

WTM/AB/MIRSD/NRO/09/2020-21

**SECURITIES AND EXCHANGE BOARD OF INDIA
CONFIRMATORY ORDER**

UNDER SECTIONS 11(4), 11B AND 11D OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 35 OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.

In respect of:

Noticee No.	Name of the Noticees	PAN
1	Modex International Securities Limited	AAACM2105K
2	Mr. Dharmendra Kumar Arora	ABEPA0955B
3	Mr. Pavan Kumar Sachdeva	AAZPS4975R
4	Mr. Ajay Jain	AGXPJ1124B
5	Mr. Parminder Singh Kindra	AAIPK2244G
6	Mr. Sanjay Mohan Uniyal	AACPU2128H
7	Ms. Sarika Chawla	AFVPC0852J
8	Ms. Sharda Gupta	AAKPG7214J
9	Mr. Vikram Duggal	AHTPD5588N
10	Mr. Suresh Agarwal	CKAPA4494A

(The aforesaid entities are hereinafter referred to by their respective names / serial numbers or collectively as “the Noticees”)

In the matter of Modex International Securities Limited

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had passed an *ex-parte ad-interim* order in respect of Modex International Securities Limited, hereinafter referred to as ‘**MISL**’/ ‘**Stock Broker**’/ ‘**Broker**’/ ‘**Trading Member**’) and others (viz: Noticee no. 2 to 10), on April 30, 2020 (hereinafter referred to as “**interim order**”).

2. Vide the interim order, the following directions were issued:

(a) *All Noticees are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, either directly or indirectly, or being associated with the securities market in any manner whatsoever, till further directions;*

(b) *The aforesaid Noticees shall cease and desist from undertaking any activity in the securities market, directly or indirectly, in any manner whatsoever till further directions;*

(c) *The aforesaid Noticees are directed not to dispose of or alienate any assets, whether movable or immovable, or to create or invoke or release any interest or charge in any of such assets except with the prior permission of NSE and BSE;*

(d) *The aforesaid Noticees are directed to provide a full inventory of all their assets, whether movable or immovable, or any interest or investment or charge in any of such assets, including details of all their bank accounts, demat accounts and mutual fund investments immediately to NSE and BSE but not later than 5 working days from the date of receipt of this order;*

(e) *Till further directions in this regard, the assets of the Noticees shall be utilized only for the purpose of payment of money and /or delivery of securities, as the case may be, to the clients/investors under the supervision of the concerned exchanges/depositories;*

(f) *The depositories are directed to ensure that no debits are made in the demat accounts, held jointly or severally, of the aforesaid Noticees except*

for the purpose mentioned in sub-para (v) above, after confirmation from NSE/BSE;

(g) *The banks are directed to ensure that no debits are made in the bank accounts held jointly or severally by the Noticees except for the purpose of payment of money to the clients/investors under the written confirmation of NSE/BSE;*

(h) *The stock exchanges shall deal with the complaints/claims of the clients against the member and may return the amount of client fund and securities to the clients and may also use assets of the Noticee no. 1 to meet clients'/exchanges'/clearing members'/clearing corporations', obligations; and*

(i) *The above directions are without prejudice to the right of SEBI to take any other action that may be initiated in respect of aforesaid entities/persons.*

3. In the interim order, the Noticees were called upon to file objections (if any) to the observations and directions given in the interim order, within 21 days from the date of receipt of the interim order by it. Accordingly, Noticee no. 1, 2 and 3 filed a joint reply vide letter dated July 15, 2020. Noticee no. 4 filed his reply vide letters dated June 26, 2020 and July 07, 2020. Noticee no. 5 filed his reply vide letters dated June 26, 2020 and July 02, 2020. Noticee no. 7 filed her reply vide letter dated June 26, 2020. Noticee no. 8 filed her reply vide letter dated July 01, 2020, Noticee no. 9 filed his reply vide letter dated August 04, 2020 and Noticee no. 10 filed his reply vide letter dated June 08, 2020.

4. In the interim order cum show cause notice the discrepancies/ deficiencies *prima facie* observed on the part of the stock broker *inter alia* are mentioned

below:

- (a) By having shortfall of client's securities, MISL is in *prima facie* violation of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular No SEBI/MRD/Policy/AT/Cir- 19/2004 dated April 21, 2004, SEBI Circular No. MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 and SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
- (b) By misappropriating client's securities and funds, MISL is in *prima facie* violation of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
- (c) By having a shortfall in funds, MISL is in *prima facie* violation of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.
- (d) By misrepresenting and failing to maintain proper books of accounts, MISL is in *prima facie* violation of Rule 15 of Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as "**SCRR**") read with Regulation 17 of SEBI (Stock Broker) Regulations 1992 (hereinafter referred to as "**Stock Broker Regulations**").
- (e) By making periodic payments to clients, MISL is in *prima facie* violation of Section 12(1) of SEBI Act, 1992 read with Rule 8 (1) (f) and 8 (3) (f) of SCRR and Regulation 3 & 14(1)(a) of SEBI (Portfolio Managers) Regulations, 1993.

5. The interim order also granted the Noticees an opportunity of personal hearing on June 26, 2020 at SEBI Bhavan II, Bandra Kurla Complex, Mumbai. On June 26, 2020, Advocates/representatives appeared on behalf of Noticees no. 4, 5, 7 and 9, while Noticee no. 8 and 10 appeared for themselves, via video conference and made submissions. Noticees no. 1, 2 and 3 did not appear for the hearing and sought an adjournment vide their joint letters dated June 17, 2020, June 22, 2020 and June 24, 2020. Noticees no. 1, 2 and 3, vide their aforesaid letters, had also sought for an inspection of documents and accordingly, inspection of documents was granted to the Noticees no. 1, 2 and 3 on June 26, 2020. Following the principles of natural justice, another opportunity of personal hearing was granted to Noticees no. 1, 2 and 3 on July 16, 2020. On July 16, 2020, the Noticees no. 1, 2 and 3 appeared along with their advocates/representatives and made submissions.

6. The Noticees have raised various contentions regarding the observations in the interim order. The submissions of the Noticees in brief are summarised as hereunder:

(a) Noticees no. 1, 2 and 3 (Modex International Securities Ltd, Dharmendra Kumar Arora and Pavan Kumar Sachdeva) vide their joint letter dated July 15, 2020 *inter alia* submitted the following:

(i) Noticee No.1, is registered with SEBI as a stock-broker bearing Registration Number INZ000211434 and has been a member registered with National Stock Exchange of India Limited (NSE) and BSE Limited (BSE) in the Capital Market Segment, Future and Options (F&O) Segment and in Currency Derivatives Market and is also a Depository Participant (DP) of Central Depository Services Limited (CDSL) with registration number in DP -205-2016.

(ii) The Company has been operating in the capital market segment since April 1996 and in Future & Options Segment since August 2001 in accordance with SEBI Regulations, Circulars issued by SEBI from time to time and Bye- Laws, Rules and Circulars of stock exchanges. In the

past, there has been no instances of violations of any regulatory prescriptions of SEBI, NSE or BSE. The Noticees have enjoyed clean track record and trust and confidence of 12998 clients in capital market segment (active clients 1301) and 9720 clients in F & O Segment including prominent institutional clients (active clients 532).

