

WTM/AB/IVD/ID-4/8409/2020-21

SECURITIES AND EXCHANGE BOARD OF INDIA
MISCELLANEOUS ORDER

On the representation from Shri Adesh Jain (PAN: AEGPJ3902G) – In respect of Final order dated March 06, 2020 passed by SEBI in the matter of MPS Infotechnics Limited (formerly known as Visesh Infotechnics Limited).

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) passed a final order dated March 06, 2020 (hereinafter referred to as “**the final order**”) in the matter of MPS Infotechnics Limited (hereinafter referred to as “**MPSIL**”) against the following entities, namely: -

Noticee no.	Noticee Name
1.	MPS Infotechnics Limited (formerly known as Visesh Infotechnics Limited)
2.	Clifford Capital Partners A.G.S.A
3.	Mr. Peeyush Aggarwal
4.	Mr. Sanjeev Bhavnani
5.	Mr. S. N. Sharma
6.	Mr. Adesh Jain
7.	Mr. Karun Jain
8.	Mr. Rajinder Singh

2. In the final order, *inter alia*, following directions were issued against the aforesaid entities:

Quote

- a. *Noticee No. 1 shall continue to pursue the measures to bring back the outstanding amount of \$ 8.90 million into its bank account in India. It is clarified that Noticee No. 3, Noticee No. 7 and all other present directors of Noticee No. 1 shall ensure the compliance of this direction by Noticee No. 1 and furnish a Certificate from a peer reviewed Chartered Accountant of ICAI*

along with necessary documentary evidences to SEBI, certifying the compliance of this direction.

- b. *Noticee No. 1 is restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities, directly or indirectly, in any manner whatsoever or being associated with the securities market in any manner, whatsoever, till compliance with directions contained in para 58(a) above and thereafter, for an additional period of two years from the date of bringing back the money.*
- c. *Clifford Capital Partners A.G.S.A (Noticee No. 2), Mr. Peeyush Agrawal (Noticee No. 3), Mr. Sanjiv Bhavnani (Noticee No. 4), Mr. S. N. Sharma (Noticee No. 5), Mr. Adesh Jain (Noticee No. 6), Mr. Karun Jain (Noticee No. 7) and Mr. Rajinder Singh (Noticee No. 8) are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 5 years from the date of this order. During the period of restraint, the existing holding of securities including units of mutual funds of these Noticees shall also remain frozen.*
- d.

Unquote

3. After passing of the final order, Shri Adesh Jain, Noticee no. 6 to the final order, has made a representation dated July 02, 2020 (hereinafter referred to as "**the Representation**"), in respect of the aforesaid final order passed by SEBI. Brief of the Representation made by Shri Adesh Jain is as follows:

- (i) In view of the extreme urgency and without prejudice to all his rights and contentions as available under law, I am filling the present representation seeking an urgent intervention in relation to the para 58(c) of the SEBI Order. I request to grant me the relief as prayed for in this representation which is absolutely necessary and warranted in the wake of the financial crises in the country due to Covid-19.
- (ii) Due to the unprecedented situation arising due to the Covid-19 pandemic and the economic impact of the same, I am facing a severe liquidity crunch

which has impaired my ability to meet his statutory obligations. I am also finding it difficult to pay the operational dues and salaries to my staff because of the cash crunch. There is also a requirement to meet with minimum business commitments to keep my partnership firm on-going.

- (iii) As directed in the SEBI Order, the depositories have effected a complete 'freeze on debit and credit' of my demat accounts. While I do not want to trade in securities, I only intend to liquidate my investments for liquidity purposes. I wish to inform that I have never involved as active traders in the securities market and my investments were on long term basis as can be seen from the records. Therefore, I request SEBI to defreeze my demat accounts in order to liquidate the securities valuing to Rs. 90 lakhs as on date.
- (iv) In addition to the above, it has come to my knowledge that SEBI has passed an order dated April 30, 2020 against Modex International Securities Limited (Modex order) wherein the said entity is debarred from securities market for misusing clients fund and securities. In this regard, I would like to submit that the said entity is one of my depository participant and as a consequence of the Modex Order, I am unable to transfer my unlisted securities.
- (v) I further request that I have been restrained from accessing the securities market for a period of five years vide SEBI's order, thereby debarring me from making transaction in listed shares in securities market. However, due to SEBI's order all my demat accounts have been frozen thereby restraining me to make transactions in unlisted shares/securities also. Also due to SEBI's order I am unable to open a new demat account with CDSL, so as to transfer my unlisted securities. This had led to an anomalous situation wherein I am not able to transfer and secure my unlisted securities.
- (vi) Therefore, I request you to allow me to transfer the unlisted securities mentioned in his Annexure-2. That SEBI has itself directed the exchange

