BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/NH/VS/2022-23/18699]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of –

Chaitanya Commodities Private Limited (PAN: AADCC8650J) (SEBI Reg no: INZ000052730) having address at Flat no. 608, Pragati Bhawan, 26, Rajindra Place, New Delhi - 110008

In the matter of Chaitanya Commodities Private Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), initiated adjudication proceedings under Section 15-I of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") and Section 23-I of the Securities Contracts (Regulation) Act, 1956 ("**SCRA**") read with Rule 5 of SEBI (Procedure For Holding Inquiry and Imposing Penalties) Rules, 1995 ("**Adjudication Rules**") and Rule 5 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 ("**SCRA Adjudication Rules**") for adjudicating under Section 15HB of SEBI Act, 1992 ("**SEBI Act**"), Section 23D of the Securities Contracts (Regulation) Act, 1956 ("**SCRA**") and Section 15F (a) of the SEBI Act against Chaitanya Commodities Private Limited (the "**Noticee**") for alleged violations of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated

September 26, 2016, Section 23D of the SCRA read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 3, 2009, SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011 and SEBI Circular CIR/MRD/DMS/13/2010 dated April 23, 2010, SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 7, 2016, SEBI Circular MRD/DoP/Dep/SE/Cir-22/06 dated December 18, 2006, SEBI Circular SMD/MDP/CIR/043/96 dated August 5, 1996 and Regulation 8 read with Schedule V of the SEBI (Stock Brokers) Regulations, 1992 by the Noticee, pursuant to inspection of the Noticee conducted between May 29-31, 2019 for the period of April 1, 2017 – March 31, 2019 (hereinafter referred to as the **'inspection period'**).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI appointed Shri Suresh B. Menon as Adjudicating Officer vide order dated December 29, 2020, to inquire into and adjudge under Section 15HB of the SEBI Act, Section 23D of the SCRA and Section 15F (a) of the SEBI Act, the aforesaid violations alleged in respect of the Noticee. Subsequently, upon superannuation of Shri Suresh B. Menon, the undersigned was appointed as Adjudicating Officer (hereinafter referred to as "**AO**") in the matter vide order dated June 6, 2022. The appointment of the AO was communicated vide order dated June 7, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. SEBI/EAD/SBM/ASR/13953/2021 dated June 30, 2021 (hereinafter be referred to as the "**SCN**") was issued to the Noticee under Rule 4(1) of the SEBI (Procedure for holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) and the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005, ("**SCRA Adjudication Rules**") to show cause as to why an inquiry should not be held and penalty be not imposed against them under under Section 15HB of the SEBI Act, Section 23D of the SCRA and Section 15F (a) of the SEBI Act for alleged violation of the abovementioned SEBI Circulars

4. The SCN was served upon the Noticee on August 6, 2021 by Speed Post Acknowledgment at its registered office address A-89, Second Floor, Lajpat Nagar-II, New Delhi – 110024 provided to SEBI by MCX, where the Noticee was registered as commodity derivative broker vide SEBI Registration No. INZ000052730.

5. As per material on record, the Noticee was granted an opportunity to make its submissions in respect of the SCN vide letter dated May 27, 2021. However, no reply has been received from the Noticee till date.

6. During the course of the adjudication proceedings initiated in respect of the Noticee, the status of the Noticee's membership at MCX was sought to be confirmed from MCX vide e-mail dated July 1, 2022. MCX vide e-mail dated July 4, 2022 submitted that the present status of the Noticee as the exchange is "Expelled from the Membership of the Exchange". It was also informed by MCX that the Noticee may be reached at its designated e-mail id. viz. compliance@quantumglobal.in.

7. Accordingly, vide Hearing Notice No. SEBI/EAD1/NH/VS/OW/P/2022/27502 dated July 5, 2022 the Noticee was provided an opportunity of hearing on July 13, 2022. The said Hearing Notice was served on the Noticee vide e-mail dated July 8, 2022 chaitanyacommodity@gmail.com and compliance@quantumglobal.in.

8. No response to the hearing notice was received from the Noticee. In the meantime, status of the Noticee on the website of the Ministry of Corporate Affairs was displayed as 'Strike-off", indicating that the Noticee has been struck-off from the records of the Register of Companies. In order to confirm the status of the Noticee, e-mail dated June 8, 2022 and letter dated July 14, 2022 were sent to the Registrar of Companies, NCT of Delhi and Haryana seeking the present status of the Noticee. Further, the Registrar of Companies was requested to provide a copy of the final notice of strike-off and order of dissolution of the Noticee, in case the

Noticee had been struck-off the register of companies in terms of Section 248 (5) of the Companies Act, 2013.

9. Vide e-mail dated August 23, 2022 the Registrar of Companies, NCT of Delhi and Haryana confirmed that the Noticee (CIN U74992DL2010PTC199235) has been struck-off from the register of companies in terms of the provisions of Section 248 (1) (c) of the Companies Act, 2013 vide Notice issued on April 20, 2022. A copy of the Gazette notification of Public Notice in Form No. STK-6, intimating dissolution of the Noticee effective April 20, 2022 upon strike-off from the Register of Companies was also attached with the e-mail of the RoC dated August 23, 2022.

10. The Noticee has been charged with alleged violations of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, Section 23D of the SCRA read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 3, 2009, SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011 and SEBI Circular CIR/MRD/DMS/13/2010 dated April 23, 2010, SEBI Circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 7, 2016, SEBI Circular MRD/DoP/Dep/SE/Cir-22/06 dated December 18, 2006, SEBI Circular SMD/MDP/CIR/043/96 dated August 5, 1996 and Regulation 8 read with Schedule V of the SEBI (Stock Brokers) Regulations, 1992. I note from Public Notice No. ROC-DEL/248 (1)/STK-5/2022/535 dated January 31, 2022 issued under Section 248 (1) (c) of the Companies Act, 2013 and available on the website of the Ministry of Corporate Affairs that the Noticee was mentioned as a company which had "*not been carrying on any business or operation for a period of two immediately preceding financial years*.." and thirty days were provided for showing cause to the contrary in case any person objected to the proposed strike-off. Further, the Noticee was struck-off from the Register of Companies under Section 248 (1) (c) read with Section 248 (5) of the Companies Act, 2013 and consequently dissolved with effect from April 20, 2022 during the pendency of adjudication proceedings.

11. The applicable provisions of the Companies Act, 2013 are reproduced for reference as follows:-

> ***250***. *Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.*

12. In view of the fact that the Noticee has been struck-off and liabilities in respect of the present proceedings had not accrued as on the date of dissolution of the Noticee, it would not be appropriate to determine liability against a company which no longer exists. Hence the proceedings are hereby disposed of 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.

13. In this regard I am persuaded by the decision of the ITAT in the matter of *M/s. Anujay Hycare Products (P) Ltd. Vs The Income Tax Officer* *(ITAT Delhi)* Date of Judgement/Order - 06/04/2018, wherein the Income Tax Appellate Tribunal observed that *"………. there could not have been any valid assessment order passed against the assessee-company which was not in existence as on the day of passing of the assessment order because it had already been dissolved. The assessment in the case of non-existing entity is thus nullity. Therefore, A.O. had no jurisdiction to pass the order against the non-existing company…….*
However, as on today, it is an established fact that assessee-company has already been dissolved and its name is struck-off from the Registrar of Companies. Therefore, it is a non-existing Company and as such, A.O. cannot pass the assessment order under section 143(3) of the I.T. Act, 1961 against the assessee-company. The issue is, therefore, covered in favour of the assessee-company by the above judgments of Hon'ble Delhi High Court, relied upon by the Learned Counsel for the Assessee."

14. I further note that the SEBI Act in Section 28B states the following in respect of liability for penalty in the case of a death of a person:-

"*Continuance of proceedings.*

28B. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased:

Provided that, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person."

ORDER

15. After taking into consideration all the facts and circumstances of the case, the adjudication proceedings initiated against the Noticee i.e. Chaitanya Commodities Pvt. Ltd. (PAN: AADCC8650J) vide Show Cause Notice No. SEBI/EAD/SBM/ASR/13953/2021 dated June 30, 2021 stand disposed of.

16. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: AUGUST 30, 2022 **N. HARIHARAN**
PLACE: MUMBAI **ADJUDICATING OFFICER**