

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/AK/AJ/2023-24/28496**

**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:

**WATERFLOW COMMOTRADE PRIVATE LIMITED
PAN: AABCW1311Q**

in the matter of dealings in Illiquid Stock Options at BSE

A. 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 Bombay Stock Exchange (hereinafter referred to as “**BSE**”). SEBI observed that such large scale reversal of trades in stock options lead to creation of artificial volume at BSE. In view of the same, SEBI conducted an investigation into the trading activities of certain entities in illiquid stock options at BSE for the period April 1, 2014 to September 30, 2015 (hereinafter referred to as “**Investigation Period**”).
2. Pursuant to a preliminary examination conducted in the Illiquid Stock Options matter an Interim order was passed by SEBI on August 20, 2015 against 59 entities which were confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to trading in stock options segment of BSE which was completed in the year 2018. The investigation findings revealed that of all trades executed in the stock options segment of BSE during the Investigation Period, 81.38% of the trades, that is 2,91,643 trades, were trades which involved a reversal of buy and sell positions by the clients and counterparties in a contract. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE’s stock options segment during the investigation period. The proceedings initiated

against the first set of 59 entities, vide the aforementioned Interim Order were disposed of vide final Order dated April 05, 2018, without any further directions, observing that the Adjudicating Officer shall continue the proceedings in accordance with the SEBI Act, 1992 (hereinafter referred to as the “**SEBI Act**”) and SEBI (Procedure for Holding and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the “**Adjudication Rules**”) and pass appropriate order on merits. It was also recorded therein that SEBI has decided to take appropriate action against all 14,720 entities in phases.

3. In the meantime, the Hon'ble Securities Appellate Tribunal (SAT), vide its Order dated October 14, 2019, in the case of *R. S. Ispat Ltd Vs SEBI, inter alia* observed that “*SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options*”.
4. Accordingly, a Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided a one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The said scheme was kept open from August 01, 2020 till December 31, 2020. Finally, adjudication proceedings were initiated against those entities who did not avail the opportunity of settlement. It was observed that **Waterflow Commotrade Private Limited** (hereinafter referred to as the “**Noticee**”) was one of the various entities which indulged in execution of reversal trades in stock options segment of BSE during the Investigation Period. In view of the same, SEBI initiated adjudication proceedings against the Noticee for violation of the provisions of 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**”).
5. It was observed that 13,186 entities did not avail the opportunity of settlement and therefore Adjudication proceedings were initiated against the entities in a phased manner. In order, to duly expedite the Adjudication proceedings against the entities, SEBI had appointed additional Adjudicating officers to adjudicate against the said entities. However, owing to the huge number of alleged entities, the adjudication proceedings were being conducted in a phased manner that

required adequate time to complete the proceedings against all entities. The Adjudicating officers had passed Orders with respect to certain Noticees in a phased manner.

6. It was observed, that some of the entities against whom Orders were passed in the adjudication proceedings appealed before the Hon'ble SAT. During the course of the hearing in a group of appeals, the Hon'ble SAT, vide its Order dated May 13, 2022, inter alia held that *“SEBI should reconsider and seriously give a thought in coming out with a fresh Scheme under Clause 26 of the Settlement Regulations, 2018. Such scheme can be a onetime scheme for this class of person. The terms of settlement should be attractive so that it could attract the noticees/entities to come forward and settle the matter which will ameliorate the harassment of penalty proceedings to the noticees and at the same time would help to clear the backlog of these pending matters before various AOs”*.
7. Accordingly, SEBI introduced a Settlement Scheme i.e. SEBI Settlement Scheme, 2022 (hereinafter referred to as “**Scheme 2022**”) in terms of Regulation 26 of the SEBI (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as “Settlement Regulations”). The Scheme provided a onetime opportunity to the entities against whom proceedings had been initiated and appeals against the said proceedings are pending before any forum or authority.
8. I note that SEBI framed the Scheme in accordance with the provisions of the Settlement Regulations and issued a Public Notice dated August 19, 2022 about the Scheme and the modalities for availing the benefit of the Scheme. The Notice was also made available on the website of the BSE. The Scheme was initially kept open for a period of three months commencing from August 22, 2022 to November 21, 2022 (both days inclusive). Considering the interest of a large number of entities to avail the Scheme, SEBI extended the period of the Scheme till January 21, 2023 vide public notice dated November 22, 2022.⁸ A total of 10,980 Noticees availed the benefit of the Scheme and remitted the specified settlement amount respectively. Accordingly, a settlement order was passed on March 08, 2023, settling the matter with respect to 10,980 Noticees.