- (iii) The Noticees have been extending their full co-operation to the inspection team of NSE as also Forensic Auditors by remaining with them in office till late night on most of the days despite shortage of staff and stoppage of operations. The Noticees have continuously shared data with the exchange for releasing the securities before Axis Bank went to the Hon'ble Securities Appellate Tribunal ("SAT") and even after SAT's orders dated 19.06.2020 and 03.07.2020. The Noticees have worked with the exchange day night to prepare the data in accordance with the SAT order. We have also been continuously helping our investors by updating all the progress, transfer of shares, providing of statement etc even in lockdown and afterwards.*
- (iv) That a complete lockdown was declared in the whole country with effect from March 20, 2020 and consequently, the Noticees could not provide any further information / documents to NSE/ Forensic Auditors. However, NSE/ Forensic Auditors went ahead with finalizing their observations/ findings in the absence of vital information, which in turn has resulted in generation of inaccurate statement of the Company's assets and liabilities as on January 24, 2020.*
- (v) In parallel proceedings initiated under Chapter 4 of NSE Rules, the NSE has issued Show Cause Notice dated March 14, 2019 for purported violations observed during inspection for the period of October 01, 2016 to September 30, 2017; and Show Cause Notice dated January 07, 2020 for the purported violations occurred during inspection period from March 01, 2019 to November 30, 2019 in CM and F&O Segments. Hence, both the proceedings i.e. one by NSE and another by SEBI pursuant to the Interim Order in respect of the same alleged violations tantamount to double jeopardy as the Noticees are proposed to be penalized twice for the same set of violations. The current proceedings deserve to be dropped on this ground itself.*

(vi) *That the Interim Order based on NSE Report (NSER) and Forensic Review Report (FRR) has made allegations against the Noticees without proper examination or analysis of the said reports and has failed to assess the impact of FRR's assumptions and limitations on the final outcome of the Report. The Interim Order fails to take note that FRR has specifically stated that the results of their work with respect to review of transactions should be considered only as a guide and not as a definitive pronouncement. Methodology adopted for arriving at the figures of shortfall in securities and shortfall of funds is flawed as the same does not provide holistic picture, particularly, because it makes certain exclusions which distort the fair and factual position of the securities and funds lying with the Company.*

(vii) *As per Chapter 2 Clause (6) of the FRR, "The Report is based on review of the limited information provided till 11 March 2020" however, the FRR has failed to take into consideration several critical entries before making their observations and inferences. Some of such instances are given below for sake of brevity:*

a. FRR has failed to take into consideration the aggregate amount of Rs.39,09,139/- which has been paid by the Noticees during the period January 17 to January 21, 2020 to settle the claims of 222 clients while determining the liability of the Company. Intimation regarding the same has been reported by the Company to NSE and SEBI vide its email dated January 27, 2020 (copies whereof are attached herewith and marked collectively as Exhibit "G").

b. FRR, while determining the liability of the Company, has failed to take into consideration the aggregate amount of Rs. 48,300/- which has been paid by the Noticees to settle the claims of 17 clients. Intimation regarding the same has been reported by the Company to NSE and SEBI vide its email dated January 30, 2020 (copies whereof are attached herewith and marked collectively as Exhibit "H").

c. FRR, while determining the liability of the Company, has failed to take into consideration the aggregate amount of Rs. 4,93,467/- which has been paid by the Noticees to settle the claims of 3 clients. Intimation regarding the same has been reported by the Company to

NSE and SEBI vide its email dated February 18, 2020 (copies whereof are attached herewith and marked collectively as Exhibit "I").

d. FRR, while determining the liability of the Company, has failed to take into consideration the aggregate amount of Rs.43,54,299/- which has been paid in February 2020 by the Noticees to settle the claims of 7 clients (copies whereof are attached herewith and marked collectively as Exhibit "J").

e. The Company's promoter Mr. D.K. Arora has also paid an aggregate sum of Rs. 45,00,000/- to 3 clients, the details whereof are given at Exhibit "K" hereto.

f. The FRR has not taken into consideration the quantum of securities receivable by Noticee No. 1 (Negative List) while determining the liability of the Noticee 1 which has resulted in drawing perverse observations in the FRR.

g. The FRR dated March 27, 2020 on the basis of which SEBI has proceeded to pass the Impugned Order on April 30, 2020 is unsigned and only in draft format. The said FRR dated March 27, 2020 differs from the final FRR dated May 5, 2020 and no reasons for such variance and the implications thereof have been provided to the Noticees. The authenticity of the said FRR dated March 27, 2020 is, therefore, very much questionable and SEBI ought to have verified the correctness of the same before proceeding to pass the Impugned Order in a hasty manner.

h. The FRR and NSER suffer from several other errors and inconsistencies. The Noticees have not been able to examine the said reports thoroughly on account of the recognized nature of the said reports, limitations on reviewing data due to nation-wide lockdown and paucity of time. The Noticees, therefore, reserve their right to furnish additional submissions in relation to such errors and inconsistencies in the said Reports.

(viii) Though NSE completed inspection of the Company's affairs for the period from March 01, 2019 to December 11, 2019, it did not share the inspection report with the Company nor it sought any comments from the

Company on its findings. In fact instead of seeking the Company's comments on findings of the inspection, NSE rushed for appointing KPMG to undertake Forensic Review of the Company's books and records from April 01, 2017 to January 24, 2020 (Review Period). Arbitrarily, Forensic Review Report of KPMG was also not shared with the Company, nor any comments of the Company were sought. It is a well-established regulatory norm mandated by principles of natural justice that the regulatory authority shall seek comments of the inspected entity before drawing any adverse inference based on the data and information collected by it during inspection. NSE has committed violation of principles of natural justice by not seeking comments of the Company on NSER and FRR. The Interim Order has further compounded the said violation by blindly acting upon the observations made in the said reports without conducting any independent examination or analysis thereof. Resultantly, the Noticees have been made to suffer harsh and unwarranted directions passed vide the Interim Order which are not sustainable either in law or in the facts of the case.

- (ix) That the ad- interim Order has been hastily passed against the Noticees based on Draft unsigned reports (i.e. NSE Report and Forensic Review Report), the facts and figures whereof were yet to be verified and confirmed by the persons concerned. It is submitted that the said draft reports which were circulated for internal discussion only could not have been relied upon by SEBI for passing an ad- interim ex- parte Order against the Noticees;*
- (x) That the allegations have been made against the Noticees without taking into account the documents, records and information repeatedly shared by the Company with NSE. The conclusions or inferences drawn in the said reports would have been substantially different if they had paid due regard to the information provided to them by the Noticees.*
- (xi) Non-Availability of Clients' securities: As per the Interim Order, NSE Report states that on verification of the back office securities holding of MISL and securities available in its beneficiary accounts with Clearing members/ Clearing Corporation on January 24, 2020, purported shortfall of clients' securities amounting to Rs. 95.29 Crore was observed. It is*

submitted that the said shortfall of Rs. 95.29 Crore have been wrongly worked out, particularly, because no consideration has been given to the Negative Securities of the value of Rs. 113.03 Crore i.e. securities recoverable from the clients as on January 24, 2020. It is clear from Table 7 of FRR that there were Negative/recoverable securities of the value of Rs. 113.03 Crore from Non- Pro clients. If the Negative securities (even partly) are set off against the net Positive Securities shortfall of Rs. 95.29 Crore payable to clients then the amount of shortfall will undergo change. In this connection, it is pertinent to observe from Annexure 18 to the FRR that there are several Non- Pro clients other than Non- Pro top 16 clients from whom securities of substantial value are recoverable. Extract of Table 7 of FRR is annexed and marked as Exhibit D-1 and Annexure 18 to the FRR is annexed and marked as Exhibit D2. The Noticees deny the purported contention as well as the tabular representation pertaining to shortfall of clients securities as mentioned in the said Order. Further, no independent investigation/ inquiry has been conducted by SEBI in regard to the purported shortfall in the securities amounting to Rs. 95.29 Crore as alleged in the said Order.

