

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. Order/AS/VC/2024-25/31280-31281]**

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

**In respect of**

<b>Noticee No.</b>	<b>Name and PAN of the Noticee</b>
1	<b>Soumen Mitra</b> (PAN – BVOPM3943A)
2	<b>Sanjoy Kumar Dey</b> (PAN – AYAPD4581B)

**In the matter V B Industries Limited**

**Order of the Hon'ble SAT**

1. Vide Adjudication order dated January 31, 2023 (hereinafter referred to as '**AO order**'), penalties of ₹6,00,000/- (Rupees Six Lakh Only) each was imposed on Soumen Mitra (**Noticee-1**) and Sanjoy Kumar Dey (**Noticee-2**) (hereinafter collectively referred to as '**Noticees**') under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') for violations of provisions of Sections 12 A (a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**').
2. Aggrieved by the aforesaid AO order, the Noticees filed an appeal in the Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**'), vide Appeal No. 370 of 2023. In view of the facts and circumstances of the case, the Hon'ble SAT, vide order dated August 05, 2024, remanded the matter back to SEBI for fresh reconsideration in accordance with law by granting an opportunity to the appellants to produce any document and to make any submissions.

### **Appointment of Adjudicating Officer**

3. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') vide order dated August 14, 2024, appointed the undersigned as Adjudicating Officer, under Section 15-I (1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") read with Section 19 of the SEBI Act, to adjudicate upon the alleged violation under Section 15HA of the SEBI Act.

### **Personal Hearing and Reply**

4. In accordance with the aforesaid directions of the Hon'ble SAT, vide notice dated September 04, 2024, an opportunity to produce any document and to make any submissions in the matter by September 20, 2024 and an opportunity of personal hearing was granted to the Noticees on September 25, 2024. Vide email dated September 13, 2024, Noticees requested for inspection of the documents in the matter, which was granted to them on September 24, 2024. Further, vide email dated October 10, 2024, Noticees were provided another opportunity of hearing in the matter on October 23, 2024. Thereafter, vide email dated October 17, 2024, Noticees submitted their common reply dated October 16, 2024. On October 23, 2024, the Authorised Representatives (hereinafter referred to as '**ARs**') of Noticees appeared for the scheduled hearing in person at SEBI and reiterated the submissions made vide letter dated October 16, 2024.
5. The relevant extract of the common replies submitted by Noticees vide letter dated October 16, 2024 is as under:

*(a) "Admittedly, the investigation did not establish any connection between the purported buy and sell entities. Furthermore, during the inspection conducted on 24-09-2024, it was revealed that the investigative authority did not verify the attachments to the DIR-12 forms of the 2 Companies. SEBI has informed us that*

*it does not have these attachments on record. It is crucial to emphasize that the attachments are an integral part of the DIR-12 form, and their absence raises significant concerns about the thoroughness of the investigation, especially considering that SEBI has made the directors of these 2 strike-off Companies parties to the Show Cause Notice.*

*.....*

- (b) It is strongly refuted and denied that the Noticees have ever given their consent and approval to become the directors of any company including the 2 Companies. The Noticees after receipt of the SCNs in the captioned scrip as well as in the scrip of Edynamics Solutions Limited (the Noticees are also parties to said matter, matter remanded back to SEBI by the Hon'ble SAT) came to know about misuse of their names, details and documents.*
- (c) On perusal of the Investigation Report and annexures thereto and surfing of MCA website, it become abundant clear that these 2 Companies since their incorporation have not filed statutory returns and therefore the names of these 2 Companies have been struck off by the Registrar of Companies, West Bengal.*
- (d) On further perusal of the Annexure 15 in the matter of Edynamics Solutions Limited (the Noticees are also parties to the SCN thereto) and documents provided during the inspection held on 24-09-2024, it is revealed that the subscribers of the Memorandum and Articles of Association of 4 Companies including 2 Companies were the following persons:*
  - a. Mr. Barun Kumar Das*
  - b. Mr. Gouri Shankar Mandal*
  - c. Mr. Pratap Chakrabarty*
  - d. Mr. Anup Kumar Deb*
  - e. Mr. Avijit Shah (SEBI has passed an Order and exonerated him as his name has been misused)*
  - f. Mr. Chandan Pati*
- (e) It is to be noted that names of these entities have been misused by one Mr. Devesh Upadhyaya and he had admitted the same before the Income Tax*

