BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SRP/AE/2018-19/1597]

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 BY ADJUDICATING OFFICER) RULES, 1995, IN THE ADJUDICATION PROCEEDINGS INITIATED AGAINST SHRI VIMAL PRAKASH MITTAL [PAN: AAAPM0629B] IN THE MATTER OF GDR ISSUE BY SYBLY INDUSTRIES LTD.

BACKGROUND

1. The Securities and Exchange Board of India (*hereinafter referred to as **"SEBI"***), initiated Adjudication Proceedings against Shri Vimal Prakash Mittal *(hereinafter referred to as **"Noticee")*** for the alleged violation of the provisions of Section 12(a), (b) and (c) of the SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), and 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 *(hereinafter referred to as **"PFUTP Regulations")*** read with Section 15HA of the SEBI Act, 1992 in the matter of GDR issue by Sybly Industries Ltd. *(hereinafter referred to as **"Sybly / the Company")***.

2. SEBI conducted investigations into the GDR issue by Sybly for the period from May 01, 2008 to August 31, 2008 (hereinafter referred to as **"Investigation Period"**). The investigations, *prima facie,* revealed that Sybly had issued 1.51 million Global Depository Receipts (**GDRs**) amounting to USD 6.99 million on June 19, 2008, equivalent to 3,02,05,000 equity shares of Rs. 1 each, and the said issue was subscribed by one entity viz. Vintage FZE (now known as Alta Vista International FZE). It was observed that the subscription amount was paid by Vintage FZE by obtaining loan from European American Investment Bank AG (**EURAM Bank**) by entering into Loan Agreement dated May 30, 2008 with EURAM Bank. It was further observed that Sybly provided security towards

the loan obtained by Vintage FZE, through Pledge Agreement dated May 30, 2008 signed between Sybly and EURAM Bank, wherein Sybly pledged GDR proceeds against the loan availed by Vintage FZE for subscribing to GDRs of Sybly. Investigations observed that the aforesaid Pledge Agreement was an integral part of Loan Agreement entered into between Vintage FZE and EURAM Bank, and these agreements enabled Vintage FZE to avail the loan from EURAM Bank for subscribing GDRs of Sybly. It was alleged that the GDR issue would not have been subscribed had Sybly not given such security towards the loan taken by Vintage. Investigations observed that the Company had reported to BSE that the GDR issue of the Company has been successfully subscribed which made investors believe that the said GDR issue was genuinely subscribed. Investigations also observed that the aforesaid arrangement (viz. Loan Agreement and Pledge Agreement) was not disclosed to the public, and the Company allegedly reported misleading news to the stock exchange which contained information in a distorted manner and may have influenced decision of investors. Therefore, it was alleged that the scheme of issuance of GDRs was fraudulent. Investigations revealed that the directors of Sybly in its board meeting held on March 31, 2008 had authorized EURAM Bank to use Sybly's GDR proceeds deposited with EURAM Bank as security in connection with loan, and authorized Shri Mahesh Chand Mittal (Managing Director of Sybly) and Shri Umesh Kumar Mittal (director of Sybly) to sign any application, agreement etc. as may be required by the EURAM Bank. It was thus alleged that the Noticee being one of the directors, who approved the aforesaid board resolution, acted as party to the fraudulent scheme. Hence, it was alleged that the Noticee had violated the provisions of Section 12(a), (b) and (c) of the SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), and 4(1) of the PFUTP Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. Initially, Shri Biju. S. was appointed as the Adjudicating Officer (**AO**) in the said matter. Subsequently, the undersigned has been appointed as AO vide a communication of SEBI dated July 06, 2018, to inquire into and adjudge under

Section 15HA of the SEBI Act, 1992 the aforesaid violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD-4/AJ/BS/AE/OW/18695/1/2018 dated July 02, 2018 *(hereinafter referred to as **"SCN")*** was issued to the Noticee in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 *(hereinafter referred to as **"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 should not be imposed under Section 15HA of the SEBI Act, 1992 on the Noticee for the alleged violation of the Section 12(a), (b) and (c) of the SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), and 4(1) of the PFUTP Regulations.

5. Vide letter dated July 25, 2018, Sybly informed that Shri Vimal Prakash Mittal (Noticee) had passed away in May 2011. In this regard, a copy of Death Certificate of the Noticee was submitted by Sybly as proof of demise.

6. I note that the Hon'ble Supreme Court's Order in the case of *Girija Nandini vs. Bijendra Narain Choudhury (AIR 1967 SC 2110)* has stated that in case of personal actions, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives, and in such cases the maxim "*actio personalis moritur cum persona"* (personal action dies with the death of the person) would apply, and the said view was subsequently followed by SEBI in the case of M/s. Sakthi Finance Limited, wherein Adjudication Proceedings against Late N. Mahalingam were abated. In the present case, I note from the copy of the Death Certificate dated May 25, 2011 issued by the Municipal Corporation of Delhi that the Noticee had passed away on May 16, 2011. I observe that the Noticee had passed away even before the initiation of the present Adjudication Proceedings against him.

7. Therefore, by relying on the aforementioned Order of Hon'ble Supreme Court, I am of the view that the Adjudication Proceedings initiated against the Noticee will not survive and is liable to be abated without going into the merits of the

case. Consequently, no penalty is imposed on the Noticee, who has since deceased and the Adjudication Proceedings shall stand abated.

8. Accordingly, the aforesaid Adjudication Proceedings initiated against the Noticee viz. Late Shri Vimal Prakash Mittal vide SCN No. EAD-4/AJ/BS/AE/OW/18695/1/2018 dated July 02, 2018 are disposed of without further going into the merits of the case.

9. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this Order is being sent to Sybly (as the Noticee was a director of the Company) and also to SEBI.

Date : November 29, 2018 **Satya Ranjan Prasad**

Place: Mumbai **Adjudicating Officer**