It is true that out of Positive Securities of Rs. 233.02 Crore, the security holdings of seven (7) clients worth Rs. 46.30 Crores in three scrips are not payable to them as the same do not belong to them and were wrongly transferred to them by the Company through the demat accounts of its group company Modex Commodities Trade Private Limited (MCTPL).

(xii) Improper use of clients funds: It is alleged that the Company had collected investments (securities) from certain clients with commitment of periodic payment as returns on their investment under branch codes starting with VD and VD2 or client code MX. The said contention is denied as the Company did not commit any fixed return or periodic payment on the investments, as is clear from the letters issued to a very few clients of erstwhile Director, Mr. Vikram Duggal. The Company craves leave to refer to and rely upon the said letters, sample whereof is annexed as Exhibit "E". While it is true that the Company invested such

funds/ securities in F & O Segment which resulted in net F & O losses as alleged, it is however denied that no efforts were made to recover the losses. The concerned employees of the Company had been in constant touch with such clients to recover the losses. Those clients were allowed to trade even after losses or they were made some periodic payments considering the long term relationship with such clients and their past track record in performance of their obligations. It is denied that the Company had collected investments from the clients on periodic payment commitment basis and could not recover the F & O losses from the customers as alleged and met its obligations pertaining to F & O losses by selling other clients' securities. The Company is in the process of initiating necessary steps to recover the said F & O Losses in consultation with its legal advisors. It is pertinent to note that the Company is legally entitled to recover the said losses from the clients even after write off (so long as such debts have not become time barred). It is a standard practice for the banks/corporate bodies to write off the debts to clean the balance sheet but that does not take away their right to recover the debts which have not otherwise become time barred.

(xiii) It is denied that the Company had indulged in any kind of misappropriation of funds, as alleged. The FRR clearly brings out that there was no siphoning of funds or any fraudulent transfer but the funds were used only for purposes of the Company's business needs as under:
(a) "Analysis of bank statements for the period 1 April 2019 to 31 December 2020 showed potential movement of sales proceeds recognize ecogni. INR100.27 crore from MISL's BSE/NSE cash settlement account with IndusInd bank to MISL's FAO settlement account with Axis bank.

(b) Periodic payments to clients (ecogni. INR16.97 crore) despite FAO losses recoverable from them.

I Flat advance (ecogni. INR10.47 crore) paid to beneficiaries connected with Mr Pawan Sachdeva (INR4.52 crore) and other parties (INR5.95 crore). Based on available information, the relationship of other parties with MISL could not be established."

It may be observed from the above that no funds of the Company have been misappropriated. Sale proceeds of Rs. 100.37 Crores were transferred from Cash Settlement Account with IndusInd Bank to the Company's F & O Settlement Account with Axis Bank. In other words, the funds remained within the Company. Periodic payments of about Rs. 16.87 Crores to some clients despite F & O losses were made with a view to retain these clients who otherwise had good financial health and clean track record in performance of their past obligations. As regards the flat advance of approximate Rs. 10.47 Crore, it is submitted that these were all genuine transactions (supported by documents) whereunder the Company had acquired good and marketable title in those properties. In fact the Company had availed overdraft loan of Rs. 9.79 Crore from Axis Bank against the said properties acquired by the Company.

- (xiv) Shortfall in funds available with the Company: As per the Interim Order, there is a shortfall of funds available with the Company of Rs. 79.61 Crores which comprises creditors of Rs. 30.63 Crore and net overdraft balance with banks of Rs. 49.09 Crore and margin of Rs. 0.11 Crore with BSE as alleged. While calculating the trade payable of Rs. 30.63 Crore to the creditors (clients), the securities receivable from credit clients (who have sold securities of other clients) have been adjusted to the extent of Rs. 71.86 Crore from the aggregate Trade payable of Rs. 102.49. As per Section 6.7 of FRR, "In 11 out of 259 creditors, TP of Rs. 71.86 Crores can be considered good to set off against net securities receivable of approximate INR. 99.39 Crore (i.e. securities receivable of Rs. 106.04 Crore minus securities payable of Rs. 6.65 Crore), 10 out of these 11 creditors are those whose accounts were used to sell securities of other clients (refer Section 6.4 (1C))."*

Conspicuously, while FRR read with the summary of Funds and Securities payable as on June 24, 2020 (given in Annexure to NSE Report) has considered Rs. 71.86 Crore out of aggregate receivable of Rs. 106.86 Crore good to set off, no consideration whatsoever has been given to the remaining Trade Receivables from Rs. 106.04 Crore. Further, the Axis Bank's dues of Rs. 41.98 crore included Rs. 21.98

Crore debt due to shortfall of obligation which has since been allowed to be paid off from Margin held by Axis Bank as per Order dated July 03, 2020 of SAT in Appeal No. 146_/ 2020 filed by Axis Bank. Accordingly, the Axis Bank's liability will be reduced. Further, Axis Bank's loan of Rs. 10 Crore against property and Rs. 10 Crore non-funded portion of BG is adequately secured. No consideration has been provided to the value of such securities. If the market value of such securities is taken into account then the quantum of Bank dues may also substantially come down. In view of the aforementioned, it is respectfully submitted that the shortfall has not been worked out properly and it does not reflect the correct factual position. Hence, the Noticees deny the correctness and genuineness of the purported table reflecting the shortfall of funds available. An extract of Section 6.7 of FRR is annexed and marked as Exhibit "F-1" hereto.

(xv) It may be observed from "Details of the Debtors Funds Receivable" in the aforementioned Summary of Funds and Securities that while NSE / SEBI have taken note of Rs. 40.65 Crore recoverable from unsecured debtors and Rs. 34.18 Crore recoverable from 11 Creditors out of 259 creditors, no weightage whatsoever has been given to the value of such recoverable for the purpose of set off against the trade payable by the Company. If some reasonable value is assigned to such recoverable(s) for the purpose of set off then the liability of the Company may further come down.

(xvi) The amount of TP/TR may further undergo change if the following are taken into consideration:

(a) The Company vide its email dated January 27, 2020 (copies whereof are attached herewith and marked collectively as Exhibit "G") has reported to NSE and SEBI that it has paid aggregate amount of Rs. 3909139/- to settle the claims of 222 clients. However, FRR as well as NSER have not considered the said payment while determining the liability of the Company.

(b) The Company had reported to NSE and SEBI about payment of Rs. 48,300/- to 17 clients vide its email dated January 30, 2020 (copies whereof are enclosed herewith and marked collectively as Exhibit "H")

which has also not been considered while determining the liability of the Company.

I The Company had reported to NSE and SEBI the payment of Rs. 4, 93,467/- to 3 clients vide its email dated February 18, 2020 (copies whereof are attached herewith and collectively marked as Exhibit "I") which has also not been considered while determining the liability of the Company.

(d) The Company has also paid an aggregate sum of Rs. 43,54,299/- to 7 clients, the details whereof are given in Exhibit "J" hereto.

I Further the Company's promoter Mr. D.K. Arora has also paid an aggregate sum of Rs. 4500000/- to 3 clients, the details whereof are given the Exhibit "K" hereto. The said payments have also not been considered by NSE during inspection as the said payments were made afterwards.

(f) As per Hon'ble SAT's Order dated July 03, 2020 passed in Appeal No. 146/2020 of Axis Bank, the securities of several clients lying in margin with the Axis Bank as CM has to be returned. It is submitted that the same will also reduce the current liability of the Company. A copy of the Hon'ble SAT's Order dated July 03, 2020 is enclosed herewith and marked as Exhibit "L".

(g) On verification of the Financial Balances mentioned in Annexure 28 of FRR, it is observed that the FRR has not considered margin money which was lying with the Company resulting in flawed status of financial balances. A sample of some accounts giving the status of balance as per Forensic and as per Modex is given in the Annexure hereto is annexed as Exhibit M-1. Annexure 28 of FRR is annexed as Exhibit "M-2".