*Authorities. The Income Tax Authorities have recorded the statement of Mr. Devesh Upadhyaya on oath on 22-09-2017.*

- (f) *It is further submitted that as per sub-Section 5 of Section 152 of Companies Act, 2013, a person appointed as a Director shall not act as a Director unless he gives his consent to hold office as Director and such consent has to be filed with the Registrar of Companies within 30 days of his appointment in such manner as may be prescribed. The Sub-Section 5 of Section 152 of Companies Act, 2013 is reproduced as under:*

*“A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment in such manner as may be prescribed.”*

*The prescribed manner is specified in Rule 8 of the Companies (Appointment and Qualification of Directors) Rules, 2014 which states as under:*

*“Every person who has been appointed to hold the Office of a Director shall on or before the appointment furnish to the Company a consent in writing to act as such in Form DIR-2.*

*Provided that the Company shall, within thirty days of the appointment of a Director, file such consent with the Registrar in Form DIR-12 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.”*

*On taking Public Search of the abovementioned Companies from MCA website it is revealed that the Consent letter (in Form DIR-2) attached to Form DIR-12 is wrongly filed. For instance, in case of Appointment of Soumen Mitra and Sanjoy Kumar Dey i.e. the Noticees herein as Director in Goldensight Vinimay Private Limited the Consent letters filed are on behalf of Barun Kumar Das and Gauri Sankar Mandal and not on behalf of Soumen Mitra and Sanjoy Kumar Dey. Moreover, the Consent letter wrongly filed are not signed documents. The same DIR-12 provides for resignation from Directorship of Barun Kumar Das and Gauri Sankar Mandal.*

- (g) *It is further submitted that the filed DIR-12 is Appointment Letter as an attachment and the said Appointment Letter is to be issued by the Company to the incoming*

*Director. However, in the Dir-12 filed, the Appointment letter is addressed by Barun Kumar Das and Gauri Sankar Mandal to the Company. Further, no Board Resolution recommending and approving the Appointment of Soumen Mitra and Sanjoy Kumar Dey or approving the Resignation of Barun Kumar Das and Gauri Sankar Mandal is attached to the DIR -12 filed with Registrar of Companies. Thus, it is abundant clear that the names, details and documents of the Noticees have been grossly misused without the consent, knowledge and approval of the Noticees. It is undoubtedly clear that the Noticees are not the directors of Goldensight Vinimay Private Limited.*

- (h) *Similarly, in case of M/s Onceover Dealtrade Private Limited, the Noticees are shown to have been appointed as Directors vide Form DIR -12 dated 31-08-2014, However, as per public search taken from MCA website it is revealed that the Consent Letter dated 21-08-2014 to act as Director in Form DIR -2 as attached in Form DIR-12 are in the name of Mr. Pratap Chakrabarty and Mr. Arup Kumar Deb and Appointment Letter dated 21-08-2014 are also in the name of Mr. Pratap Chakrabarty and Mr. Arup Kumar Deb. The Noticees further submit that the Consent letter in Form DIR-2 and Appointment Letter both dated 21-08-2014 are not signed documents. The Noticees further submit that the Appointment Letter is to be issued by the Company to the Director however, the Appointment letter attached to the DIR-12 is addressed by Mr. Pratap Chakrabarty and Mr. Arup Kumar Deb to the Company. The said Form DIR-12 dated 31-08-2014 also provide for the resignation of Mr. Pratap Chakrabarty and Mr. Arup Kumar Deb. Thus, it can be concluded without any doubt that the Noticees have never provided their consent and approval to be directors of M/s Onceover Dealtrade Private Limited.*
- (i) *The Noticee respectfully submits that, during the relevant period, significant deficiencies in the system allowed the fraudsters to exploit vulnerabilities, resulting in the misuse of the Noticees' names and documents. Specifically, the Instruction Kit for eForm DIR-12 indicated that an eForm would be automatically approved if submitted by an existing company (STP), while new companies (Non-STP) would require processing by the Office of the Registrars. The Noticees were fraudulently implicated in this matter, with no direct involvement or wrongdoing on their part. It is crucial to emphasize that the misuse of their identities and the*

*existing systemic lacunae were the primary factors enabling this fraudulent activity. The Noticees were the victims of circumstances beyond their control, resulting from deficiencies in the regulatory framework.*

- (j) Further, the Noticees would like to place reliance on Sanjeet Kumar Sharma Vs SEBI ( Appeal No. 596 of 2022 dated 09-10-2023) by the Hon'ble SAT wherein it was held that*

