BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO: ORDER/Order/RB/SM/2022-23/20857)

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:

Utkarsh Agarwal Family Trust
PAN: AAATU0893R
41 B B Ganguly Street Central Plaza Building
3rd Floor Room C1
Kolkata, West Bengal - 700012

In the matter of

Dealing in illiquid stock options at BSE

FACTS OF THE CASE

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 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 2,91,744 trades comprising 81.4% of all the trades executed in the Stock Options Segment by various persons/entities at BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract. In view of the large scale reversal of trades that were observed in the Illiquid Stock Options segment at BSE, it was alleged that these trades were non-genuine in nature.

3. It was observed that Utkarsh Agarwal Family Trust (hereinafter referred to as '**Noticee**') was one of the various entities which had indulged in the execution of the non-genuine trades in the Stock Options Segment at BSE during the above referred investigation period. It was observed that the Noticee had entered into reversal trades with its counterparties which involved squaring off

transactions with significant difference in sell value and buy value of the transactions. It was therefore alleged that Noticee had executed the reversal trades, which were non-genuine in nature and have created false or misleading appearance of trading in terms of creation of artificial volume in the Stock Options segment at BSE and therefore, it is alleged that the Noticee has violated the provisions of regulations 3(a), (b), (c), (d) and regulation 4(1), 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'). In view of the above reasons, adjudication proceedings were initiated against the Noticee under the provisions of section 15 HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer, vide order dated July 02, 2021 under section 19 read with section 15-I of the SEBI Act and 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 the alleged violation of the aforementioned provisions of law by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Show Cause Notice (No. SEBI/HO/EFD1/DRA1/OW/P/2021/23049/1) dated September 08, 2021 (hereinafter referred to as **'SCN'**) was issued to the Noticee 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 the Noticee and why penalty, if any, should not be imposed on the it under the provisions of section 15HA of the SEBI Act.

6. The SCN issued to the Noticee, *inter alia* mentioned/alleged the following-
   a. *The trades entered by the Noticee were reversed on the same date with same counterparty at a substantial price difference without any basis for significant change in the contract price which indicates that these trades are artificial and are non-genuine in nature.*
   b. *During the investigation period, 2 trades for 1,36,000 units were executed by the Noticee in the said contract on May 21, 2015.*
   c. *While dealing in the said contract on May 21, 2015, at 13:29:19 hrs, the Noticee entered into 1 sell trade with counterparty Fastner Machinery Dealers Pvt. Limited, for 68,000 units at ₹12.5 per unit. At*

13:29:26 hrs, the Noticee entered into a buy trade with the same counterparty for 68,000 units at ₹7.5 per unit.

d. *The Noticee's two trades while dealing in the above said contract during the investigation period allegedly generated artificial volume of 1,36,000 units, which made up 10.24% of total market volume in the said contract during this period.*

e. *In view of the foregoing, it is alleged that Noticee, by indulging in execution of non-genuine reversal of trades in Stock Options with same entities on the same day, created false and misleading appearance fo trading in stock options and therefore, allegedly violated Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) of PFUTP Regulations, 2003.*

7. The SCN issued to the Noticee was delivered by post at the address of the Noticee on September 17, 2021. Copy of the notice was also sent to the noticee via email dated September 20, 2021. The replies of the Noticee, dated December 08, 2021 and December 28, 2021, are submitted by Shri Vinod Kumar Agarwal, the former trustee of the Noticee Trust. An opportunity of personal hearing was granted to the Noticee, which was attended by the Noticee's Authorized Representative - Shri Mukesh Agarwal. The submissions made by the Noticee in its written replies were reiterated during the course of the personal hearing. The said replies *inter alia* record the following submissions:

   (i) The Show Cause Notice dated 08/09/21 was served upon the Trust on 17th September 2021 by Registered Post.

   (ii) The said Trust has been dissolved on 2nd April 2019.

   (iii) The said Trust, being an artificial person, is created and governed by applicable laws and after the completion of its dissolution, there is no existence of such entity further.

   (iv) The same was held in the matter of Adjudication order in the matter of Venus Power Ventures (India) Ltd. wherein the common Show cause Notice (SCN) was issued on March 15, 2015 to the concerned 37 parties to proceed 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. It was found that out of these above 37 entities, the 4(four) entities were the Companies namely 1) Cementex India Pvt. Ltd., 2) Leha Power Pvt. Ltd., 3) KCM Infrastructure Pvt. Ltd., and 4) I K projects Pvt. Ltd., and wherein the status is shown as " Strike Off " as per Ministry of Corporate Affairs ('MCA') website, hence the SCNs with regard to them were disposed of by passing separate orders. Though the SCN in above cases were issued in March 2015 i.e. before the companies were being strike off as per the MCA status, the proceedings weren't initiated or held in 2021, since the said 4 companies were "strike off" in the year 2017 as per the MCA master data.

(v) In this case the said Trust is already dissolved on 2nd April 2019 i.e. much before the date of the SCN issued to the said Trust i.e. on 08/09/2021, hence the proceedings against the said dissolved Trust cannot be initiated and the said issued SCN is termed to be bad in law and invalid and that any proceedings against the said dissolved Trust be abated/discontinued.