(h) On verification of Paragraph 7 of FRR pertaining to securities of the clients, it is observed that NSE has not correctly calculated the securities holding of clients. A sample of securities holding of some of the clients with differences and reasons for such differences are given in Exhibit "N-1". Extract of Paragraph 7 of FRR is annexed as Exhibit "N-2".

(xvii) Periodic payment to clients (Rs. 16.87 crore): It is alleged that on the basis of analysis of sample financial ledgers of 78 out of 197 VD clients, it has been observed that MISL made a periodic payment totaling Rs.

16.87crore to 50 VD clients during the Review Period. In 47 out of those 50 VD clients, F&O losses of Rs. 98.60 crore was recorded during the Review Period. Further, periodic payments totaling Rs. 0.07crore were observed in one Non-VD client despite F&O losses of Rs. 2.13 crore. As submitted earlier somewhere in this reply, the Company has not entered into any arrangement for fixed or assured returns on investment with any client as alleged. It is however pertinent to note that Noticee No. 9, Mr. Vikram Duggal was managing the complete VD Group trading by leading marketing team and continuously holding meetings with VD group clients for development of business. Mr. Duggal was exclusively responsible on full-time basis to provide service to VD clients and for that purpose he was drawing remuneration from the Company. Hence, violation if any is attributable to him and he should be required to provide clarification in this regard. It is therefore denied that MISL is in prima facie violation of Section 12(1) of SEBI Act, 1992 read with Rule 8 (1) (f) and 8 (3) (f) of SCRR and Regulation 3 & 14(1)(a) of SEBI (Portfolio Managers) Regulations, 1993.

(xviii) That a complete lockdown was declared in the whole country with effect from March 20, 2020 and consequently, the Noticees could not provide any further information/documents to NSE/Forensic Auditors. However, NSE/Forensic Auditors went ahead with finalizing their observations/findings in the absence of vital information, which in turn has resulted in generation of inaccurate statement of the Company's assets and liabilities as on January 24, 2020.

(b) Noticees no. 4 (Ajay Jain) vide letters dated June 26, 2020 & July 07, 2020, Noticee no. 5 (Parminder Singh Kindra) vide letters dated June 26, 2020 & July 02, 2020 and Noticee no. 7 (Sarika Chawla) vide letter dated June 26, 2020, *inter alia* have made similar submissions which are as follows:

(i) The Noticee no. 4 was a Non-Executive Independent Director of the Company from March 27, 2019 to December 15, 2019. The Noticee tendered his resignation on December 15, 2019. In support of the above contention, a copy each of the following is submitted:

- I. Form DIR-12 filed with RoC in respect of appointment of the Noticee as Independent Director
- II. The Noticee's Resignation Letter dated December 15, 2019
- III. Form DIR-11 filed with RoC with respect to his resignation
- IV. The Noticee's Intimation dated December 19, 2019 regarding his resignation to NSE
- V. The Noticee's Intimation regarding his resignation to SEBI on January 06, 2020

(ii) The Noticee no. 5 is a Non-Executive Independent Director of the Company from July 07, 2015 and has not been involved in any of the operations, day to day affairs of the Company. Prior to being appointed as such, the Noticee had served on the board of the Company from May 15, 2006 to November 12, 2011 as director. In support of the above contention, copies of the following documents are attached herewith.

- I. Form DIR-12 filed with RoC in respect of appointment of the Noticee as Independent Director;
- II. Form 32 filed with RoC in respect of appointment of the Noticee as director;
- III. Form 32 filed with the RoC in respect of cessation of the Noticee as a director by way of resignation.

(iii) The Noticee no. 7 was a Non-Executive Independent Director of the Company from March 28, 2018 to December 21, 2019. The Noticee no. 7 tendered her resignation on December 17, 2019 to the Company. Copies of the following are attached herewith as Annexure "1 and 2".

- i. Form DIR-12 filed with RoC in respect of appointment of the Noticee as Independent Director
- ii. The Noticee's Resignation Letter dated December 21, 2019

(iv) It may be observed from the documents submitted that the Noticee no. 4 was a Director of the Company barely for a period of 9 months. It is pertinent to note that during the said short period of directorship the

Noticee no. 4 had not attended any board meeting of the Company nor had the Noticee drawn any remuneration, salary, compensation or benefits of any kind from the Company.

- (v) The Noticee no. 5 had not drawn any remuneration, salary, compensation or benefits of any kind from the Company.
- (vi) The Noticee no. 7 was a Director of the Company barely for a period of 21 months and has not attended any board meeting after December 21, 2019. It is submitted that during the said short period of directorship the Noticee no. 7 had not drawn any remuneration, salary, compensation or benefits of any kind from the Company.

Similar Replies filed by Noticees no. 4, 5 and 7:

- (vii) *The Noticee has also not signed any paper, minutes, cheques, letters, correspondences and/or documents of any sort pertaining to the management or business of the Company or anything directly or indirectly related to the Company.*
- (viii) *The Noticee never had any authority or right whatsoever pertaining to banking operations/transactions of the Company and he was not authorized by the Company to deal with any authority, department, customers/clients or employees pertaining to anything even remotely associated with the Company in any manner.*
- (ix) *It is evident from the aforementioned facts that the Noticee was not even remotely involved directly or indirectly in the affairs, management or business of the Company in any manner or capacity whatsoever. NSE Inspection Report, Forensic Audit Report as well as the Interim Order have not made any allegations specifically against the Noticee nor they have referred to any complaints or grievances against the Noticee in particular.*

- (x) *(Noticees no. 4 and 5 have submitted that) The Company in its letter dated 02.01.2020 has confirmed that the Noticee was not concerned with the day to day management of the Company and that the Company shall bear any liability which may accrue on account of the Noticee acting as a director of the company.*

- (xi) *The Impugned Order as well as NSE Inspection Report and the Forensic Audit Report do not make any allegations specifically against the Noticee and the directions have been issued against the Noticee on this ground alone that he was a director of the Company during a small part of the relevant period. No examination /enquiry whatsoever has been made to ascertain the role of the Noticee with respect to the alleged violations. It is respectfully submitted that an independent director cannot be held liable merely for being a director unless there is material to show that the alleged acts of omission or commission by the company had occurred with his knowledge, consent, connivance or neglect. This position of law is clearly laid down in section 149(12) of the Companies Act, 2013. With a view to make whole time directors and key managerial personnel to be mainly responsible for acts or omissions of the Company and not to make ordinary directors liable for the same, the Companies Act, 2013 provides the definition of “officer who is in default” in clause (60) of Section 2. SEBI Act (Section 27) as well as Regulation 25(5) of the SEBI (LODR) Regulations, 2015 have also taken care to ensure that ordinary directors are not held liable for acts or omissions of a company unless such acts of omission or commission are committed with their consent, connivance, knowledge or neglect.*

- (xii) *While Section 166 of the Companies Act, 2013 bestows enormous duties on the directors, the same cannot be read in isolation. Courts have time and again settled that affixing liability should not be automatic, rather it should be attributable to the role of the director. The*

tag of 'officer who is in default' goes out to the executive wing of the Board before touching the non- execution part depending on the circumstances of each case. Further, Section 149(12) of the Companies Act, 2013 reinstates the fact that the independent directors and non-executive directors can be held liable only in respect of such omission or commission which had occurred with their knowledge attributable through board processes and with their consent or connivance or where they had not acted diligently.

