BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO.: Order/CK/RS/2021-22/ 14519)

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:

Shri Anthony Eugene Gomes

(PAN: AEMPG3090A)

In the matter of dealings in Illiquid Stock Options at the Bombay Stock Exchange

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") observed large scale reversal of trades in the Stock Options segment of the Bombay Stock Exchange (hereinafter referred to as "BSE") leading to the alleged creation of artificial volume in the stock options segment. In this regard, SEBI conducted an investigation into the trading activity in the illiquid Stock Options segment at the BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as "Investigation Period").

2. It was observed during the course of investigation that a total of 2,91,643 trades comprising 81.38% of all the trades executed in the Stock Options Segment at BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. It was observed that Anthony Eugene Gomes (hereinafter referred to as "Noticee") was one such client whose reversal trade(s) involved squaring off open positions with a significant price difference without any basis for such change in the contract price. The aforesaid reversal trade(s) allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of

regulations 3(a), (b), (c), (d) and regulations 4(1),4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations, 2003").

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "Adjudication Rules") vide order dated July 02, 2021 to inquire into and adjudge under section 15HA of the SEBI Act against the Noticee for the alleged violation of the aforesaid provisions of PFUTP Regulations, 2003.

SHOW CAUSE NOTICE AND REPLY

4. A Show Cause Notice bearing reference no. SEBI/HO/CDMRD/DEA/ OW/2021/15648/1 dated July 19, 2021 (hereinafter referred to as "SCN") was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee under Section 15HA of the SEBI Act for the violations alleged to have been committed by the Noticee.

5. Since the SCN was duly delivered, a Hearing Notice bearing reference no. SEBI/HO/CDMRD/DoP/P/OW/2021/32794/1 dated November 16, 2021 was issued to the Noticee, giving an opportunity of personal hearing.

6. The undersigned was informed vide letter dated November 30, 2021 that the Noticee had passed away on June 02, 2020. Copy of a death certificate dated June 24, 2020 issued by Kolkata Municipal Corporation was produced along with the said letter. The same has been verified for details from the website of Kolkata Municipal Corporation. It is observed that the Noticee expired before initiation of the present adjudication proceedings against him.

7. In this regard, it is relevant to note that section 15-I (1) of the Securities and Exchange Board of India Act, 1992 states as under:

   "For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G,15H, 15HA and 15HB, the Board may appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty".

8. I also note that in **Alamelu Veerappan vs. Income Tax Officer** (Writ Petition No.30060 of 2017), Hon'ble Madras High Court, *inter-alia*, observed that *"The issue, which falls for consideration, is as to whether the impugned notice under Section 148 of the Act issued in the name of the dead person – the said Mr. S. Veerappan is enforceable in law and the subsidiary issue being as to whether the petitioner, being the wife of the said Mr. S. Veerappan, can be compelled to participate in the proceedings and respond to the impugned notice. The fact that the said Mr. S. Veerappan died on 26.1.2010 is not in dispute. If this fact is not disputed, then the notice issued in the name of the dead person is unenforceable in the eye of law (*emphasis supplied*)."*

9. Further, Hon'ble Securities Appellate Tribunal has held in **Chandravadan J Dalai Vs. SEBI** that "*The appeal abates since the appellant during the pendency of the appeal died on 29th November, 2004. The appeal accordingly abates. The penalty imposed on the original appellant being personal in nature also abates".*

10. In the matter under consideration, the Noticee expired before the issuance of SCN and therefore, an opportunity of personal hearing cannot be provided to the person concerned. Since the Noticee is non-est and the notice issued in the name of the dead person is unenforceable in the eye of law, I am of the view that the adjudication proceedings initiated against the Noticee do not survive and are liable to be abated without going into the merits of the case. Consequently, no penalty is

imposed on the Noticee who is deceased and the Adjudication Proceedings against the Noticee stand abated.

ORDER

11. After taking into consideration all the facts and circumstances of the case, the Adjudication Proceedings initiated against the Noticee, viz. Late Shri Anthony Eugene Gomes (PAN - AEMPG3090A), vide SCN bearing reference no. SEBI/HO/CDMRD/DEA/OW/2021/15648/1 dated July 19, 2021 are disposed of.

12. In terms of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee/ his legal representative and also to SEBI.

DATE: December 17, 2021 **CHHAVI M KAPOOR**

PLACE: MUMBAI **ADJUDICATING OFFICER**