BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: Order/GR/PU/2022-23/ 21228]

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

In respect of:

Sanyo Finance and Investments Pvt. Ltd. (**PAN: N.A**.)

In the matter of

Shonk Technologies International Ltd.,

BACKGROUND

1. An Adjudication order dated November 28, 2003 was passed against Sanyo Finance and Investments Pvt. Ltd. (herein after referred to as the "**Company/Noticee**")., and directed to pay a penalty of Rs.1 Crore under Section 15A (b) of SEBI Act, 1992. Subsequently, upon failure of the said company to pay the penalty imposed by the Adjudicating officer, Prosecution Proceedings was initiated against Rakesh Soni, under Section 24 (2) of the SEBI Act, 1992, by virtue of being the director of the said company at the relevant period of time. With regard to the same, Mr. Rakesh Soni had received summons from the Special Court on December 17, 2021 and aggrieved by the same, had filed an appeal in the Hon'ble Securities Appellate Tribunal (**SAT**), challenging the said Adjudication Order.

2. The Hon'ble SAT, after considering the arguments on both sides, vide its order dated September 21, 2022, stated that *"the impugned order is quashed in so far as the present appellant is concerned. The case is remanded back to the AO to decide the issue afresh upon giving an opportunity to the appellant to place his case. For that purpose, the appellant shall appear before SEBI/the concerned AO on October 17, 2022."* The Hon'ble SAT in the said order also observed that the Company is already said to have been struck of.

3. In this regard, the undersigned was appointed as the Adjudicating Officer ('**AO**') vide order dated October 12, 2022, under Section 19 read with Section 15-I of SEBI Act, 1992 and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter, '**Adjudication Rules**') to inquire into and adjudge under Section 15A(a) of SEBI Act, 1992, the alleged violation by the Noticee.

4. In this connection, in compliance of the Hon'ble SAT order dated September 21, 2022, the Authorized Representative (**AR**) appeared on behalf of Mr. Rakesh Soni before the undersigned on October 17, 2022 and specifically reiterated that Mr. Rakesh Soni was not representing the company and made oral submissions, wherein the AR had stated that Mr. Rakesh Soni was not the Director of the Noticee during the relevant period of violation and that he was only the auditor of the Company since 1999. In this regard, the AR also submitted the documentary proof which was placed before the SAT in the said appeal in support of his submissions/claim. Further, as requested by the ARs of Mr. Rakesh Soni, a time of one week was granted to make written submissions, in the matter. Accordingly, vide letter dated November 4, 2022, submission has been made reiterating the aforesaid oral submission of AR seeking condonation on the delayed submission of the same. The summary of the submissions made by AR are as under:

a) Service of Show Cause Notice on the company Sanyo Finance and Investments Private Ltd., and imposition of penalty against it was not proper.

b) Averment made by SEBI that service of the SCN upon the company is deemed to be service on Mr. Rakesh Soni is not correct and is against the principles of natural justice.

c) Even if it is assumed that the service of the notice was proper, which should not be taken as an affirmation of service on Mr. Rakesh Soni, the said service was not made on the actual director during the investigation period.

d) Mr.Rakesh Soni was a Director of the company till 1999 and subsequently resigned from the said position in 1999. Therefore, it is incorrect on the part of the SEBI to claim that our client was an "officer in-charge" for the purpose of the said notice.

e) Mr.Rakesh Soni was neither a Director of the Company at the time of issue of summons by the SEBI nor at the time of passing of the Impugned Order. Additionally, the same were not served on him and he was not made party to the adjudication proceedings.

f) Mr.Rakesh Soni held the position of Statutory Auditor in the Company during the relevant period, he was neither responsible for complying with any Summons served on the Company nor for the payment of penalty imposed by the SEBI vide the Impugned Order. Further, during the relevant period, the Balance Sheet as on March 31, 1999 and 2000 as well as the Profit & Loss statement for the year ending March 31, 1999 and 2000 reflected Mr. Gulshan Rai and Mr. RK Dhawan as the Directors of the company and the role of Mr. Rakesh Soni its client was merely restricted to signing of Balance Sheet as an Independent Auditor of the company.

g) With regards to the imposition of penalty, the alleged failure has taken place in 2001 and 2002 and hence such failure would be governed by the provisions of the Act prevailing on the date of alleged failure i.e. provision prior to the amendment.

