BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER Ref No.: Order/KS/KT/2023-24/25705]

UNDER SECTION 15-I OF 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:

Mahesh Agarwal
(PAN: ADFPA5354D)

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") has initiated Adjudication Proceedings against Mahesh Agarwal (hereinafter referred to as "**Noticee**"), under SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") for allegedly violating Regulations 3(a),(b),(c),(d) and 4(1), 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trading Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"), in the matter of trading in illiquid stock options at Bombay Stock Exchange Ltd. (hereinafter referred to as "**BSE**").

2. SEBI had conducted an investigation into large scale reversal of trades in Stock Options segment of the BSE during the period of April 01, 2014 to September 30, 2015. Pursuant to investigation, it was observed that during the investigation period, the Noticee had indulged in reversal trades, which allegedly created false and misleading appearance of trading thereby generated artificial volumes in the Stock Options Segment of BSE during the investigation period. The trades entered in the unique contracts were reversed on the same day with same counterparties, at a price difference which had no underlying basis and without an intention of performing it or there being a change of ownership/rights in the contracts. These factors indicate that these trades were allegedly artificial and non-genuine in nature. In the above facts and circumstances, it was alleged by SEBI that the Noticee by indulging in execution of non-genuine reversal trades in Stock Options, created false and misleading appearance of trading in securities market and thereby, violated provisions of Regulation 3(a), (b), (c), (d) and 4(1) and 4(2)(a) of the PFUTP Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

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 September 20,2021, 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 & REPLY

3. Accordingly, in terms of Rule 4(1) of the Adjudication Rules read with Section 15I of the SEBI Act, a Show Cause Notice (hereinafter referred to as “**SCN**”) dated March 07, 2022 was issued to the Noticee calling upon him to show cause as to why an inquiry should not be held against him in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15HA of the SEBI Act for the aforesaid alleged violations. The SCN sent to the Noticee was duly served upon the Noticee via SPAD/email.

4. Thereafter, Mr. Sanjeev Kumar Khetan, from M/s S K Khetan & Associates, Chartered Accountants, vide email dated March 14, 2022 informed that the Noticee, Mr. Mahesh Agarwal had passed away on November 25, 2020 at the age of 69 years. Subsequently, a notarized copy of the death certificate of the Noticee was provided vide email dated August 11, 2022.

5. I note that the death certificate dated November 30, 2020 was issued by Kolkata Municipal Corporation, Department of Health & Family Affairs, Government of West Bengal bearing registration no. HG013/2020/003553, which mentions that the Noticee died on November 25, 2020.

6. Before proceeding further in the matter on merit, it would be in the fitness of things to first decide as to whether on the death of the Noticee, the present adjudication proceedings against her would continue or abate.

7. In this context, it is worth mentioning that in **Girijanandini Vs Bijendra Narain** (AIR 1967 SC 2110), the Hon’ble Supreme Court held 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. It is also relevant to refer to the decision of Hon’ble Securities Appellate Tribunal in **Chandravadan J. Dalal vs. SEBI** (Appeal No. 35/2004 decided on June 15, 2005) wherein it was held that: “*The appeal abates since the appellant during the pendency of the appeal died on 29^th^ November 2004. The appeal accordingly abates. The penalty imposed on the original appellant being personal in nature also abates*.”

ORDER

8. After taking into consideration all the facts and circumstances of the case, the Adjudication Proceedings initiated against the Noticee, viz. Late Mr. Mahesh Agarwal (PAN- ADFPA5354D), vide SCN bearing reference no. SEBI/HO/ISD/P/OW/2022/9645/1 dated March 07, 2022 are disposed of.

9. In terms of rule 6 of the Adjudication Rules, a copy of this order is being sent to SEBI and to the last known address of deceased Noticee.

Place: Mumbai **Kranti Sardesai**

Date: April 11, 2023 **Adjudicating Officer**