dalal, Mr. Dushyant Natwarlal Dalal and Ms. Puloma Dalal. However, none of these are observed to have been issued to Dushyant Natwarlal Dalal HUF. Further, it is noted that dividend for shares held by an HUF is credited only to a bank account held by the HUF, and apparently the present account is not held by Dushyant Natwarlal Dalal HUF.

43. As observed hereinabove, Mr. Natwarlal Takordas Dalal and Ms. Rasila Natwarlal Dalal are deceased and on their death, as a banking practice, unless the legal heirs join in the account, the survivor/s will be entitled to operate the account. Admittedly the survivor in the said account is Mr. Dushyant N Dalal. According to the Noticees, the survivors are Mr. Dushyant



N Dalal and Ms. Puloma D Dalal. Ascertaining the exact names of the joint holders in the account is not required as both Mr. Dushyant N Dalal and Ms. Puloma D Dalal are Defaulters and it would not make a difference if one or both are the survivors in the account. Therefore, in the absence of any documents establishing the contrary, it is presumed that the said bank account pertains to the Defaulters.

44. Based on the above and as stipulated under section 226 (3) (ii) of the Income Tax Act, it is concluded that the entire money available in the abovesaid account is held by the Defaulters and is accordingly liable for attachment in execution of the Recovery Certificate. Hence, no relief is granted in respect of account no. 000128200000159 (old no. 6592) held with Bank of India.

**Account No. 30132-Shamrao Vithal Bank**

45. This account is held jointly by Ms. Gita Shishir Rokadia, Mr. Dushyant N Dalal and Mr. Natwarlal Takordas Dalal. The amount available in the said account as on the date of attachment is Rs. 19,657.80.

46. The Noticees have submitted at Annexure 12 that the account wholly beneficially belongs to Ms. Gita Shishir Rokadia and Mr. Dushyant N Dalal and Mr. Natwarlal Takordas Dalal are holders for convenience who has no beneficial interest. Further, it was stated that the transactions in the account are reflected in the Income Tax Return filed by Ms. Gita Shishir Rokadia.

47. From the bank account statement for the above account, it is noted that most of the deposits made into the account are by way of dividends received for the shares held by Ms. Gita Shishir Rokadia. No other substantial transactions are observed in the account.

48. In view of the above, I hereby order that the Shyamrao Vittal Co-op Bank to release the said balance Rs Rs Rs. 19,657.80 (Rupees Ninetee thousand



six hundred fifty seven and paise eighty) to Ms. Gita Shishir Rokadia on her request. However, the Bank may note that NO DEBIT shall be permitted in the said account until further orders from the Recovery Officer as the said account is jointly held with the Defaulter.

**Bank A/c no. 16636 with Shamrao Vittal Co-op Bank Ltd**

49. Admittedly the said account is held by Ms Smita Ajit Shah jointly with Mr Natwarlal Thakuordas Dalal (deceased) and one of the Defaulters. The contention of the Noticee at Annexure 13 of the written submissions is that the Defaulters names have added for convenience with no beneficial interest on them. The bank account statement, income tax returns with the statement of accounts(unsigned) have been furnished by the Noticee to establish that the balance held as on 31st March 2013 in the said account is shown in her statement of account stated to have been filed along with the income tax returns. Copies of dividend received by her from her share holdings, etc were furnished by the Noticee. I also note that the balance available in the said account is Rs 23458.89.

50. In view of the above, I hereby order that the Shamrao vittal Co-op Bank to release the said balance Rs.23458.89 (Rupees twenty three thousand four hundred fifty eight and paise eighty nine) to Ms Smita Ajit Shah on her request. However, the Bank may note that NO DEBIT shall be permitted in the said account until further orders from the Recovery Officer as the said account is jointly held with the Defaulters.

**Bank A/c no. 11465 with Shamrao Vittal Co-op Bank Ltd**

51. Admittedly the said account is held by Ms Yuti D Dalal jointly with both the Defaulters. The contention of the Noticee at Annexure 14 of the written submissions is that the Defaulters names have added for convenience with no beneficial interest on them. The bank account statement, income tax returns with the statement of accounts(unsigned) have been furnished by the Noticee to establish that the balance held as on 31st March 2013 in the said account



is shown in her statement of account. Copies of dividend received by her from her share holdings, etc. were furnished by the Noticee. Even though the shares were held by her jointly with the Defaulters, the entire bank balance has been shown in the statement of accounts stated to have been filed along with the income tax returns. I also note that the balance available in the said account is Rs 12,677.52.

52. In view of the above, I hereby order that the Shamrao vittal Co-op Bank to release the said balance Rs 12,677.52(Rupees twelve thousand six hundred seventy seven and paise fifty two) to Ms Yuti D Dalal on her request. However, the Bank may note that NO DEBIT shall be permitted in the said account until further orders from the Recovery Officer as the said account is jointly held with the Defaulters.

**Bank A/c no. 17209 with Shamrao Vittal Co-op Bank Ltd**

53. Admittedly the said account is held by Ms Aashni D Dalal jointly with both the Defaulters. The contention of the Noticee at Annexure 15 of the written submissions is that the Defaulters names have added for convenience with no beneficial interest on them. The bank account statement, income tax returns with the statement of accounts(unsigned) have been furnished by the Noticee to establish that the balance held as on 31st March 2013 in the said account is shown in her statement of account. I also note that the balance available in the said account is Rs 8,574.91.