and depositories to supervise that the securities are delivered to respective investors/client of Modex. Once SEBI directs, I shall be able to take assistance of depositories to open new account and transfer his shares to my other new demat account in CDSL.

(vii) Considering the present situation and for the reasons explained above, I request SEBI to:

- a. Permit me to liquidate or transfer my shares/securities which are listed in Annexure-1
- b. Direct the depositories to allow me to open a new Demat account and allow me to transfer the unlisted shares mentioned in Annexure-2.

(viii) He submits that the relief claimed in this representation is not unprecedented and in the past several cases, the office of the Whole Time Member has been granting such reliefs. Even in appeals, the Hon'ble Securities Appellate Tribunal has been granting such relief when similar direction of restraint was imposed on the appellants. For instance, in the Sapna Dilip Bombaywala case (decided on July 10, 2019), the Hon'ble SAT while allowing the Appellant to liquidate her shares opined that *"the restraint order from accessing the securities market cannot be a ground to deny the appellant from liquidating the shares which are already lying in the demat account"* Similarly, in the Pia Johnson case, in pursuance to the direction of the Hon'ble SAT, the SEBI had issued an order dated March 04, 2020, allowing her to liquidate the shares held in her demat account. taking note of these orders, SEBI is also permitting the squaring off of existing positions in the market which is also recorded in the addendum dated March 12, 2020 in the captioned SEBI Order.

(ix) Furthermore, there is no financial liability or any penalty on me in the SEBI order. The direction only pertains to the execution of trades in the securities market which as mentioned earlier, is and was never intended by me. With a view to enable me to meet my requirements and tide over

the financial crises, I humbly request SEBI to issue appropriate directions to the depositories to defreeze my demat accounts to sell/transfer the securities as listed in Annexures 1 and 2.

4. I note that impugning the final order, Shri Adesh Jain (Noticee no. 6) has also filed an Appeal (L) No. 209 of 2020 before Securities Appellate Tribunal, Mumbai (hereinafter referred to as "**Hon'ble SAT**"). Hon'ble SAT while hearing the appeal and the miscellaneous applications filed therein, vide its order dated July 28, 2020, *inter alia*, has directed SEBI to consider the Representation and pass appropriate orders within 7 working days from the date of the order.
5. I have considered the representation made and the final order passed. In this regard, I note that the direction contained in para 58(c) of the final order, as quoted in para 2 above, provides that during the period of restraint, the existing securities including units of mutual funds of the debarred entities shall also remain frozen.
6. I note that Shri Adesh Jain has relied on the order of the Hon'ble SAT in the matter of Sapna Dilip Bombaywala case (Order dated July 10, 2019 in Appeal no. 219 of 2019) wherein, the Hon'ble SAT allowed the appellant to liquidate her existing shares, in the similar circumstances. I find that in the Sapna's matter, SEBI order dated February 12, 2019 while debarring the Noticee therein for six years also clarified that the existing securities holding including units of mutual funds of the Noticee, shall remain frozen. I note that vide its order dated July 10, 2019 while observing that the restraint order from accessing the securities market cannot be a ground to deny the appellant from liquidating the shares which are already lying in her demat account and that there was no order of disgorgement or penalty against the appellant, allowed the appellant therein to access the securities market only to the limited extent of liquidating her existing shares.
7. I note that Hon'ble SAT in its order dated October 30, 2017 passed in Appeal no. 272 of 2017 – Rajesh Pavithran Vs. SEBI, while observing that the fact

that the appellant is restrained from accessing the securities market cannot be a ground to deny liquidation of the shares lying in the demat account especially when no amount is recoverable under any order passed by SEBI against the appellant and there is no order passed by SEBI attaching the shares lying in the demat account of the appellant, permitted the appellant therein to access the securities market only to the limited extent of liquidating the shares lying in the demat account of the appellant.

