BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/AS/AK/2022-23/25370)

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
Capable Mining Private Limited
(PAN: AAECC5511F)
In the matter of dealings in Illiquid Stock Options at BSE

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) observed large scale reversal of trades in stock options segment of BSE. Subsequently, upon investigation of the trading done during the period from April 1, 2014 to September 30, 2015 (hereinafter referred to as "**Investigation Period**" / "I.P.") in the stock options traded on BSE, SEBI observed large scale reversal of trades by various entities including **Capable Mining Private Limited** (hereinafter referred to as 'Noticee'). The reversal trades comprised of 81.40% (2,91,744 trades) of all the trades executed in BSE Stock Options Segment wherein the open positions were squared off with a significant price difference without any basis for such change in the contract price. It was alleged that the aforesaid reversal trades were non-genuine in nature and also resulted into generation of artificial volumes. The Noticee was alleged to have engaged in 2 such reversal trades in 1 unique contracts wherein the position taken was reversed with same counterparties on the same day, but at a substantial price difference.

APPOINTMENT OF ADJUDICATING OFFICER

2. In this connection, SEBI had initiated adjudication proceedings against the 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, in the matter of trading in illiquid stock options at BSE. Ms. Aradhana Verma was appointed as Adjudicating Officer vide order dated September 20, 2021 under section 19 read with sub-section (1) of 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**) to inquire into and adjudge the alleged violations by the Noticee and determine whether penalty under Section 15HA of the SEBI Act is liable to be imposed. Pursuant to reallocation of cases from erstwhile Adjudicating officer Ms. Aradhana Verma, the instant matter *vide* AO communication dated March 17, 2023, was transferred to the undersigned.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice no. SEBI/AO/AV/P/OW/2022/3773/1 dated January 31, 2022 (hereinafter referred to as **'SCN'**) was served at the address of the Noticee, under Rule 4 of the SEBI (Procedure for holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') read with section 15I of the SEBI Act, to show cause as to why an inquiry should not be held and penalty be not imposed against it under Section 15HA of the SEBI Act for the alleged violations of Regulations 3(a), (b), (c), (d) and 4(1), (2)(a) of the PFUTP Regulations. Subsequently, a notice no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/OW/2022/37964/1 dated August 8, 2022 (hereinafter referred to as **'Notice'**) was served on the Noticee informing about the SEBI Settlement Scheme, 2022, in terms of Regulation 26 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 in the matter of Illiquid Stock Options and in case Noticee do not wish to avail of the facility under the SEBI Settlement Scheme, 2022, Noticee was advised to file a reply to the SCN within

30 days of the receipt of the SCN. The aforesaid SCN and Notice sent through SPAD were returned undelivered/remained undelivered.

4. Thereafter, during the course of the proceedings, the status of the Noticee was ascertained from the website of Ministry of Corporate Affairs (MCA). As per Form No. STK-7-“Notice of Striking Off and Dissolution” Notice No. ROC/WB/248(5)/STK-7/DriveIII/2019/2 dated October 30, 2019, downloaded from the website of Ministry of Corporate Affairs (MCA), Government of India (www.mca.gov.in), it is observed that the name of the Noticee has been struck-off from the list of companies by the Registrar of Companies, Kolkata (ROC) and dissolved as on October 30, 2019. The said notice, inter alia, mentioned the following:

   “This is with respect to this office's Notice No.RoCKolkata248(1) even dated and Notice in form STK-5 No.ROC/WB/STK5/Driv-III/2019/2 issued on dated 16.09.2019. Notice is hereby published that pursuant to sub-section (5) of Section 248 of Companies Act, 2013 the names of 306 No. of Companies as per list Annexure A have this day i.e, 30th Day of October 2019 been struck off from the Register of the companies and the said Companies are dissolved.”

   I find that the name of the Noticee is mentioned in the said list of 306 companies at sl.no. 69 under CIN No U13205WB2011PTC168008.

5. From the above, it is clear that the name of the Noticee has been struck off from the ROC list with effect from October 30, 2019 and the Noticee stands dissolved from the said date. I further note that, it is an established fact that when a company’s name is struck-off from the ROC list and the company is dissolved, it is a non-existing company and the adjudication proceedings against the non-existing company is thus nullity. In view of the foregoing, I am of the view that the instant adjudication proceedings against the Noticee are liable to be abated without going into the merits of the case. Should the Noticee stand revived or

restored at any stage, a decision to initiate proceedings may be taken afresh at that stage.

6. In this context, I would also like to draw reference to a judgment of the Hon'ble Delhi High Court in the case of Commissioner of Income Tax (CIT) vs Vived Marketing Services (P) Ltd., ITA NO. 273/2009 dated September 17, 2009 in which it was held that –
   "When the Assessing Officer passed the order of assessment against the respondent company, it had already been dissolved and struck off the register of the Registrar of companies under Section 560 of the Companies Act. In these circumstances, the Tribunal rightly held that there could not have been any assessment order passed against the company which was not in existence as on that date in the eyes of law it had already been dissolved. We are of the opinion that the view taken by the Tribunal is perfectly valid and in accordance with law."

7. After taking into consideration the aforesaid facts and circumstances, the Adjudication Proceedings initiated against Noticee vide SCN dated January 31, 2022, are disposed of without going into the merits of the case.

8. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to SEBI and to the last known address of the Noticee.

Place: Mumbai	**ASHA SHETTY**
Date: 31st March, 2023	**ADJUDICATING OFFICER**