(xiii) MCA vide its Master Circular dated July 29, 2011 on prosecution of Directors and General Circular dated March 2, 2020 have clarified that no Nominee/Independent Director shall be held liable for any act of omission or commission by a company which constitutes a breach or violation of any provisions of the Companies Act and which occurred without his knowledge attributable through Board process and without his consent or connivance or where he has acted diligently in the Board process. A copy of the said MCA Master Circular and General Circular is annexed herewith as Annexure "7" and Annexure "8" respectively.

(c) Noticees no. 8 (Sharda Gupta) vide letter dated July 01, 2020 *inter alia* submitted the following:

- (i) Mrs. Sharda Gupta is 57 years of age. She was an independent lady director between 17th September, 2015 to 11th December, 2017. Mr. D.K. Arora, Whole Time Director, being a family friend requested her to join as an independent director. She was told that, she will have no responsibilities for day to day working of Modex with no benefits like Salary, Conveyance, Sitting fee, etc. She has highlighted that during her tenure, she was not involved in the day to day working operations of Modex.*
- (ii) From the Interim order dated 30th April, 2020, it appears that, all the issues stated therein pertain to day to day working of Modex, which she was not involved in. Also, that NSE first observed discrepancies in operations in November, 2019, much after she had resigned from*

Modex, i.e. on 11th December, 2017.

- (iii) Incidentally this order never came to her notice, it is only when her family members were unable to access their bank accounts. When they contacted the bank, they told them that the accounts were frozen due to a SEBI order. It is only after her son searched the internet, they came across the above-said order, somewhere around 8TH of May, 2020.
- (iv) Being the eldest female member in the family, as a mark of respect, she was added as a second holder in the family member accounts and investment. As a result of the said order all their accounts have been frozen. All her family members including her are independent tax payers. Each member of her family accounts for the income from their income in their respective income tax returns. She also filed her income tax return regularly where-in all her income from investments is accounted for in her income tax return.
- (v) At the end to summarise, my request to you, please note:
 - 1. All the issues raised in the Interim order dated 30th April, 2020 pertained to day to day operations of Modex.
 - 2. As an independent director, she was neither involved nor responsible for day to day operations of Modex.
 - 3. The issues first came to light based on the audit report in November, 2019, nearly 2 years after her resignation.

(d) Noticees no. 9 (Vikram Duggal) vide letter dated August 04, 2020 *inter alia* submitted the following:

- (i) That the notice joined Modex International Securities Limited (herein after referred as MISL) in the year 2009-10 as a LEGAL CONSULTANT only. That recogn job profile was to provide legal consultancy to MISL and also assist the company in its legal cases.
- (ii) That further in the year 2013 when Companies Act, 2013 was enacted by the Legislature, officials of MISL requested the recogn to be inducted as an independent director in the company owing to the requirements of the Companies Act, 2013. That considering the long term relations with MISL recogn agreed and was appointed as an independent director for

a period of 5 years i.e. from 2014 to 2019. It is pertinent to mention here that ecogn was not given any other responsibility in the day to day affairs of the company neither he was having any authority to sign or take decisions on or behalf of the Company. It is pertinent to mention that ecogn was appointed as an Independent Director of MISL under schedule IV of the Companies Act, 2013. That the ecogn herein was neither the **Key Managerial Personnel** of MISL and was neither having signing authority on or behalf of the company.

- (iii) That it is pertinent to mention that ecogn herein in the month of March, 2019 informed the board of MISL that he does not wish to continue as an independent director of the company which was not accepted by the board and thereafter tendered his resignation once again on 26th September 2019 which was duly accepted.
- (iv) That as an independent director ecogn herein has no decision making powers and was not working in the day to day affairs. It is pertinent to mention that the ecogn has no role in the investments made by MISL on or behalf of the clients. It is further pertinent to mention that ecogn herein barely interacted with the investors/clients of MISL regarding their investments. Further all the transactions pertaining to the investments were done at the back office of MISL and ecogn never functioned from back office of MISL.
- (v) That in the instant case the roles and responsibility of ecogn were that of legal consultant only and was limited to that extent without any authority of decision making and it is an established rule that the liability of an independent director can be ascertained through the roles and responsibilities undertaken by such director during the course of his/ her appointment. That in the present case ecogn cannot be held as an 'officer in default', and in process of determining his liability it is to be seen that he has no role in the functioning of the company and there is no document on record which can show his involvement in transacting with the clients or with their money.
- (vi) That as per the forensic reports there are huge amount of money that has been misappropriated by MISL, however there is no single averment or allegation against the ecogn stating that he has any role in

commission or omission of the said act. It is pertinent to mention that there is no document on record that can establish that ecogn herein was having any role to play when it comes to functioning of MISL or has any role or responsibility for trading on or behalf of MISL.

(vii) That it is mentioned in the ex-parte order that there is a group by the name of "VD" and the abbreviation means Vikram Duggal, it is pertinent to mention that ecogn never gave any permission to run a group by his name neither he has any knowledge about the said group or signed any document pertaining to the formation of said group. That even if we presume the fact without admitting it that the said group is into existence at MISL then also the same cannot make ecogn liable as the formation of the group by his name does not give him any signing authority and the said authority was only with KMP of MISL. That even ecogn never drew any commission or funds from the sale and purchase or trading done from the account holders mentioned in the said group. Moreover, the documents relied upon by the adjudicating authority fail to file any document pertaining to the source of the VD Group and thus any conclusion drawn on the said basis is illegal and bad in the eyes of law.

(viii) That several investors have also registered FIR's against MISL wherein present ecogn has not been named neither any criminal prosecution has been initiated against him. It is pertinent to mention that even it has been held in one of the recent case of one of the client, titled as **Vikas Puri Versus State of NCT, Saket Court, New Delhi** that ecogn cannot be held liable as he had no authority to take decisions or sign on behalf of the company and never transacted with the complainants. He being a former legal consultant or former independent director with no authority cannot be made liable. That by the bare perusal of the said **Judgment** passed by that Hon'ble Court it can be ascertained that ecogn cannot be held liable. Even by considering the FIR's registered against MISL and its KMP's and not against ecogn herein it is now crystal clear that ecogn has no authority to take decision on behalf of MISL and cannot be held liable.

(ix) That the noticee herein is neither a Designated Director, Whole Time Director, Shareholder, Promoter nor a Key Managerial Personnel of

MISL and was having no authority to take decision on behalf of MISL nor having any signing authority therefore he cannot be made liable for any illegal act done by MISL.

- (x) That noticee cannot be held liable when there is no evidence against him that he was involved in the day to day functioning of MISL as the mere fact that a person is a Director would not make him automatically responsible for refund of monies under Section 73(2) of the Companies Act.
- (xi) That as the noticee is not involved neither has any knowledge regarding the illegal acts done by MISL neither was a part of the same and also duly resigned from MISL cannot be held responsible. It is pertinent to mention that the noticee never drew any salary from MISL neither any commission and was only receiving his Professional Legal Fee makes it clear that he was not a part of misappropriation of funds done by MISL (if any).

Submissions made vide letter dated August 29, 2020 in response to the letter dated July 15, 2020 of Noticee no. 1, 2 and 3.

- (xii) The Wholetime Executive Directors are just shying away from the Law and trying to escape their own Liability and accountability.
- (xiii) It is respectfully submitted that the Board of MISL consisted of 2 Wholetime Directors, namely Mr D K Arora and Mr Pavan Sachdeva who were the Designated Directors, Wholetime Executive Directors as well as Majority Shareholders of MISL, and the rest 7 were all Independent Directors of MISL at different times. Since 2014, the board had appointed Mr D K Arora and Mr. Pavan Sachdeva as the Key Managerial Personnel for looking into the day to day affairs of MISL, and the KMP had all the authority to take the decision and had the Signing Authority with respect to Banks, Exchanges, MCA, Income Tax, Annual Reports etc.
- (xiv) That, VD group means Vikram Duggal, the ecogn is not aware as to how MISL classified/bifurcated the various clients under which head. VD could mean Vijay Dhawan (who was a Director in the company till 2012), Vijay Dashmi, Vishal Dave or many other names. How did MISL classify

in their back office, the Noticee is not aware. It is pertinent to mention that ecogn never gave any permission to run a group by his name neither he has any knowledge about the said group or signed any document pertaining to the formation of said group. That even if we presume the fact without admitting it that the said group is into existence at MISL, then also the Noticee cannot be made liable as the formation of the group by the name VD does not give him any decision making and signing authority and the said authority was only with KMP of MISL. That even ecogn never drew any commission or funds from the sale and purchase or trading done from the account holders mentioned in the said group.

