BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: Order/SD/KS/2022-23/17068]

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

In respect of:

Surface Finance Private Limited.
(PAN - AABCS1202L)

F-15, Lokmanya Shopping Centre,
Shivaji Chawk Station Road,
Bhayander (West), Thane,
MH – 401 101 IN

In the matter of
Investigation in the matter of M/s Esaar India Limited

Facts of the Case in Brief

1. Securities and Exchange Board of India (hereinafter be referred to as, "**SEBI**") initiated adjudication proceedings under Section 15HA of SEBI Act, 1992 (hereinafter be referred to as, the **"SEBI Act)** against **Surface Finance Private Limited. (PAN - ABCS1202L)** (hereinafter be referred to as, **"Noticee")** for the alleged violation of Section 12A (a), (b), (c) of the Securities and Exchange Board of India Act, 1992(SEBI Act) r/w Regulations 3 (b), (c), (d) & 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred as '**PFUTP Regulations**')

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer, vide communique dated August 23, 2021 under Section 19 read with Section 15-I of the SEBI Act read with

Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15HA of the SEBI Act for the aforementioned alleged violation of the provisions of law by the Noticees.

SHOW CAUSE NOTICE, HEARING AND REPLY

3. Show Cause Notices ref. SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/8/2021 dated October 20, 2021 (hereinafter referred to as '**SCN'**) were issued to the in terms of Rule 4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against her and why penalty, if any, should not be imposed on the Noticee under the provisions of section 15HA of the SEBI Act, 1992

4. The SCN with reference number SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/8/2021 dated October 20, 2021 was issued to the Noticee via Speed Post Acknowledgement Due (SPAD). However, there was no reply received from the Noticee even after 14 days, the status of the Noticee was ascertained from the Ministry of Corporate Affairs (MCA) website. It was observed that the Noticee was based in ROC-Mumbai whose status was mentioned as "**strike-off**" on the website of the Ministry of Corporate Affairs (www. mca.gov.in) I also observe that the address of the company provided in AO Communique is same as the address available on MCA website.

5. As per the Notice of Striking Off and Dissolution list, as annexure A of Form No. STK-7, which was downloaded from the MCA website, a list of 11,735 companies were attached as per the Notification issued by ROC, Mumbai in terms of sub-section (5) of Section 248 of the Companies Act, 2013 and rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.. I find that the name of the Noticee was mentioned in the said list (at sl.no. 10087 under CIN U65920MH1995PTC086257).

6. Details of Public Notices issued by the RoC-Mumbai under Section 248 of the Companies Act, 2013 in respect of the Noticee as available on the website of the Ministry of Corporate Affairs leading to the said respective Noticee being struck- off the Register of Companies is given below:-

a. **<u>Surface Finance Private Limited</u>** was struck-off pursuant to Section 248 (5) of the Companies Act, 2013, with effect from 11.09.2018 as per Public Notice No.: ROC-MUM/Section 248/2nd Drive/STK-7/7254 issued on dated 12.09.2018.

7. The Noticee has been charged with alleged violations of the PFUTP Regulations in 2011-2015. I further note that the Noticee was struck -off from the Register of Companies and dissolved with effect from 11.09.2018, pursuant to Section 248 (5) of the Companies Act, 2013, prior to issuance of SCN against the Noticee. Hence, I note that the Noticee was struck- off from the register of companies before initiation of the present adjudication proceedings.

8. The applicable provisions of Section 248 of the Companies Act, 2013 are reproduced for reference as follows:-

Power of Registrar to Remove Name of Company from Register of Companies.

248. *(1) Where the Registrar has reasonable cause to believe that—*

(a) a company has failed to commence its business within one year of its incorporation or

(b)…

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under Section 455 he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice. d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under subsection (1) of section 10A; or

(d)…..

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.

he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice

(2) *Without prejudice to the provisions of sub-section (1), a company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:*

Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

(3) *Nothing in sub-section (2) shall apply to a company registered under section 8.*

(4) *A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.*

(5) *At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved. The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:*

Provided that notwithstanding the undertakings referred to in this subsection, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.

(6) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.

(7) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies.

***250.** Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.*

9. Further, Black's Law Dictionary explains 'dissolution' as termination or winding up. It further clarifies that the dissolution of a corporation is the termination of its legal existence. Strike off essentially means removing the name of the company from the Register maintained by the Registrar of Companies. It is like closure of the company and the company will not be in existence after being struck-off and cannot perform any operations

10. In view of the fact that the Noticee was a company which was struck-off from the register of companies prior to initiation of instant proceedings in the current matter, and which consequently no longer existed at the time of initiation of proceedings. Therefore, it would not be appropriate to determine liability against such company.

11. In this regard, I place reliance on the following judgments:

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."*

Decision of the ITAT in the matter of ***M/s. Anujay Hycare Products (P) Ltd. Vs The Income Tax Officer (ITATDelhi)*** Date of Judgement/Order -

06/04/2018, Income Tax Appellate Tribunal, observed 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."

12. Further, I have checked the precedents of SEBI Orders and found that in the matters of WEBEL Power Electronics Ltd. on 16.02.2017, Rajnandi Yarns Pvt. Ltd. on 31.12.2020, and Nitin Industries Ltd.on 20.12.2017, Pincon Lifestyle Ltd on 25.02.2021, the Adjudication proceedings were dropped as the entities were struck off before the initiation of Adjudication Proceedings.

13. I further note that the SEBI Act in Section 28B states the following in respect of liability for penalty in the case of a death of a person:*" Continuance of proceedings.*

28B. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased:

Provided that, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person."

14. In view of the foregoing, the proceedings against the Noticee is abated without going into the merits of the case. Should these companies stand revived or restored at any stage in future, a decision to initiate proceedings may be taken afresh at that stage.

ORDER

15. After taking into consideration aforesaid facts and circumstances, the Adjudication Proceedings initiated against Noticee i.e. **Surface Finance Private Limited** vide SCN No. SEBI/HO/EFD1/EFD1_DRA5/P/OW/29066/8/2021 dated October 20, 2021 is disposed of.

16. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee viz. M/s Surface Finance Private Limited and also to Securities and Exchange Board of India.

Date: June 15, 2022 **SANDEEP P DEORE**
Place: Mumbai **ADJUDICATING OFFICER**