*"10. In view of the aforesaid evidence which has been filed by the appellant, we are of the opinion, that entries made in the MCA portal showing the appellant as a Director cannot be taken as the gospel truth when such entries are disputed and, therefore, SEBI is required to consider other additional evidence to support their case that the appellant was a Director. Additional evidence could be in the form of Board Resolutions showing his presence, appointment letter, acceptance letter and such other documentary evidence which can be obtained from the Company itself.*

*11. In the light of the aforesaid, we are of the opinion, that when a specific stand has been taken by the appellant from the inception that he was never a Director in which case it was the obligation of the respondent to get additional evidence to prove that the appellant was a Director in the Company. In the absence of additional evidence, we are of the opinion, that the impugned order against the appellant cannot be sustained.*

*12. Considering the aforesaid, the impugned order in so far as it relates to the appellant is quashed. The appeal is allowed. The matter is remitted to the WTM to decide the matter afresh after considering the evidence that has been filed by the appellant before this Tribunal and such other evidence that the WTM may obtain from further enquiry regarding the directorship of the appellant. In the circumstances of the case, parties shall bear their own costs."*

- (k) The Noticees submit that their mere appearance as directors of the two companies on the MCA website does not, in itself, establish their actual status as directors. Information displayed on the MCA website, which has not been verified by the Registrar of Companies, cannot be regarded as conclusive evidence.*

*It is imperative for SEBI to prove, beyond a reasonable doubt, that the Noticees are or were indeed the directors of the two companies in question. In the fact and*

*circumstances of the present case, the burden of proof now lies with SEBI to demonstrate the veracity of such claims as made in the IR as well as in the SCN.*

- (l) It is very pertinent to mention that the Ld. AOs, SEBI while inquiring other matters relating to fraudulent trading in illiquid stock options, have themselves found that name, details and documents of Mr. Sudeb Ghosh, Mr. Avijit Shah and Mr. Rajib Rajbangshi have been misused. The names of all these entities had been misused by none other than Mr. Devash Upadhyaya.*
- (m) Please further note that Mr. Devesh Upadhyaya in his statement has further accepted that he had used the names and details of several entities / persons for the purposes of Jamakharchi / accommodation entries of bogus LTCG and for trading in the shares of various companies.*
- (n) It is further to be noted that the Income Tax Department in the replies to RTI Application which was made by Mr. Avijit Shah has confirmed about the recording of the Statement of Mr. Devesh Upadhyaya on oath on 22-09-2017. The Department has further clarified in the said RTI Reply that the Department has not taken any action against those entities whose names are mentioned in the Statement on oath of Mr. Devesh Upadhyaya.*
- (o) It is further submitted that all the Noticees are innocent and they were totally unaware about misusing of their names, details and documents.*
- (p) It is further submitted that the Noticees are not recollecting that they have ever signed any documents to become directors of 2 Companies. Indeed, the Noticees are not much educated and have very negligible knowledge of English language. It seems that someone has forged their signatures.*
- (q) The Noticees have no experience in the securities market and never opened any trading as well as demat account with any of SEBI Registered Broker / Depositories Participant to execute trades in the securities market in their respective names or in any other name including the names of 2 Companies. Indeed, they never visited the office of any Broker. It is further submitted that the Noticees have made any payment to any person to purchase the shares of any 2 Companies.*

- (r) SEBI has now provided the copies of the KYC documents of 2 Companies to the Noticees. On perusal of the same, it is clear that the signatures purportedly of the Noticees on the KYCs documents are materially different from the actual signatures of the Noticees herein. The Noticees request that their signatures to be sent to forensic lab to verify with the purported signatures of the Noticees on KYC documents so that it can be ascertained that how Member Brokers in connivance with entities had opened bogus trading and demat accounts in the name of 2 companies, forged the signature of the Noticees and failed to verify the credentials of 2 companies.
- (s) I further request your goodself to use your power, provided under Section 15-I (2), to Summons the Broker and other persons acquainted with the facts and circumstances to the present matter and find out who had actually opened the accounts in the names of 2 Companies by misusing the Noticees' names, details and documents and further executed trades. I further request for cross examination with the 2 Member Brokers.
- (t) The Noticees have not violated the provisions of SEBI Act and SEBI PFUTP Regulations.
- (u) Since, Noticees are totally unaware about the transactions executed in the names of 2 Companies wherein they were allegedly shown directors, the Noticees are not making submissions on the merit of the case.
- (v) The Noticees further submit that the vicarious liability on the directors of a company cannot be imputed automatically in the absence of any statutory provision to that effect (and therefore by implication, without following any specified procedure in such statutory provision). In the SCN, the provisions of Section 27(1), SEBI Act has not been applied and /or mentioned, whose proviso permits the accused person to present a defense that the contravention was despite the said person knowledge and involvement in that matter. Without prejudice to the aforesaid, it is submitted that vicarious liability cannot be imputed against the Noticees herein in the present matter as they are denying that they were/are directors of the Company and had any role in the entire scheme to manipulate the scrip of VBIL. Further, SEBI has failed to bring on record vital



*documents which could have established that the Noticees were/are the directors of 2 companies or no.*

- (w) It is further submitted that for the scheme as alleged in the SCN requires special skills and knowledge of the securities market. The Noticees herein are neither having such skills nor having any knowledge of securities market to execute the allege scheme to manipulate the scrip of the Company.*
- (x) It is further submitted that the Noticees herein have no connection of whatsoever nature with the purported Noticees who had circulated the SMSs to offload the shares of the Company in the market.*
- (y) It is further submitted that similar modus operandi in the scrip of Edynamics Solutions Limited has been used wherein SEBI has separately investigated the matter and the Noticees herein are parties to that case also.*
- (z) The Noticees are not in a position to take legal action against the entities who had misused their names, details and documents as the Noticees belongs to very poor families and hardly earns to meet their daily needs. The Noticees are from remote areas of West Bengal. They have no knowledge of securities law as they have never traded in the market. Further, the investigation in the matters relating to Securities Markets requires some specific skill and knowledge and it cannot be expected from the Police Authorities of a remote village of West Bengal that they can investigate the matter properly without being biased. Further, the Noticees cannot take leave from their respective employment otherwise they have to sacrifice their daily wages / salaries. However, it is once again requested to SEBI to investigate the matter in depth and find out who had misused the names, details and documents of the Noticees and traded in the accounts of 2 Companies. It is a matter of concern that SEBI has initiated more than 2 proceedings against these 2 Companies and/or the directors of these 2 companies i.e. the Noticee herein.”*

### **Consideration of Issues and Findings**

6. It was alleged in the SCN that Noticee-1 and Noticee-2 as Directors of Onceover Dealtrade Pvt. Ltd. and Goldensight Vinimay Pvt. Ltd. created artificial volume and gave a false and misleading appearance of trading in the scrip of V B

Industries Limited (hereinafter referred to as 'VBIL'), so as to enable net-sellers to exit in the scrip of VBIL which was not very liquid. Therefore, it was alleged that the Noticees have violated the provisions of Sections 12 A (a), (b), (c) of SEBI Act and Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations and the same was upheld in the Adjudication Order dated January 31, 2023.

7. In the instant matter, the Hon'ble SAT, inter alia, observed as follows:

*"8. We have perused Form DIR-12 as per Exhibit – H produced by the appellants. It does not contain the consent letters signed by the appellants. It leads to a prima facie inference that appellants may not be having any clue of they being appointed as directors of the said companies. In any event, an order leading to civil consequence must precede with a proper enquiry and full opportunity to the noticees to defend their case.*

*9. In the facts and circumstances of this case, in our opinion, the matter requires reconsideration in the hands of SEBI by granting an opportunity to the appellants to place their say before SEBI in accordance with law."*

8. In response to the allegations, Noticees have submitted that as per sub-section 5 of Section 152 of the companies Act, 2013, a person appointed as a director shall not act as a director unless he gives his consent to hold office as director and such consent has to be filed with the Registrar of Companies within 30 days of his appointment, however, Noticees have never given their consent and approval to become the directors of any company including the 2 companies and their names, details and documents were misused. Noticees submitted that in case of appointment of Soumen Mitra and Sanjoy Kumar Dey as Director in Goldensight Vinimay Private Limited, the consent letters were filed on behalf of Barun Kumar Das and Gauri Sankar Mandal and not on behalf of Soumen Mitra and Sanjoy Kumar Dey and the consent letters are not signed documents. The same DIR-12 provides for resignation from directorship of Barun Kumar Das and

Gauri Sankar Mandal. Further, no Board Resolution recommending and approving the appointment of Soumen Mitra and Sanjoy Kumar Dey or approving the resignation of Barun Kumar Das and Gauri Sankar Mandal was attached to the DIR -12 filed with Registrar of Companies. Thus, the names, details and documents of the Noticees have been misused without their consent, knowledge and approval.

9. Noticees further submitted that similarly, in case of M/s Onceover Dealtrade Private Limited, the consent letters dated August 21, 2014 to act as Director in Form DIR-2 as attached in form DIR-12 were in the name of Mr. Pratap Chakrabarty and Mr. Arup Kumar Deb and consent letters are not signed documents. The said form DIR-12 also provide for the resignation of Mr. Pratap Chakrabarty and Mr. Arup Kumar Deb. Thus, the Noticees have never provided their consent and approval to be directors of M/s Onceover Dealtrade Private Limited.
10. Further, Noticees submitted that they are not much educated and don't have skills and knowledge of the securities market. They have no experience in the securities market and never opened any trading as well as demat account with any of SEBI registered broker / depositories participant to execute trades in the securities market in their respective names or in any other name including the names of 2 companies. They were totally unaware of the transactions executed in the names of 2 companies and about misuse of their names, details and documents.
11. Noticees further submitted that the vicarious liability on the directors of a company cannot be imputed automatically in the absence of any statutory provision to that effect (and therefore by implication, without following any specified procedure in such statutory provision). In the SCN, the provisions of Section 27(1) of SEBI Act has not been applied and /or mentioned, whose proviso permits the accused person to present a defense that the contravention was

despite the said person's knowledge and involvement in that matter. Vicarious liability cannot be imputed against the Noticees in the present matter as they are denying that they were/are directors of the Company and had any role in the entire scheme to manipulate the scrip of VBIL.

12. I find from the material available on record that the form DIR-12 (i.e. particulars of appointment of directors and the key managerial personnel and the changes among them) filed by Goldensight Vinimay Private Limited with Registrar of Companies did not contain the Consent given by the Noticees to act as a director of the said Company. The form DIR-2 (i.e. Consent to act as a Director of a Company) as attached with the form DIR-12 was in name of Barun Kumar Das and Gauri Sankar Mandal and the same was unsigned. I also find from the form DIR-12 filed by Onceover Dealtrade Private Limited that the form DIR-2 was in name of Pratap Chakrabarty and Arup Kumar Deb which was also unsigned and the Consent to act as a director of the said Company was not given by the Noticees as per records. Thus, it appears that the Noticees had not given their consents to act as directors of the said two companies. Therefore, I am inclined to take a lenient view and give the benefit of doubt to the Noticees.

13. Further, Noticees have contended that the provisions of Section 27(1) of SEBI Act were not applied in the SCN, hence the vicarious liability on the directors of a company cannot be imputed automatically in the absence of any statutory provision to that effect. Section 27(1) of SEBI Act provides that the person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable. In this regard, I find that neither the provisions of Section 27(1) of SEBI Act nor any other applicable relevant provisions for making the directors of the companies liable were not invoked in the SCN. Therefore, in absence of invoking the provisions of Section 27(1) of SEBI Act or any other applicable relevant provisions of any law for making the Noticees liable for contravention by the said

companies and giving them an opportunity to present their defense in this regard, the Noticees cannot be deemed to be guilty of the contravention and cannot be held liable for the violation done by the said companies. Hence, the submissions of the Noticees are tenable.

14. Therefore, in view of the abovementioned observations and findings, I note that the other issues and submissions of the Noticees do not merit consideration and accordingly, I hold that the allegations made against the Noticees as Directors of Onceover Dealtrade Pvt. Ltd. and Goldensight Vinimay Pvt. Ltd. for violation of the provisions of Sections 12 A (a), (b), (c) of the SEBI Act and Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations do not stand established.

### **Order**

15. Considering all the facts and circumstances of the case including the submissions of the Noticees and findings elaborated hereinabove, the factors mentioned in 15-J of the SEBI Act, 1992 and exercising the powers conferred upon me under Section 15-I of SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, I hereby dispose of the Adjudication Proceedings initiated against the Noticees viz. Soumen Mitra and Sanjoy Kumar Dey vide Show Cause Notice dated November 09, 2021, without imposing any penalty.
16. In terms of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticees and also to the SEBI.

**Place: Mumbai**

**Date: March 20, 2025**

**ASHA SHETTY**

**ADJUDICATING OFFICER**