8. Hon'ble SAT in its interim order dated January 31, 2020 passed in Appeal no. 44 of 2020 – Rishikumar Rajnarayan Bagla HUF Vs. SEBI observed as under:

“2.We find that by the impugned order the appellant has been restrained from accessing the securitiesmarket for a period of five years. We also find that the appellant's mutual funds and securities have also been frozen. It was urged that on account of the freezing of the demat accounts the appellant is unable to pay the appropriate taxes, namely, advances tax, etc.

3. Considering the fact that there is no order of disgorgement or penalty against the appellant, we allow the appellant to access the securities market only to limited extent to liquidate the shares and mutual funds upto 50%.....”

9. In this regard, I note that adjudication proceedings under Section 15-I of the SEBI Act, 1992 are pending against Shri Adesh Jain, in the same matter of MPS Infotechnics Limited. The adjudication proceedings against Shri Adesh Jain may result into imposition of monetary penalty and in the event of failure to pay said penalty, if imposed, recovery proceeding under Section 28A of the SEBI Act, 1992 may be initiated against Shri Adesh Jain. However, at present no penalty order or recovery proceeding is pending against Shri Adesh Jain, which has been observed by the Honb'le SAT in Sapna and Rajesh Pavithran matters (*supra*) as a valid ground to extend the restraint order to the existing securities of the debarred entity.

10. Further, with regard to matter of Pia Johnson relied upon by Shri Adesh Jain, I note that as correctly pointed out in the representation by Shri Adesh Jain itself, the liquidation of the shares in the demat account of Pia Johnson was in pursuance of an order dated February 24, 2020 passed by the Hon'ble SAT

wherein Hon'ble SAT permitted the appellants therein to sell their stocks and shares as and when required during the pendency of the appeal by making an appropriate application before SEBI. As Hon'ble SAT had already permitted the appellants therein to sell the securities, therefore, the order dated March 04, 2020 came to be passed by SEBI allowing the appellants therein to sell their securities, as mentioned in their representation made to SEBI.

11. Shri Adesh Jain has also prayed for allowing transfer of unlisted securities lying in his demat account held with Modex International Securities Ltd., as DP, which stands debarred because of SEBI's ex parte ad interim order dated April 30, 2020. In this regard, I note that aforesaid grievance and consequential prayers made, does not emanate from the order dated March 06, 2020 passed by SEBI in the MPSIL matter. Therefore, said request of Shri Adesh Jain cannot be entertained in this proceeding which has started pursuant to direction given by Hon'ble SAT in its order dated July 28, 2020 passed in an appeal against the order passed by SEBI in MPSIL matter.
12. Having regard to all the aforesaid, I hereby allow, Shri Adesh Jain, Noticee no. 6 (PAN: AEGPJ3902G) in the SEBI order dated March 06, 2020 passed by SEBI in MPSIL matter, that he may sell only his securities lying in NSDL Demat Account no. IN300966 10060506 and NSDL Demat Account No. IN302566 10002789, to the extent of 50%, within a period of 3 months from the date of this order.
13. The sale of shares shall be conducted in accordance with all requirements under law and within 7 days of sale, Shri Adesh Jain shall file copy of bank account statement highlighting credit of amounts received as sale consideration and debit entries corresponding to the payment of statutory dues, salaries or partnership contribution paid out of the amount so realised, with SEBI.
14. The representation dated July 02, 2020 of Shri Adesh Jain stands disposed of on the aforesaid lines.

15. This order comes into force with immediate effect.

16. A copy of this order shall be forwarded to Shri Adesh Jain, Stock Exchanges, the relevant banks and the Depositories to ensure that the direction given above is complied with.

Sd/

ANANTA BARUA

Date: August 04, 2020

WHOLE TIME MEMBER

Place: Mumbai

SECURITIES AND EXCHANGE BOARD OF INDIA