

SECURITIES AND EXCHANGE BOARD OF INDIA
WESTERN REGIONAL OFFICE, AHMEDABAD
BEFORE THE RECOVERY OFFICER
RECOVERY CERTIFICATES No. 4698 of 2022 and 6591 of 2023

Order under Rule 16 of the Second Schedule to the Income-tax Act, 1961 read with section 28A of the Securities and Exchange Board of India Act, 1992 in the matter of transfer of property of defaulters

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India ("SEBI") passed Orders in various matters in the scrip of Timbor Home Limited, in which *inter-alia*, monetary penalties were imposed on Ms. Nina Ajay Maloo (PAN: AJXPM3547Q) (hereinafter referred to as 'entity') as below:

Table 1

Sr. No.	SEBI Order No & Date	Noticee Name	Penalty (in Rs.)
1.	Order/KS/AS/2021-22/12457-12472 dated July 06, 2021	Nina Ajay Maloo	1,00,000/-
2.	ORDER/AP/AS/2020-21/11064-11076 dated March 23, 2021	Nina Ajay Maloo and Ajay Sureshchandra Maloo (joint and several liability)	5,00,000/-

2. The entity was directed to remit / pay the total amount of penalty within time stipulated in Orders mentioned in Table 1 above, else, recovery proceedings may be initiated against the entity under Section 28A of the Securities and Exchange Board of India Act, 1992, for realization of penalty, along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.



3. Subsequently, upon non-payment of penalty by the entity, recovery proceedings were initiated against Nina Ajay Maloo (defaulter) under provisions of Section 28A of SEBI Act, 1992 read with Section 220 to 227, 228A, 229, 232 of the Income Tax Act, 1961 and the Second and Third Schedule to the said Act and the rules made thereunder for a total sum of Rs. 8,96,479/- (Rupees Eight Lakh Ninety-Six Thousand Four-Hundred and Seventy-Nine Only) along with further interest, all costs, charges and expenses incurred in respect of all the proceedings taken for recovery as follows:

Table 2

Sr. No.	Recovery Certificate	SEBI Order No & Date	Date of Notice of Demand (NoD) and date of service	Attachment Proceedings	Defaulter Name
1.	6591 of 2023	Order/KS/AS/2021-22/12457-12472 dated July 06, 2021	May 24, 2023 served on May 31, 2023	10445/2023 10446/2023 (June 20, 2023)	Nina Ajay Maloo
2.	4698 of 2022	Order/AP/AS/2020-21/11064-11076 dated March 23, 2021	April 25, 2022 served on May 02, 2022	8547/2022 8550/2022 (June 27, 2022)	Nina Ajay Maloo and Ajay Sureshchandra Maloo

4. Further, attachment proceedings in respect of Bank and Demat accounts were initiated under the said recovery proceedings as mentioned in Table above. During the course of recovery proceedings, it has come to notice that the defaulter was the owner of property located at- Flat No. B-2, HariKrupa Apartment, the HariOm Apartment C.H.S.L., Survey No. 891, Subplot no. 1 & 2, T.P. No. 3, FA, Plot No. 57/A, Near Naranpura Railway Crossing, Usmanpura, Ahmedabad at the time of initiation of both the recovery proceedings mentioned in Table 2.



5. Further, it has been observed that the defaulter has transferred the said property belonging to her, to her daughters (Ms. Anushree Ajay Maloo and Ms. Anshumi Ajay Maloo) on January 12, 2024 i.e. after the issuance and service of all relevant NoDs, for no consideration (as gift). Currently, the said property is undergoing re-development and as per agreement provided by the builder of the property, owner of the aforesaid property is allotted with Flat 103 on the first floor of the renovated building.
6. Till date, an amount of Rs. 14,521/- has been recovered in RC 4698 and outstanding amount as on date against the said RC is Rs.7,36,479/-. However, no recovery has been made in RC 6591 and outstanding amount as on date is Rs.1,60,000/-. The total outstanding amount due from the defaulter as on date is Rs. 8,96,479/-.
7. Since entire dues could not be recovered from Defaulter, assets of Defaulter including immovable properties are liable to be attached. In terms of Section 28A of the SEBI Act, 1992 read with Rules 16, 48 and 51 of the Second Schedule to the Income-tax Act, 1961, where a notice has been served on the Defaulter by the Recovery Officer, the Defaulter shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him, except with the permission of Recovery officer. In this regard, no permission has either been taken or claimed to have been taken by the defaulter from the Recovery Officer.
8. Considering the fact that the entity / defaulter has alienated the property in contravention of provisions mentioned in para 7 above, it was felt necessary to immediately attach the assets of Defaulter held in the name of Ms. Anushree Ajay Maloo W/o Manan Ashokbhai Patel and Ms. Anshumi Ajay Maloo, to prevent them from disposing of or transferring or alienating the same with a view to obstruct or delay the recovery proceedings. Accordingly, a Prohibitory Order dated February 02, 2026 has been issued in this regard directing Defaulter and all the subsequent purchaser(s) of attached property prohibiting them from disposing, transferring, alienating, or charging in respect of the following attached property.