54. In view of the above, I hereby order that the Shamrao vittal Co-op Bank to release the said balance Rs 8,574.91 (Rupees eight thousand five hundred seventy four paise ninety one) to Ms Aashni D Dalal on her request. However, the Bank may note that NO DEBIT shall be permitted in the said account until further orders from the Recovery Officer as the said account is jointly held with the Defaulters.

**Bank A/c no. 035601507591 with ICICI Bank Ltd**



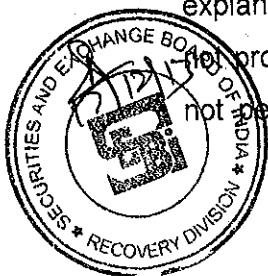
55. As noted from the intimation of ICICI Bank, the aforesaid bank account is held jointly by Ms Aashni D Dalal & Mr Dushyant Dalal. This is also admitted by the Noticee at Annexure 17 of the written submissions filed by them. The only contention raised by the Noticee is that the entire amounts held in the said account belongs to Ms Aashni D Dalal and that balance of Rs 33003.05 also belonged to her.

56. On perusal of the statement of account dt 11-12-2013 furnished by the Noticee for the period 1-3-2013 to 31-8-2013 does not establish that the entire money available in the joint account pertain to her. Except opening credit balance of Rs 1,00,091.05 and interest credit of Rs 1,978/-, there are no credits in the accounts, however, there are number of debit entries in the said accounts. The Noticee has not established with any documentary evidence to the effect either the opening or closing balance in the said account belong to her.

57. In view of the above and in the absence of any documents and as provided under Section 226(3)(ii) of Income Tax Act, since the account is jointly held by both Ms Aashni D Dalal & Mr Dushyant Dalal and the latter is Defaulter, I hereby order that the ICICI Bank to release half of the balance i.e., Rs 16,501.50 (Rupees sixteen thousand five hundred one and paise fifty) to Ms Ms Aashni D Dalal on her request. However, the Bank may note that NO DEBIT shall be permitted in the said account until further orders from the Recovery Officer as the said account is jointly held with the Defaulter.

**Bank A/c no. 035602505709 with ICICI Bank Ltd**

58. The Defaulters have at Annexure 17 contended that the said accounts pertain to professional accounts and exclusively used for payment of professional expenses carryout by the Defaulter and that the balance was transferred from Puloma Dalal & Co's account. Except hand written explanation for each of the entries on the bank statement, the Defaulters have not produced any documentary evidence to show that the said account does not pertain to them. It is noted that the said account is jointly held by the



Defaulters in their individual capacity. So long as the account is held in their personal name, it cannot be presumed that the account is held by a different entity. Further, I note that attachment in respect of some of the bank accounts held in their professional capacity were already released pursuant to the directions of the Hon'ble Securities Appellate Tribunal and this account is not one such account which was ordered by the Hon'ble Tribunal for release from the attachment.

59. In view of the above and in the absence of any documentary proof that the said bank accounts are not held by the Defaulters, it would not be prudent on the part of the Recovery Officer to release the said account till all the dues are repaid by the Defaulters in execution of the recovery proceedings initiated against them. Accordingly, no relief is granted in this regard.

**Bank A/c no. 623505379217(OD) with ICICI Bank Ltd**

60. Admittedly, the said account is jointly held by the Noticee Ms Yuti D Dalal with the Defaulters. The contention of the Noticee at Annexure 17 is that the said account is OD account and is sparingly used at times to accommodate the branch for window dressing. I note from the statement of bank account that there were huge fund transfers from and to the accounts of the Defaulters. Therefore, in the absence of any evidence, it cannot be held that the said account is exclusively held by Ms Yuti D Dalal. I note that the balance available in the said accounts is Rs.5,337.11.

61. In view of the above and in the absence of any documents and as provided under Section 226(3)(ii) of Income Tax Act, since the account is jointly held by Ms Yuti D Dalal with both the Defaulters, I hereby order that the ICICI Bank to release 1/3rd of the balance i.e., Rs 1,779/- (Rupees one thousand seven hundred seventy nine only) to Ms Yuti D Dalal on her request. However, the Bank may note that NO DEBIT shall be permitted in the said account until further orders from the Recovery Officer as the said account is jointly held with the Defaulters.



62. The Annexure 17 of the reply filed by the Noticees contain two dormant accounts held with Shaymrao Vittal Co-op Bank. However, on perusal of the file it noted that the bank has not reported attachment of the said accounts, so far. The said Annexure 17 also contain the details of one bank account held with Bank of Baroda by M/s Puloma Dalal & Co. The bank has already advised that the said has not been attached. Hence, it is not necessary to deal with the same.

63. All the respective banks referred above are directed to note that except the amounts ordered to be released as above, the attachment orders issued by the Recovery Officer shall continue to be in force till further orders.

64. Copy of this order is sent to the respective banks for compliance and also to the Noticees and Defaulters.

December 17, 2013



*D.V. Sekhar*  
**D.V. Sekhar**  
Deputy Legal Advisor &  
Recovery Officer