ISSUES FOR CONSIDERATION AND FINDINGS

5. I have carefully perused the submissions made in the matter and documents available on record, and the issues that arise for consideration in the present case are:

   a. *Whether the status of the Noticee Company is still shown as struck off, in the MCA website?*

   b. *Whether Mr. Rakesh Soni was the Director of Sanyo Finance and Investments Pvt. Ltd. during the investigation Period and if so, he was responsible for the Non-compliance of summons by the Noticee?*

Issue a. Whether the status of the Noticee Company is still shown as struck off, in the MCA website?

6. During the course of the proceedings, it was observed from the order dated September 21, 2022 of the Hon'ble SAT that status of the Noticee was "Strike Off" and accordingly, a search was done on the website of the Ministry of Corporate Affairs ("**MCA**") to ascertain the present status of the Noticee. It was observed from the MCA website that the status of the Noticee (CIN: U65923DL1995PTC072962) is being shown as "Strike Off".

7. Pursuant to the name of a company being struck off from the RoC list and being dissolved, it will result in the company closing down completely and will not be able to perform any functions or operations, i.e., the company had ceased to exist. Consequently, the adjudication proceedings initiated against such a company will result into a nullity. Evidently, it would not be appropriate to determine liability against a company which no longer exists as on date of the current proceedings.

8. 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*".

9. 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.*"

Issue b. Whether Mr. Rakesh Soni was the Director of Sanyo Finance and Investments Pvt. Ltd. during the investigation Period and if so, whether he was responsible for the Non-compliance of summons by the Noticee?

10. It is noted from the Hon'ble SAT order dated September 21, 2022, on the said appeal of Mr. Rakesh Soni, that it had quashed the Adjudication order dated November 28, 2003 with respect to Mr. Rakesh Soni and not against Sanyo Finance and Investments Pvt Ltd., Further, the said order was remanded to decide the issue afresh. Also it is pertinent to note that the appointment of the adjudicating officer in this case mandates the undersigned to inquire and adjudicate the violation of Non-compliance of summons by the Company i.e. Sanyo Finance and Investments Pvt. Ltd. and not against Mr. Rakesh Soni.

11. In view of the fact that the Hon'ble SAT has not set aside the order against Sanyo Finance and Investments Pvt Ltd. and considering the submissions made by Mr. Rakesh Soni that he was not appearing on behalf of the company and also that no representation has been received from the company in this matter and that as per MCA record the name of the company is struck off, it is not appropriate for me to comment on the order already passed against the Sanyo Finance and Investments Pvt Ltd.,. Therefore, the issue will be examined on the basis of the material available on record, only with respect to Mr. Rakesh Soni.

12. Further, I note that, Mr. Rakesh Soni has submitted that the violation in question had taken place in 2001 and 2002 when he was not a Director of the Noticee and has also submitted that imposition of penalty, if any, should be governed by the provisions of the SEBI Act prevailing on the date of alleged failure/non-compliance. Further, I note that, Mr. Rakesh Soni has not attempted to defend the Noticee, i.e., Sanyo Finance and Investments Pvt. Ltd. in his submissions. In this regard, I also note that the Adjudication order dated November 28, 2003 was not against any individual but only against the Noticee as a body corporate and it is also silent about the individual role of Mr. Rakesh Soni with regard to the default committed by the Noticee. Therefore, I note that reconsideration of the said order dated

November 28, 2003, on a direction of remand, cannot lead to an adjudication of the role of Mr. Rakesh Soni, as it was not done in the original order. Moreover, I note that there is also no material available on record to ascertain the individual role of Mr. Rakesh Soni with regard to the default committed by the Noticee. Additionally, I also note that since the status of Sanyo Finance and Investments Pvt Ltd., is shown on the MCA record as strike off and the order dated November 28, 2022 against Sanyo Finance and Investments Pvt Ltd., has not been set aside by the Hon'ble SAT, the question of review/modification of penalty against Sanyo Finance does not arise at this stage.

ORDER

13. 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 which emanates from the Hon'ble SAT order dated September 21, 2022, without any direction.

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

Date : November 30, 2022 **G Ramar**

Place : Mumbai **Adjudicating Officer**