- (xv) That, the Noticee no 9 used to receive Legal & Professional Charges from MISL after MISL deducted TDS under Section 194 J of the Income Tax Act, 1961 which pertains to deduction on Fees for Professional Service or Technical Service. Moreover, if you will observe the copies of some of the bills which we have submitted earlier, the Noticee has never charged any GST or Service Tax in the Bills as the Legal Profession is exempt from GST or Service Tax.*
- (xvi) The Noticee was never paid any Salary or Commission by MISL. The money paid to him was never subject to Section 192 of the Income Tax Act, which pertains to Salary Income or under Section 194 H which deals with the Commission or Brokerage Business.*
- (xvii) The Noticee was providing only Legal Services to MISL and HENCE on their own behest MISL used to show this Expenditure, in their Accounting books, under the Head Legal and Professional Charges.*
- (xviii) As far as The Letter is concerned, the Noticee does not remember if he signed such a letter.*
- (xix) That further it is pertinent to mention that there are several FIR's and complaints that have been lodged against Mr. DK Arora and Mr. Pavan Sachdeva and also there is a Judicial Order that has been passed by the Hon'ble Saket Court, New Delhi wherein it has been held and I quote "that ecogn cannot be held liable as he had no authority to take decisions or sign on behalf of the company and never transacted with the complainants. He being a former legal consultant or former*

independent director with no authority cannot be made liable.”

- (xx) *That even by considering all the above judicial documents it is crystal clear that Noticee no 9 cannot be made liable for any of the act that has been done by MISL as recogn no 9 was not in default as he was having no authority to take decisions or to sign and also not involved in any day to day activities of MISL.*

(e) Noticees no. 10 (Suresh Agarwal) vide letter dated June 08, 2020 *inter alia* submitted the following:

- (i) *He has been a director of MISL for a very short duration. He had joined as an additional and independent non-executive director of MISL on October 03, 2019 and had resigned from that position with effect from January 17, 2020. Therefore, in effect, he was on the Board of Directors of the MISL for less than 4 months. A copy of the prior approval accorded by the NSE for his induction as a director of the company and the MCA master data of the company confirming his date of appointment are annexed.*
- (ii) *He is a person of Indian origin now citizen of Republic of Singapore and is living and gainfully employed in Singapore, with no interaction or communication with MISL or its directors regarding its day to day functioning or operations.*
- (iii) *During his short association with MISL, he did not receive any communication or information from the company except for the communication dated January 03, 2020 which prompted him to resign from the company.*
- (iv) *That during his short tenure of nearly 100 days as additional independent director, he was not given notice of any board meeting, or any agenda of the minutes of any previous board meetings, nor did he attend any Board Meeting of MISL during this period.*
- (v) *He had terminated his association with MISL as additional independent director as the company was not forthcoming with any kind of information generally provided by the companies to its directors regarding the functioning and operations of MISL. He had stated this reasoning in his resignation letter dated January 17, 2020 also annexed.*

- (vi) MISL (Noticee no. 1) has forwarded his resignation to the stock exchanges under the applicable SEBI rules and regulations but the stock exchanges are yet to respond to the same in spite of passage of nearly 3 months after forwarding the request. A copy of the letter sent by MISL to stock exchanges seeking confirmation of his cessation from directorship is annexed.*
- (vii) In addition to not being involved in the day to day working of MISL, he also did not receive any pecuniary benefits like salary /sitting fee/travel expense, etc. from the said company and no such matter pertaining to the interim order was brought to my knowledge by the company during tenure of my association with the company.*
- (viii) He had no relationship with MISL in the past nor have worked in any capacity with MISL. Further he is neither a promoter or associated with any of the promoters of MISL. No forensic auditor has approached him to examine or record statements for details of his role or his dealings with MISL.*
- (ix) Attention is drawn to the General circular no. 1/2020 dated March 02, 2020 issued by the legal cell of Ministry of Corporate Affairs, whereby standard operating procedure has been issued for prosecution filed or internal adjudication proceedings against independent directors etc. and it has been clarified that “in case, lapses are attributable to the decisions taken by the Board or its Committees, all care must be taken to ensure that civil or criminal proceedings are not unnecessarily initiated against the IDs or the NEDs, unless sufficient evidence exists to the contrary”. Thus independent director cannot be prosecuted unless conclusive evidence of their involvement exists.*
- (x) Attention is drawn to sub clause 5 of clause 25 of the SEBI (LODR) Regulations, 2015, wherein, it is provided that:
“(5) An independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which occurred with his knowledge, attributable through processes of board of directors, and with his consent or connivance or where he had not acted diligently with respect to the provisions contained in these regulations”.*
- (xi) He was not involved or aware of any of the operations of the company.*

He is not a principal officer of MISL in terms of Regulations 2(i) if the SEBI (Intermediaries) Regulations, 2008, as amended. He reiterates that in his view of his limited association with MISL, that too for a very short duration, his positioning and treatment with other directors and principal officers of MISL is neither justified nor meets the principle of natural justice. Hence, he would request SEBI in view of the above submissions to kindly drop the proceedings initiated against him, Noticee no. 10 of the said order.

Consideration of submissions and findings:

7. I have considered the submissions made by the Noticees in their replies/additional replies and during the hearings. Before dealing with the submissions of the Noticees on merits, I find it necessary to deal with the preliminary issues raised by the Noticees. I note that MISL has submitted that NSE has committed violation of principles of natural justice by not seeking comments of the company on NSE Report and Forensic Report (hereinafter referred to as “**FRR**”). That the interim order has compounded the said violation by blindly acting upon the observations made in the said reports without conducting any independent examination or analysis thereof. Further, MISL has also submitted that the interim order has been passed against them based on draft unsigned reports. In this regard, I note that the ex parte interim order has been passed on the basis of *prima facie* evidence obtained from the report of NSE which is a recognised stock exchange under Section 4 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA**”), which is the first level regulator and of which MISL is a member. Under securities laws, a recognised stock exchange can conduct inspection or forensic audit of its members on its own or on advise of SEBI. In the present matter, I note that NSE had conducted an inspection for the period from March 01, 2019 to December 11, 2019 and upon finding certain discrepancies, a forensic audit of MISL was conducted to determine the assets and liabilities of MISL along with the value of securities/funds potentially misappropriated by MISL. The forensic audit was conducted for the period April 01, 2017 to January 24, 2020. Thereafter, NSE prepared its own report after examining the findings of the

FRR, and forwarded its report to SEBI vide its email dated March 27, 2020. Thus, the contention of MISL that the interim order was based on draft reports, is erroneous and hence untenable. I note that there are serious allegations of misuse of clients funds and securities and misrepresentation of books and accounts by MISL in *prima facie* violation of the securities laws and therefore, in the interest of the investors, I find that it was necessary to take immediate steps under Sections 11, 11B and 11D of the SEBI Act, 1992 to protect the interest of investors. The facts and circumstances necessitating issuance of directions by the interim order have been brought out in the interim order. In this regard, reference is placed on the order dated March 12, 2019 passed by the Hon'ble SAT in the matter of *North End Foods Marketing Pvt. Ltd. (Appeal No. 80 of 2019)*, wherein, it was observed as under:

“13. Having heard the learned senior counsel at length, we find that it is no more res integra that SEBI has power to pass ex parte ad interim order, pending investigation, which power flows from Section 11 and 11B of the SEBI Act. A plain reading of Section 11 and 11B shows that SEBI has to protect the interests of the investors in securities and to regulate the securities market by such measures as it thinks fit and such measures may be for any or all of the matters provided in sub-section 2 of Section 11 of the Act. SEBI has power to pass interim orders and such interim orders can also be passed ex parte. Interim orders are passed in order to prevent further possible mischief of tampering with the securities market. If during a preliminary enquiry, it is found prima facie, that the person is indulging in manipulation of the securities market, it would be obligatory for SEBI to pass an interim order or for that matter an ex parte ad interim order in order to safeguard the interests of the investors and to maintain the integrity of the market. Normally, while passing an interim order, the principles of natural justice has to be adhered to, namely, that an opportunity of hearing is required to be given. Procedural fairness embodying natural justice is to be applied whenever action is taken affecting the rights of the parties. At times, an opportunity of hearing may not be pre-decisional and may necessarily have to be post-decisional especially where the act to be prevented is imminent or where action to be taken brooks no delay. Thus, pre-decisional

hearing is not always necessary when ex parte ad interim orders are made pending investigation or enquiry unless provided by the statute. In such cases, rules of natural justice would be satisfied, if the affected party is given a post-decisional hearing.”

8. Therefore, given the serious allegations of misuse of clients' funds worth Rs. 136.29 Crore, Client's securities worth Rs. 95.29 Crore and misrepresentation of books and accounts by MISL, there was an immediate urgency in passing an ex parte ad interim order in order to safeguard the interest of the clients/investors. I also note that the interim order has been issued in the nature of show cause notice affording the Noticees a post decisional opportunity of hearing. As noted in para 5 above, pursuant to passing of the interim order, following the principles of natural justice, the Noticees were given an opportunity to file reply and post decisional hearing in terms of second proviso to Section 11(4) of the SEBI Act, 1992. Further, Noticees no. 1, 2 and 3 also availed an inspection of documents of the FRR and NSE Report and have thereafter filed their detailed replies to the interim order. Hence, in view of the above, I find the said contentions of MISL regarding violation of principles of natural justice as untenable.

(a) Allegation of Non-availability of clients' securities:

9. With regard to the allegation on non-availability of clients' securities, MISL has submitted that the said shortfall of Rs. 95.29 Crores has been wrongly worked out, particularly, because no consideration has been given to the Negative Securities of the value of Rs. 113.03 Crore i.e. securities recoverable from the clients as on January 24, 2020. That from Table 7 of the FRR, it is clear that there were Negative/recoverable securities of the value of Rs. 113.03 Crore from Non- Pro clients. That if the Negative securities (even partly) are set off against the net Positive Securities shortfall of Rs. 95.29 Crore payable to clients then the amount of shortfall will undergo change. MISL has submitted that out of Positive Securities of Rs. 233.02 Crore, the security holdings of seven (7) clients worth Rs. 46.30 Crores in three scrips are not payable to them as the same do not belong to them and were wrongly transferred to them by the

Company through the demat accounts of its group company Modex Commodities Trade Private Limited (MCTPL). MISL has denied the allegation as well as the tabular representation pertaining to shortfall of clients securities as mentioned in the interim order and submitted that no independent investigation/inquiry has been conducted by SEBI in regard to the purported shortfall in the securities amounting to Rs. 95.29 crore as alleged in the interim order.

10. In this regard, with regard to the said negative securities, the NSE Report states that, in the accounts of 118 clients, there is a negative securities holding of Rs. 113.03 crore in 323 scrips as on January 24, 2020. Hence, it has been alleged that securities of other clients were sold to meet the obligation of these 118 clients, resulting in misuse and shortfall of client securities. I note that MISL has not refuted the said allegation of incorrect adjustment in the register of Securities with regard to the accounts of 118 clients, where there is a negative securities holding of Rs. 113.03 crore in 323 scrips as on January 24, 2020 as alleged in the interim order under misrepresentation of books and accounts. In this regard, I further note that it has been alleged that from an analysis of the top 16 of the 118 clients with negative securities holdings (i.e. securities recoverable from them) of Rs. 111.12 crore in 250 scrips as on January 24, 2020, it showed that MISL had recorded incorrect manual adjustments to knock off the deficit of Rs. 111.12 crore. I note that MISL has not contested the same. Further, I find that the negative securities referred to by MISL have also been misrepresented by MISL. Thus, in view of the above, I find the *prima facie* allegations levelled in the interim order, against the Noticees in this regard hold good.

(b) Allegation of Improper use of clients' funds:

11. With regard to the allegation on misappropriation of securities and funds through collection of investments from certain clients (mostly under MISL's branch code VD and VD2 or client code starting with "MX") under commitment of periodic payment and investing them in the F&O trading which resulted into

losses, MISL has denied the allegation and submitted that the company did not commit any fixed return or periodic payment on the investments. I note that MISL in its reply has also stated that they invested such funds/securities in F&O segment which resulted in net F&O losses. Further, MISL has submitted that such clients were allowed to trade even after losses or that the company made some periodic payments considering the long term relationship with such clients and their past track record in performance of their obligations. In view of these submissions of MISL, I find that allegations made in the SCN hold good. I note that a stock broker can provide fee based services for purchase and sale of securities and can charge fees for the said services, however, a broker cannot indulge in other activities except those activities which are allowed under securities laws.

12. Further, I note that it has been alleged in the interim order that during the period of forensic audit, as per MISL's books, it had received net cash settlement of Rs. 126.31 crores from Exchanges against sale and purchase of clients securities. It is alleged that MISL had not transferred the sales proceeds of Rs. 126.31 crores received from Exchanges to its clients. Further, during the said period, MISL had received net sum of Rs. 9.98 crores from its clients. It is alleged that as per bank statements and balance confirmations received from bank, MISL has a fund shortage of Rs. 48.73 crore as on January 24, 2020. This indicates that the net sum of Rs. 9.98 crores received from clients have also been potentially misappropriated in addition to the sales proceeds of Rs. 126.31 crores not transferred to clients. Thus, it has been alleged that the total potential fund misappropriation by MISL is 136.29 crore. In this regard, I note that MISL has not refuted or made any submissions to the said allegations and have simply denied that it has indulged in any kind of misappropriation of funds as alleged. Thus, I find that the *prima facie* allegations levelled in the interim order, in this regard hold good.

(c) Allegation of shortfall in funds available with MISL:

13. With regard to the allegation that as on January 24, 2020, shortfall in funds

available with MISL is Rs. 76.91 crore, MISL has submitted that while calculating the trade payable of Rs. 30.63 Crore to the creditors (clients), the securities receivable from credit clients (who have sold securities of other clients) have been adjusted to the extent of Rs. 71.86 Crore from the aggregate Trade payable of Rs. 102.49. That as per Section 6.7 of FRR, *“In 11 out of 259 creditors, TP of recognised Rs. 71.86 Crores can be considered good to set off against net securities receivable of approximate INR. 99.39 Crore (i.e. securities receivable of Rs. 106.04 Crore minus securities payable of Rs. 6.65 Crore), 10 out of these 11 creditors are those whose accounts were used to sell securities of other clients (refer Section 6.4 (1C))”*. That while the FRR read with the summary of Funds and Securities payable as on June 24, 2020 (given in Annexure to NSE Report) has considered Rs. 71.86 Crore out of aggregate receivable of Rs. 106.86 Crore good to set off, no consideration whatsoever has been given to the remaining Trade Receivables from Rs. 106.04 Crore. In this regard, I note that the credit balance of Rs. 71.86 crores payable to 11 credit balance clients were adjusted against securities receivable in their respective accounts of Rs. 99.39 crores (i.e. securities receivable of Rs. 106.04 Crore minus securities payable of Rs. 6.65 Crore). In this regard, I note that a broker can not use the securities of one client for another client. However, if broker uses the securities of one client for another client, as has happened in the present case, then the broker is liable to make good the loss to the client whose securities has been misused. Hence, Rs. 30.63 crores are payable to clients.

