SECURITIES AND EXCHANGE BOARD OF INDIA

MISCELLANEOUS ORDER

UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF PRIME PLANTATIONS PRIVATE LIMITED AND OTHERS

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1. This order is being issued in pursuance of the order dated July 07, 2021 passed by the Hon'ble SAT. In the said order, the Hon'ble SAT has *inter alia* directed as:

> *"4. Considering the fact that the scheme which the appellants had initiated was in the year 1992 which came to an end in 1998 prior to the enforcement of the CIS regulations, we direct that the restraint order shall remain in suspension during the pendency of the appeal.*
>
> *5. In addition, the accounts of the company and the directors which have been frozen, it has been stated that the joint accounts in which the appellants are the second holder have also been frozen. In this regard, we are, prima-facie, of the opinion that the accounts where the appellants are the second holder should not be frozen. We accordingly direct the appellants to provide the list of the accounts which have been frozen to SEBI. If such details are provided, the respondent will pass appropriate order within a week thereafter."*

2. Thereafter, a miscellaneous application was filed by SEBI before the Hon'ble SAT, which came to be dismissed vide order dated July 30, 2021.

3. In pursuance of the aforesaid directions passed by the Hon'ble SAT, the Applicants/Appellants have provided a list of such joint demat accounts/mutual fund folios, where the primary holder of the accounts is the family member of the Appellant(s), and few of the Appellant (s) are the second holders. The said details are being reproduced herein for ready reference:

Table no. 1

S.NO	Name / Appellant No.	Demat Account No. / PAN Number	DP Name and Address
1.	Abhishek Saraf (Son of Appellant 6) with Motilal Saraf (Appellant 6)	DP ID 16014800 Client ID:00929330 (PAN of 1st Holder: ALRPS8804Q) (PAN of 2nd Holder : AMPPS3565H)	IL&FS Securities Services Ltd. and

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			Mutual Funds
2.	Sarla Saraf (Wife of Appellant 6) with Motilal Saraf (Appellant 6)	(PAN of 1st Holder: ALVPS3697P) (PAN of 2nd Holder : AMPPS3565H)	Mutual Funds
3.	Gaurav Saraf (Son of Appellant 6) with Motilal Saraf (Appellant 6)	DP ID:16014800, Client ID 00929592 (PAN of 1st Holder :ATBPS2874C) PAN of 2nd Holder: AMPPS3565H)	IL&FS Securities Services Ltd. and Mutual Funds
4.	Amey Naresh Jaju (Son of Appellant 9) with Rekha Naresh Jaju (Appellant 9)	1302340000200212 (PAN of 1st Holder: AGBPJ3343E) (PAN of 2nd Holder: AACPJ3734A)	ISS Enterprises Limited
5.	Naresh Bhagirath Jajoo (Husband of Appellant 9) with Rekha Naresh Jaju (Appellant 9)	130234000063742 (PAN of 1st Holder: AACPJ3987F) (PAN of 2nd Holder: AACPJ3734A)	ISS Enterprises Limited

4. I find that at para 5 of the aforesaid order, the Hon'ble SAT has expressed a *prima facie* opinion to the effect that the joint demat accounts where the Appellants are the second holders, should not be covered under the operation of the restraint imposed by the SEBI's direction issued *qua* the Appellants vide order dated March 19, 2021. The said opinion has been presumably expressed under an impression that the second holder of a demat account jointly held with a first holder does not have a commercial/economic interest in the assets lying in such joint demat accounts.

5. However, based on my overall appreciation of the facts and legal position surrounding the nature and operation of joint demat account as brought to my attention, such a *prima facie* presumption that the second holder of a joint demat account may not be having any ownership rights over the assets in such demat account, and hence such a jointly held demat accounts can be freed from the restraint imposed by SEBI (on the Appellants who are the second holders), may be a rebuttable presumption which needs deeper analysis for the following reasons:

I. A joint demat account may contain shares jointly acquired in IPO by all the joint holders, and the consideration paid for such acquisition may be out of the shared funds of all the holders.

II. Securities purchased from the secondary market and credited to the joint demat account may have been so acquired from the sources of funds of all the joint holders.

III. Physical shares earlier held by the first, second and third holder jointly in their names, in whatever sequence, can be transferred to the joint demat account, involving the economic interest of all the joint holders of such demat account.

IV. A presumption about the primary account holder being the owner of all the shares kept in the joint demat account can only be corroborated with actual source of funds utilised to purchase those shares so as to decide the actual ownership of the shares lying in the demat account.

V. Although primacy of the rights may have been accorded to the primary holder of a joint demat account, the same does not preclude the economic and commercial interest of the second/third holder. Similarly, the liability for payment of call money is also cast on all the shareholders, jointly and severally.

VI. On verification of the issue of the operation and management of joint demat account with the Depositories, one of the Depository (NDSL) vide its email dated August 02, 2021 has informed that a joint demat account can be mapped with two or more trading accounts of each of the respective joint holder.

VII. In terms of Section 226 (3) (ii) of the Income Tax Act, 1961, (pertaining to the issuance of notice in recovery proceedings), there is a presumption that shares are held equally by the joint holders, unless the contrary is proved.

6. Keeping the aforesaid points and issues in view, I observe that there is no straight forward answer to the question of ownership of shares in case of a joint demat account, so as to state with conviction that it is the primary holder who is the exclusive owner of the securities held in such a joint demat account, rendering the second/third holder (s) as mere technical adjunct to the primary holder; or to state that all the holders have equal or at least some economic interest, which can only be decided on the facts of each case and the answer to such an inquisition has to be supported by the bank account statements showing transaction for purchase of shares, entries in such accounts reflecting the source of funds used for purchase of securities, income tax returns containing balance sheets indicating the holding of shares and/or the tax paid out of the transactions executed in such shares, etc.

7. In the present case, I note that the applicants have furnished the following details to SEBI:

I. Details of the demat account.
II. Holding statement of the first holder
III. Declaration of the first holder
IV. Income Tax Return for FY 2017-18, 2018-19 and 2019-20
V. Statement of account for buy/sell for FY 2017-18, 2018-19 and 2019-20
VI. Statement of bank account of first holder.
VII. TDS Certificates (by Amey Jaju)

8. The aforesaid details and documents (apart from other documents, as may be required) needs to be carefully analysed and examined with supporting details with respect to each of the joint demat account/mutual fund holding, before anything can be concluded with certainty with respect to the *locus standi* of the second holder on the assets, which is not possible within the time granted by the Hon'ble SAT.

9. However, in compliance with the directions of the Hon'ble SAT at para no. 5 of the aforesaid order, I direct the following:

I. The restraint imposed vide order dated March 19, 2021 would not operate on the joint accounts, mutual fund folios mentioned in Table 1 above;

II. SEBI shall be at liberty to seek further/additional information from the Applicants and in case of failure to provide such information, the liberty granted at para (I) above would be revoked by an order.

10. The Order shall come into force with the immediate effect.

11. A copy of this order shall be forwarded to all the *Noticees*, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

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DATE: AUGUST 03rd, 2021 **S. K. MOHANTY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA