BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[Adjudication Order No: Order/GR/PU/2022-23/17318]

UNDER SCTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALITIES) RULES, 1995

In respect of

Ramya Mercantile Private Limited

PAN: AAGCR6009M; CIN: U52100MH2013PTC247062

Address: Room No 3, Sai Shraddha Chawl No 3, Ground Floor,

Shiv Shakti Nagar, Navghar Road, Bhayander (E), Thane-401105

In the matter of Mishka Finance and Trading Pvt. Ltd.

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted an investigation in the matter of trading activity of certain entities in the scrip of Mishka Finance and Trading Pvt. Ltd. (hereinafter referred to as **'MFTPL/Company'**) from February 14, 2013 to December 31, 2014 (hereinafter referred to as '**Investigation Period'**) to ascertain whether there were any violation of the provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations**") and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations'**).

2. The investigation inter-alia revealed that Ramya Mercantile Private Limited ("**the Noticee** ") had allegedly failed to make disclosures to the Company and BSE when the shareholding of the Noticee crossed 5% pursuant to the purchase of 1,22,750 shares of the company on March 26, 2014. Accordingly, SEBI initiated Adjudication Proceedings against the Noticee for alleged violation of Regulation 13(1) of PIT Regulation and Regulation 29(1) read with 29(3) of SAST Regulation.

APPOINTMENT OF THE ADJUDICATING OFFICER

3. SEBI appointed Ms. Rachna Anand, as Adjudicating Officer ('**AO**') vide communique dated February 22, 2018 under Section 19 read with 15-I of the SEBI Act, 1992 and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge the violations alleged to have been committed by the Noticee. Subsequently, Shri Suresh B. Menon, CGM was appointed as the AO in the matter in the place of Ms. Rachna Anand. Thereafter, pursuant to the transfer of Shri Suresh B. Menon, the undersigned was appointed as the AO vide communique dated April 09, 2019 in the present matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice dated March 29, 2019 (hereinafter referred to as 'SCN') was issued by the erstwhile AO Mr. Suresh B. Menon, to the Noticee in terms of Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act, 1992 to show-cause as to why an inquiry should not be initiated and penalty be not imposed under Section 15A(b) of the SEBI Act, 1992 on the Noticee for the alleged violation of the Regulation 13(1) of PIT Regulation and Regulation 29(1) read with 29(3) of SAST Regulation.

5. The SCN inter-alia alleged that it was observed from Trade log received from BSE that, during the investigation period, the Noticee had bought and sold shares of MFTL. The trades of the Noticee are as follows:

Date	**Sum of Buy Qty**	**% of total shares**	**Sum of Sell Qty**	**% of total shares**	**Cumulative**
17/02/2014	52,000	0.05%			0.05%
18/02/2014	78,001	0.08%			0.13%
19/02/2014	28,000	0.03%			0.15%
20/02/2014	1,25,500	0.12%			0.27%
21/02/2014	2,53,270	0.25%			0.52%
24/02/2014	2,88,000	0.28%			0.80%
25/02/2014	1,58,950	0.15%			0.95%
26/02/2014	4,41,000	0.43%			1.38%
28/02/2014	1,70,100	0.16%			1.54%
03/03/2014	6,64,920	0.64%			2.19%
04/03/2014	87,600	0.08%			2.27%
05/03/2014	4,98,700	0.48%			2.75%

Date	Sum of Buy Qty	% of total shares	Sum of Sell Qty	% of total shares	Cumulative
06/03/2014	1,77,855	0.17%			2.93%
07/03/2014	4,37,100	0.42%			3.35%
10/03/2014	5,34,505	0.52%			3.87%
11/03/2014	29,000	0.03%			3.89%
18/03/2014	87,000	0.08%			3.98%
20/03/2014	2,39,200	0.23%			4.21%
21/03/2014	1,75,800	0.17%			4.38%
22/03/2014	1,35,275	0.13%			4.51%
24/03/2014	2,72,136	0.26%			4.77%
25/03/2014	2,14,010	0.21%			4.98%
26/03/2014	**1,22,750**	**0.12%**			**5.10%**
27/03/2014	15,500	0.01%			5.12%
28/03/2014	8,400	0.01%			5.12%
31/03/2014	66,300	0.06%			5.19%
01/04/2014	15,000	0.01%			5.20%
04/04/2014	750	0.00%			5.20%
27/05/2014			25,000	0.02%	5.18%
28/05/2014			75,000	0.07%	5.11%
29/05/2014			87,500	0.08%	5.02%
30/05/2014			50,000	0.05%	4.97%
02/06/2014			27,000	0.03%	4.95%
20/06/2014	100			0.00%	4.95%
04/07/2014			650	0.00%	4.95%

6. From the above table, it is observed that the Noticee had purchased 1,22,750 shares of the Company on March 26, 2014 and consequently, its shareholding crossed 5%, which necessitated disclosure to be made within 2 working days under Regulation 29(1) read with 29(3) of SAST Regulations to the company and BSE as well as under Regulation 13(1) of PIT Regulations to the company. The investigation also revealed that, as observed from the replies received from BSE and the Company, the Noticee did not make any disclosure to either of them.

7. Therefore, the Noticee had allegedly violated the provisions of Regulation 13(1) of PIT Regulations and Regulation 29(1) read with 29(3) of SAST Regulations.

8. The SCN was issued by the erstwhile AO Shri Suresh B. Menon, to the Noticee vide SPAD at the above mentioned address, however, the said SCN had returned undelivered. Thereafter, the undersigned, had served a copy of the SCN along with hearing notice vide newspaper publication done on May 21, 2022 in Hindusthan Times

(English), Lokmat (Marathi) and Navbharat (Hindi). Vide the said newspaper publication, the Noticee was advised to download a copy of the SCN/HN from the SEBI website (www.sebi.gov.in) under the head Enforcement → Unserved Summons/Notices and Enforcement → Orders that could not be served, or to collect it with Annexures from the Office of the Adjudicating Officer at the address mentioned in the said publication, or to obtain it through e-mail sent to preethiu@sebi.gov.in. Further, vide the said newspaper publication, the Noticee was granted an opportunity for personal hearing on May 24, 2022. However, the Noticee neither attended the said personal hearing nor submitted its reply in the matter.

CONSIDERATION OF ISSUES

9. Thereafter, during the course of the proceedings, a search was done on the website of the Ministry of Corporate Affairs ("MCA") in order to ascertain the present status of the Noticee. It was observed from the MCA website that the status of the Noticee (CIN: U52100MH2013PTC247062) is being shown as "Strike Off". In this regard, a copy of the Company Master data of the Noticee from the MCA website is placed in the file. Further, since the status of the Noticee is showing as "Strike Off", it is imperative to confirm whether the Noticee is still in existence.

10. On perusal of the Form No. STK-7, Notice of Striking Off and Dissolution, dated April 04, 2022, as available in the MCA website, it is noted that the Registrar of Companies, Mumbai, has stated that pursuant to Section 248(5) of the Companies Act, 2013, the Noticee has been struck off the register of companies, and stands "dissolved" since March 28, 2022. It is noted from the records that the present SCN in the matter was issued on March 29, 2019. Hence, I note that the Noticee was struck off the register of companies and dissolved on March 28, 2022 i.e. post initiation of the present adjudication proceedings.

11. Pursuant to the name of a company being struck off from the RoC list and being dissolved, it will amount to the company closing down completely and will not be able to perform any functions or operations. Thereby the company ceases to exist. Consequently, the adjudication proceedings initiated against such a company as a result

will nullify. Evidently, it would not be appropriate to determine liability against a company which no longer exists as on date of current proceedings. Hence, the proceedings stand abated without going into the merits of the case. Should the company be revived or restored at any stage, a decision to initiate proceedings may be taken afresh at that stage.

12. In this regard I place reliance on the decision of the Income Tax Appellate Tribunal ('**ITAT**') in the matter of *M/s. Anujay Hycare Products (P) Ltd. Vs The Income Tax Officer* ('ITAT Delhi') *Date of Judgement/Order -06/04/2018,* in which ITAT held that "*.......... there could not have been any valid assessment order passed against the assessee-company which was not in existence as on the day of passing of the assessment order because it had already been dissolved. The assessment in the case of non-existing entity is thus nullity. Therefore, A.O. had no jurisdiction to pass the order against the non-existing company.......However, as on today, it is an established fact that assessee-company has already been dissolved and its name is struck-off from the Registrar of Companies. Therefore, it is a non-existing Company and as such, A.O. cannot pass the assessment order under section 143(3) of the I.T. Act, 1961 against the assessee-company. The issue is, therefore, covered in favour of the assessee-company by the above judgments of Hon'ble Delhi High Court, relied upon by the Learned Counsel for the Assessee.".*

13. In this context, I would further like to draw reference to a judgment of the Hon'ble Delhi High Court in the case of *Commissioner of Income Tax (CIT) vs Vived Marketing Services (P) Ltd., ITA NO. 273/2009 dated September 17, 2009* in which it was held that - *"When the Assessing Officer passed the order of assessment against the respondent company, it had already been dissolved and struck off the register of the Registrar of companies under Section 560 of the Companies Act. In these circumstances, the Tribunal rightly held that there could not have been any assessment order passed against the company which was not in existence as on that date in the eyes of law it had already been dissolved. We are of the opinion that the view taken by the Tribunal is perfectly valid and in accordance with law."*

14. Therefore, in view of the facts and circumstances noted in the preceding paragraphs and also the fact that the Noticee's name has been struck-off from the RoC list. I conclude that the present adjudication proceedings initiated against the Noticee vide SCN dated March 29, 2019 cannot be proceeded with.

ORDER

15. In view of my findings noted in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby dispose of the Adjudication Proceedings initiated against Noticee i.e. Ramya Mercantile Pvt. Ltd., vide SCN dated March 29, 2019, without going into the merits of the case.

16. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: June 27, 2022 **G. Ramar**

Place: Mumbai **Adjudicating Officer**