BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/AK/AJ/2023-24/29206

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:

SUMERU PROCESSORS PRIVATE LIMITED

PAN: AAACS4529D

in the matter of dealings in Illiquid Stock Options at BSE

A. <u>BACKGROUND OF THE CASE</u>

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 **Sumeru Processors 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 Mr. Vijayant Verma vide communication dated July 06, 2021 as the Adjudicating Officer (AO) under Section 15-I of the SEBI Act read with Rule 3 of the Adjudication Rules. Subsequently, vide communication dated September 19, 2022, the undersigned was appointed as the AO, in the instant matter, 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.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

11. A Show Cause Notice bearing reference no. 50383/1/2022 dated September 28, 2022 (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 it and thereafter penalty imposed on it under Section 15HA of the SEBI Act for the alleged violation of the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations. I note that, vide the said SCN, the Noticee was informed of the option of Settlement Scheme, 2022. The aforesaid SCN was issued through Speed Post Acknowledgement Due (hereinafter referred to as "**SPAD**")/email to the Noticee. The same returned undelivered with the remark "closed".

12. In the interest of natural justice, vide Hearing Notice sent vide SPAD/email dated March 15, 2023, the Noticee was granted an opportunity of personal hearing on March April 13, 2023. However, the Hearing Notice returned undelivered. SPAD card pertaining to the Hearing Notice did not return. The digitally signed hearing notice which was also sent by email to the Noticee, failed to be delivered.

13. Thereafter, for the purposes of serving the SCN by Speed Post with Acknowledgement Due (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, Noticee/Company status is labelled as "Under Liquidation".

14. I am given to understand that the National Company Law Tribunal, Principal Bench at New Delhi vide Judgment delivered on December 03, 2019 passed in C.A. 2333(PB)/2019 had appointed the Official Liquidator viz. Mr. Rajiv Malik with

Registration No. IBBI/IPA-002/IP-N00391/2018-2019/12115 in terms of Section 34(1) of the Insolvency and Bankruptcy Code.

D. CONSIDERATION OF ISSUES

15. I have carefully perused the documents available on record. I am of the view that before proceeding in the matter on its merit, it would be in the fitness of the thing to first decide the preliminary issue as to whether the adjudication proceedings initiated by SEBI against the Noticee would continue.

16. In order to examine the maintainability of the present adjudication proceedings against Noticee, it will be appropriate to refer to Section 446 of the Companies Act, 1956, (corresponding to Section 279 of Companies Act, 2013) which reads as under:-

"Section 446 of Companies Act, 1956

When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, <u>no suit or other legal proceeding</u> shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Tribunal and subject to such terms as the Tribunal may impose."

17. According to Black's Law Dictionary, Sixth Edition, the term 'Legal Proceedings' includes "all proceedings authorized or sanctioned by law, and brought or instituted in a court or legal tribunal, for the acquiring of a right or the enforcement of remedy." Further, the term 'Proceedings' means, "any action, hearing, investigation, inquest or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given."

18. While examining the issue of maintainability of the legal proceedings initiated after the date of order of winding up/ appointment of official liquidator, the Hon'ble High Court of Bombay, in the case of Deutsche Bank v. S.P. Kala {(1990) 67 Com. Cases} held as under:-

"Section 446 of the Companies Act provides that, when a winding up order is made or the official liquidator is appointed as provisional liquidator, no suit or legal proceedings should be commenced or if pending on the date of the winding-up order, shall be proceeded with, against the company, except with the leave of the court and subject to such terms as may be imposed. Sub-section (2) further lays down that the court which is winding-up the company shall, notwithstanding anything contained in any other law in force, have jurisdiction to entertain or dispose of, inter alia, any suit or proceeding by or against the company, whether such suit or proceeding has been instituted or is instituted. A careful examination of these provisions of law makes it clear that once a winding-up order is made or the official liquidator is appointed as provisional liquidator, no proceedings can continue or be instituted against the company without the permission of the court. It is further clear that jurisdiction to entertain or dispose of any suit or proceeding by or against the company is vested in the company court without any kind of restriction................ The expression "any suit or proceeding by or against the company" is wide enough to bring within its sweep any kind of suits."

19. In the light of the above, I am of the considered view that in the present adjudication proceedings, Noticee Company is under liquidation. This is an admitted fact. Therefore, I am of the considered view that the present Adjudication proceedings against the Noticee, which is under liquidation, cannot be continued without the leave of the Court as it falls under the term "other legal proceedings used in Section 446 of Companies Act, 1956. Further, I note that there is no material on record to suggest that leave of the court has been taken.

E. ORDER

20. In view of my findings noted in the preceding paragraphs, I am of the view that the Adjudication proceedings initiated against the Noticee vide SCN dated January 11, 2018 is not maintainable and therefore disposed of accordingly.

21. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee, Official Liquidator viz. Mr. Rajiv Malik with Registration No. IBBI/IPA-002/IP-N00391/2018-2019/12115 (B-7/18,Mianwali Nagar, Delhi Rohtak Road, Near Peera Gari Metro Station, New Delhi, National Capital Territory of Delhi,110087 – Source - https://ibbi.gov.in/en/insolvency-professional/details) and also to the Securities and Exchange Board of India.

Date: September 11, 2023 **AMIT KAPOOR**
Place: Mumbai **ADJUDICATING OFFICER**