(vi) Calcutta High court in the case of Transway Wine Pvt. Ltd. (W.P.O. 968 of 2021 dtd 5/10/21) opined that impugned notice is quashed solely on the ground that the impugned notice was issued in the name of non-existing company. The Supreme Court in 2017, in the case of CIT New Delhi (Service Tax) vs M/s Spice Enfotainment ltd. held that framing of assessment against a non existing entity/person goes to the root of the matter which is not a procedural irregularity but a jurisdictional defect as there cannot be assessment against a dead person.

8. In support of its contention that the Noticee Trust has been dissolved, copy of the Memorandum of Dissolution & Distribution dated April 02, 2019 made between Sri Vinod Kumar Agrawal and Smt Vinita Agrawal (trustees of the Noticee Trust) has been enclosed in the reply dated December 08, 2021 filed by Shri Vinod Kumar Agrawal on behalf of the Noticee Trust. The said Deed inter alia states the following – *"That Mr. Utkarsh Agarwal, the sole beneficiary has attained the age of maturity i.e. 18 years as on 20.12.2017 and the said period of eighteen years has expired ,*

That Sri Vinod Kumar Agrawal and Smt Vinita Kumar Agrawal, the trustees have decided to dissolve the trust & distribute the trust fund & hand over such proceeds/assets of the trust to the sole beneficiary Mr. Utkarsh Agarwal."

9. In the aforesaid reply dated December 08, 2021, copy of an email sent by Shri Vinod Kumar Agarwal to Income-tax Department is also enclosed. The said email *inter alia* conveys to the Department that *"…Please be informed that UTKARSH AGARWAL FAMILY TRUST, PAN AAATU0893R , sole beneficiary – Mr. Utkarsh Agarwal has been dissolved on 02/04/2019. A proof of such dissolution is annexed herewith. As the said Trust has been dissolved, please treat the PAN number & card surrendered for all future purposes."*

10. Subsequently vide emails dated October 18, 2022, the ex-trustee of the Noticee Trust forwarded a copy of the Indenture by which the Noticee Trust was created. Extracts from the said Indenture dated April 10, 2000 dealing with objects of the trust and its extinguishment are reproduced below:

"For a period of 18 (Eighteen) years from the date thereof (i.e. the date of trust deed), the trustees may either accumulate the net income of the trust or may pay, appropriate or apply the whole or such part of the income from the trust fund as the trustees may in their absolute discretion, think fit for the maintenance, education (including education in foreign countries and expenses of going to such foreign countries and return), medical expenses, marriage and other social functions, insurance premium on the lives of the said beneficiaries…

<u>On the expiration of 18 years</u> from the date hereof or at any time after that as the trustees may, in their absolute discretion, think fit to do so (that is the date of maturity or termination of trust), the trustees shall completely divide the trust fund…

…the trustees shall have absolute discretion to completely distribute the whole trust fund include the accumulated income thereof after the expiry of two years but prior to the expiry of the said period of 18 years from the date hereof and in the event of the trustee/trustees so deciding the distribution shall be so effected individually, severally, or completely which in the judgment of the trustee/trustees would be in the best interest in the carrying out or in furtherance of the objects of the trust and with such complete distribution of trust fund including the accumulated income thereof, the trust shall come to the end i.e. shall cease to exist.

…

The trustees may dissolve the trust, at any time by an unanimous decision in writing after transferring the assets of the trust to the beneficiaries (or to their legal representatives) in terms of this Deed."

(emphasis supplied)

11. The ex-trustee of the Noticee Trust has also submitted, vide email dated October 18, 2022, copy of the letter submitted to Income-tax Department informing that the trust has been dissolved on April 02, 2019 and that all assets have been transferred to the beneficiary Mr. Utkarsh Agarwal. The letter also states that the PAN card may be treated as surrendered and records that the PAN card is enclosed. The said letter carries a stamp of acknowledgment of receipt by the Income-tax Department.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have taken into consideration the facts and circumstances of the case and the evidence available on record. I have also perused the submissions made by the Ex-trustee of the Utkarsh Agarwal Family Trust. I find that the Noticee stood dissolved in terms of the Memorandum of Dissolution dated April 02, 2019 executed for Utkarsh Agarwal Family Trust. In terms of Section 77(a) of the Indian Trusts Act, 1882, which governs the extinction of Trusts, a trust is extinguished, when its purpose is completely fulfilled. Hence, based on the above observations, it is evident that the Noticee i.e Utkarsh Agarwal Family Trust stood extinguished, with effect from April 02, 2019, and was not in existence as a legal entity when the instant adjudication proceedings were initiated against the Noticee vide SCN dated September 08, 2021. In view of the above facts, I am inclined to dispose of the proceedings initiated against the Noticee viz. Utkarsh Agarwal Family Trust vide SCN dated September 08, 2021.

ORDER

13. In view of the above observations/findings 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 initiated against the Noticee viz. Utkarsh Agarwal Family Trust vide SCN dated September 08, 2021.

14. In terms of the provisions of rule 6 of the Adjudication Rules, copies of this order are sent to Shri Vinod Kumar Agrawal, Ex-Trustee of the Utkarsh Agarwal Family Trust (on behalf of the Noticee) and to the Securities and Exchange Board of India.

Date: October 28, 2022
Place: Mumbai

ROBIN JOSEPH BABY
ADJUDICATING OFFICER