9. Thereafter, hearing Notice dated February 06, 2026 were issued to buyers of the said property viz., Ms. Anushree Ajay Maloo and Ms. Anshumi Ajay Maloo and entity – Ms. Nina Ajay Maloo, calling them for personal hearing on February 11, 2026 before the Recovery Officer. On request of the defaulter, the hearing was held on February 24, 2026. Shri Ajay Maloo represented Ms Nina Ajay Maloo (spouse), Ms Anushree Ajay Maloo (daughter) and Ms. Anshumi Ajay Maloo (daughter) on February 24, 2026. During the course of hearing, Shri Ajay Maloo was advised to remit the total amount due along with applicable interest under various recovery proceedings. Shri Ajay Maloo did not provide any definite timeline towards payment of outstanding NoD amounts. A meeting was again held on March 13, 2026 where Ms Nina Ajay Maloo (spouse), Ms. Anushree Ajay Maloo (daughter) and Ms. Anshumi Ajay Maloo (daughter) was again represented by Shri Ajay Maloo. Further, post hearing, no submissions/ claims have been made either by the defaulter or the parties to whom the property has been transferred, till date.

CONSIDERATION OF ISSUES AND FINDINGS

10. I now proceed to outline my observations. It is essential to first highlight the legal provisions as under:

i Section 28A of the SEBI Act: Section 28A of the SEBI Act empowers SEBI to recover dues from any person who fails to pay the penalty imposed under the SEBI Act or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the SEBI. The recovery of the amounts dues can be made through the following modes:

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts;
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable



and immovable properties.

Subject to Explanation 1 to section 28A of the SEBI Act, what can thus be attached are the properties/assets/banks accounts of the person who is the defaulter. For effecting recovery, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, are applied by SEBI as provided for in section 28A.

ii Rule 16 of the Second Schedule to the Income-tax Act 1961:

"Private alienation to be void in certain cases.

16. (1) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.
- (2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment."

iii Rule 48 of the Second Schedule to the Income-tax Act 1961:

"Attachment.

48. Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge."

iv Rule 49 of the Second Schedule to the Income-tax Act 1961:

"Service of notice of attachment.

49. A copy of the order of attachment shall be served on the defaulter."

v Rule 51 of the Second Schedule to the Income-tax Act 1961:

"Attachment to relate back from the date of service of notice.



51. *Where any immovable property is attached under this Schedule, the attachment shall relate back to and take effect from the date on which the notice to pay the arrears issued under this Schedule was served upon the defaulter.”*

11. I note that vide two AO Orders mentioned in Table 1, Ms. Nina Maloo was directed to remit/ pay the respective amounts of penalty within 45 days from dates of respective orders.
12. Subsequent to the non-compliance with the directions of AO Orders, recovery proceedings were initiated against the defaulter under section 28A of the SEBI Act, 1992. I further note that the Defaulter had filed appeal challenging order Order/KS/AS/2021-22/12457-12472 dated July 06, 2021 before Hon'ble Securities Appellate Tribunal (SAT), however, SAT dismissed the appeal. Hence, the orders have attained finality.
13. I note that the Notices of Demand dated April 25, 2022 and May 24, 2023 under Section 28A of SEBI Act 1992 read with Rule 2 of the Second Schedule to the Income Tax Act, 1961, were issued and delivered to the Defaulter. The representative of the Defaulter in the hearing before the Recovery Officer has admitted the receipt of Notices of demand and the attachment notices. The said notice of demand had put the Defaulter on notice that in case she fails to satisfy the notice of demand, SEBI would take steps under section 28A of the SEBI Act, 1992 and relevant provisions of the Income-tax Act, 1961 to recover the dues, including attachment and sale of the person's immovable property.
14. It is pertinent to note that though the Prohibitory Order was issued on February 02, 2026, in terms of rule 51 of the Second Schedule to the Income-tax Act, 1961 the attachment of immovable property would relate back to the date when the notice of demand is delivered to the Defaulter. In terms of Rule 16 read with Rule 51 of Second Schedule to the Income-tax Act, 1961, the Defaulter becomes incompetent to enter into any contract/agreement in respect of its properties which were in