9. I note that Noticee did not avail settlement under the Settlement Scheme in 2020 or 2022 and therefore Adjudication proceedings have been revived against the Noticee.

B. APPOINTMENT OF ADJUDICATING OFFICER

10. SEBI initiated adjudication proceedings and appointed Ms. Soma Majumder as the Adjudicating Officer (AO)) under Section 15-I of the SEBI Act read with Rule 3 of the Adjudication Rules. Vide communication dated November 12, 2021 Ms. Geetha G was appointed the AO in the instant matter. Subsequently, the undersigned was appointed as the AO, vide communique dated September 19, 2022, to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with Section 15-I of SEBI Act, and if satisfied that Noticee is liable for penalty, impose such penalty as deemed fit in terms of Rule 5 of Adjudication Rules and Section 15HA of SEBI Act.

SHOW CAUSE NOTICE AND REPLY

11. A Show Cause Notice dated August 08, 2022 (hereinafter referred to as '**SCN**') was issued to the Noticee in terms of rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on the Noticee under the provisions of section 15HA of the SEBI Act, for the aforesaid alleged violations by it.
12. I find that the digitally signed email SCN sent to the Noticee was quarantined/ and delivery failed to the recipient/Noticee and hence could not be duly served. Subsequently, in September 2022, an attempt was made to deliver the aforesaid SCN through Market Infrastructure Institutions (MIIs). However, it was informed that the MIIs have deactivated the PAN against which the SCN could not be delivered, as per KYC circular dated July 29, 2022. Further, Hearing Notice (HN) sent vide letter/email dated March 13, 2023 failed to be delivered to the Noticee.
13. Thereafter, for the purposes of serving the SCN / HN by SPAD, I have ascertained the current address/status of the Noticee from the records available at the

Ministry of Corporate Affairs (MCA) website. As per the records available at the Ministry of Corporate Affairs (MCA) website on the date of this order, the name of the Noticee has been struck off from the list of companies by the Registrar of Companies, Mumbai (“ROC”) and the status of the Noticee is shown as “struck off”. I further note that vide emails dated June 07, 2023, June 14, 2023, June 16, 2023 and June 22, 2023, ROC was requested to confirm the “Strike off” status of the Noticee. ROC is yet to reply to the SEBI emails.

14. As per the said MCA website (<https://www.mca.gov.in/mcafoportal/companyLLPMasterData.do>), Noticee had been struck off the register of companies and consequently the Noticee stands dissolved. In view of the above, it is clear that the name of the Noticee has been struck-off from the ROC list and the Noticee also stands dissolved.

15. It is an established fact that when a company is dissolved and its name is struck-off from the ROC list, it ceases to exist and adjudication proceedings against a non-existing company are thus a nullity. In this context, I would like to draw reference to the judgment of the Hon'ble Delhi High Court in the matter 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.”

16. I note that Black's Law Dictionary explains 'dissolution' as termination or winding up. I also note that such dissolution of a company amounts to the termination of its legal existence. I further note that as per Section 248 of the Companies Act, 2013, “strike off” essentially means removing the name of the company from the Register maintained by the ROC. It amounts to closure of the company and the company ceases to exist in the eyes of law after being struck-off.

17. Therefore, in view of the facts and circumstances noted in the preceding paragraphs, i.e., the Noticee's name has been struck-off from the ROC list and hence dissolved and placing reliance on the aforesaid judgement, I conclude that the present adjudication proceedings initiated against the Noticee vide SCN dated August 08, 2022 cannot be proceeded with.

ORDER

18. In view of the above observations/findings and in exercise of the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby dispose of the Adjudication Proceedings initiated against the Noticee viz. Waterflow Commotrade Private Limited. vide SCN dated August 08, 2022.

19. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: August 04, 2023
Place: Mumbai

AMIT KAPOOR
ADJUDICATING OFFICER