- attachment from the date of service of the notice of demand. It is evident from facts pertaining to date of relevant NoDs stated in Table 2 above and date of transfer of property on January 12, 2024, that entity was incompetent to deal with the property owned by her after issuance of relevant NoDs, without explicit permission from the Recovery Officer, SEBI. As a result, in terms of provisions of Indian Contract Act, 1872 and Transfer of Property Act, 1882, any transfer of property by the defaulter was void, being a transfer made by an incompetent person.
15. In this regard, reading of Rule 16 along with Rule 51 of the Second Schedule to the Income-tax Act, 1961, makes it clear that:
- When a notice under rule 2 of Second Schedule is served on the defaulter, she becomes incompetent to deal with any property belonging to her except with the permission of the Recovery Officer.
 - Where attachment is made, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.
 - The attachment relates back to date when the notice issued under rule 2 of the Second Schedule to pay the arrears/dues is served on the defaulter.
16. In this context, I refer to the observations made by the Hon'ble High Court of Andhra Pradesh in its order dated May 2, 2018, in the case of *Shriya Bhupal vs. The Assistant Commissioner of Income Tax and Others*. In this case, the court held that: “.....Therefore, if a transfer had been made by a defaulter in contravention of Rule 16(1), it is automatically void.”
17. Additionally, it is pertinent to cite the observations of the Hon'ble High Court of Judicature at Madras in the case of *D. S. Senthivel vs. Tax Recovery Officer – 2 [W.P. (MD) No. 2932 – 2939/18]*, delivered on March 7, 2018, as follows:
- “



12. In this case, the property belonged to the defaulter – assessee. He has been served with notice under Rule 2. The moment such a notice was served on the defaulter- assessee, by virtue of Rule 16(1) of the second schedule, he became incompetent to deal with the property. In Rule 16(1) it is expressly stated that the defaulter assessee shall not be competent to deal with the property. If the vendor was not competent to deal with the property, he could not have passed any valid or legal title to the purchaser. ...”

18. Further to above, Hon’ble Supreme Court in the case of K. Basavarajappa Vs. Tax Recovery Officer, Bangalore & Ors. [C.A. 13049-50/1996] order dated October 11, 1996 has held that “when the defaulter agreed to sell off his property to the appellant he totally bypassed the requirement of Rule 16 (2) which lays down that where a notice has been served on the defaulter under Rule (2) the defaulter or his representative-in-interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Office, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.”
19. As mentioned in the earlier paragraph, the Defaulter had received all the three notices of demand and hence was aware that in case she fails to satisfy the notice of demand, SEBI would take steps under section 28A of the SEBI Act, 1992 and relevant provisions of the Income-tax Act, 1961 to recover the dues. On perusal of the gift deed, I note that Ms. Nina Ajay Maloo transferred the property mentioned at Para. 3 vide registered gift deed on January 12, 2024 to Ms. Anushree Ajay Maloo and Ms. Anshumi Ajay Maloo as ‘gift’. The act, of transfer of property without bringing the same to the notice of Recovery Officer, SEBI, is evidence that the Defaulter has done the same with the intention to obstruct execution of recovery certificate and evaded payment of dues despite having means to do so.
20. I further note that since sale of property is also a contract, the parties should be eligible to enter into the same as required under section 11 of the Indian Contract



Act, 1872. One of the conditions therein is that the persons contracting should not be disqualified from contracting by any law to which they are subject to. In this case, the date the demand notice under rule 2 of Second Schedule to the Income-tax Act, 1961 was served on defaulter, she became, by virtue of rule 16 of the Second Schedule to the Income-tax Act, 1961, ineligible and incompetent to enter into any contract with any person regarding the transfer of her properties. When the seller herself is not qualified to deal with her property, she cannot pass any valid title to the purchasers. Therefore, it is established that the seller, Nina Ajay Maloo was not competent to enter into the sale deed and hence could not have passed on a valid legal title to Anushree Ajay Maloo and Anshumi Ajay Maloo in respect of the property under attachment without the permission of Recovery Officer, SEBI. This serves to establish the invalidity of any transfers made by the Defaulter post notice of demand/s to her.

21. In light of the facts and circumstances of this case, and in accordance with Rule 16 of the Second Schedule to the Income Tax Act, 1961 read with Section 28A of the SEBI Act, 1992, and settled legal position and in the interest of investors in the matter, I hold that Ms. Nina Ajay Maloo was not competent under law to execute the sale deed and transfer the interest, title of subject property to Ms. Anushree Ajay Maloo and Ms. Anshumi Ajay Maloo after the initiation of recovery proceedings, and hence, the buyers have no claim over the said property. In view of above, attachment of SEBI on the said property shall continue and SEBI would proceed further in accordance with section 28A of the SEBI Act, 1992.

Date: April 02, 2026



Pooja Dhingraa

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Deputy General Manager and Recovery Officer

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