14. Further, MISL has submitted that the Axis Bank's dues of Rs. 41.98 crore included Rs. 21.98 Crore debt due to shortfall of obligation which has since been allowed to be paid off from Margin held by Axis Bank as per Order dated July 03, 2020 of Securities Appellate Tribunal in Appeal No. 146/2020 filed by Axis Bank and hence, the Axis Bank's liability will be reduced. Further, that Axis Bank's loan of Rs. 10 Crore against property and Rs. 10 Crore non-funded portion of BG is adequately secured. No consideration has been provided to the value of such securities. If the market value of such securities is taken into account then the quantum of Bank dues may also substantially come down. In view of the aforementioned, MISL has submitted that the shortfall has not been

worked out properly and it does not reflect the correct factual position. In this regard, I note from the NSE report that the summary of funds and Securities is as payable on January 24, 2020 and not as on June 24, 2020 as submitted by MISL in its reply. Further, I note that the Securities Appellate Tribunal Order in Appeal No. 146/2020 filed by Axis Bank is dated July 03, 2020, which is after the period of forensic audit conducted for the period April 01, 2017 to January 24, 2020. Be that as it may, I find that even after transferring securities to clients lying with Axis Bank/DPs, there is still a shortfall of client's funds and securities amounting to Rs. 79.52 crores i.e. securities shortfall of Rs. 48.89 crores and funds shortfall of Rs. 30.63 crores.

15. Further, MISL has submitted that while determining the liability of the company, the TP/PR may further undergo changes if the FRR had not failed to take into consideration the aggregate amount of Rs. 39,09,139/- to settle the claims of 222 clients, which has been intimated to NSE and SEBI vide email dated January 27, 2020. Further, that the FRR has failed to consider the aggregate amount of Rs. 48,300/- which has been paid to settle the claims of 17 clients. That the same was intimated to SEBI and NSE vide email dated January 30, 2020. That the FRR has failed to take into consideration the aggregate amount of Rs. 4,93,467/- which has been paid by the Noticees no. 1, 2 and 3 to settle the claims of 3 clients, and intimated to SEBI and NSE vide its email dated February 18, 2020. That the FRR has failed to take into consideration the aggregate amount of Rs. 43,54,299/- which has been paid by them to settle the claims of 7 clients. Further, that the Noticee no. 2 has paid an aggregate sum of Rs. 45,00,000/- to 3 clients for which I note that no details of the date of payment or intimation has been provided by MISL.

16. In this regard, I note that MISL vide its reply dated July 15, 2020, have submitted a copy of its email dated January 27, 2020 stating that they have settled the claims of 223 clients. However, I find that MISL has not provided any details to support the payment made to these 223 clients. MISL have vide its

reply dated July 15, 2020, also submitted a copy of its email dated January 30, 2020 stating that they have settled the claims of 17 clients. However, I find that MISL has not provided any details to support the payment made to these 17 clients. Further, MISL have submitted a copy of its email dated February 18, 2020 stating that they have settled the claims of 3 clients, however, I find that MISL has not provided any details to support the payment made to these 3 clients. I note that MISL has also not provided any details to support the payment to the above clients through any of the aforementioned emails to NSE or SEBI. Furthermore, MISL vide its reply dated July 15, 2020 have submitted that they have settled the claims of 7 clients for Rs. 43,54,299/- and the claims of 3 clients for Rs. 45,00,000/-, however, I find that MISL has not provided any details to support the payment to such clients. Hence, I find that MISL has not provided any details to support the payment it claims to have made to settle the claims of its clients to either SEBI or NSE. Further, the said claims of settlement by MISL, if at all have been settled, have all been made after January 24, 2020, i.e. after the period of forensic audit conducted for the period April 01, 2017 to January 24, 2020, and given that there are allegations of misrepresentation of books and accounts of MISL, I find that the said settlement claims made by MISL in its reply dated July 15, 2020 cannot be *prima facie* accepted without it being verified. Therefore, in view of the above, I find the submissions of MISL that the aforesaid settlements have not been considered as untenable.

(d) Allegation of Misrepresentation of books and accounts:

17. With regard to the misrepresentation of books and accounts, I note that MISL has not made any specific submissions as it has for each of the other allegations in its reply dated July 15, 2020. I note that MISL has denied that it has violated Rule 15 of the SCCR and Regulation 17 of the Stock Broker Regulations as alleged in the interim order for misrepresentation of books and accounts. However, the Noticee has failed to make any submissions or explanations with regard to the various allegations on the incorrect adjustment in the Register of Securities, incorrect entries of payments/receipts of clients by MISL or the incorrect adjustment in clients' financial ledgers as alleged in the

interim order. Hence, I find that the *prima facie* allegations levelled in the interim order, against the Noticees in this regard hold good.

(e) Allegation of Periodic payments to clients (Rs. 16.87 crore):

18. With regard to the allegation that MISL had made periodic payments totalling Rs. 16.87 crores to 50 VD clients during the review period, as noted in sub para b of para 7 above, I, *prima facie*, find that MISL has failed to explain the periodic payment it was making to its clients and have instead attributed the responsibility and alleged violation on one of its directors, Mr. Vikram Duggal (Noticee no. 9) who they claim was managing the complete VD Group trading by leading the marketing team and continuously holding meetings with VD group clients for development of business. Further, that Mr. Vikram Duggal was exclusively responsible on full-time basis to provide service to VD clients and for that purpose he was drawing remuneration from the Company. In this regard, I find that the company cannot simply absolve itself and its liability by fixing the responsibility on one of its directors. Hence, I find that MISL have failed to refute or provide any explanation to the allegations of periodic payments made by them to their clients. Accordingly, the *prima facie* allegations levelled in the interim order, against the Noticees in this regard hold good.

19. I note that MISL in its reply has submitted that shortfall of clients' securities and funds, as alleged in the interim order, has not been correctly computed as the negative securities and the payments made by it to the clients, have not been considered. In this regard, as noted above, a broker cannot use the securities of one client for another client. However, if broker uses the securities of one client for another client, as has happened in the present case, then the broker is liable to make good the loss to the client whose securities has been misused. Further, the payments claimed to be made to the clients by MISL, if any, does not completely wipe out the violations which stand committed. However, payments made to such clients or return of securities to such clients, are the factors which may be taken into consideration while determining the extent and nature of further action to be taken for violation of the securities laws.

20. Further, with regard to the contention of MISL that NSE has also issued show cause notice dated March 14, 2019 for purported violations observed during inspection for the period of October 01, 2016 to September 30, 2017 and Show Cause Notice dated January 07, 2020 for the purported violations occurred during inspection period from March 01, 2019 to November 30, 2019 in CM and F&O Segments. That both the proceedings i.e. one by NSE and another by SEBI pursuant to the Interim Order in respect of the same alleged violations tantamount to double jeopardy as the Noticees are proposed to be penalized twice for the same set of violations and hence, the current proceedings deserve to be dropped on this ground itself. In this regard, I find that the proceedings initiated by NSE are for contravention of the NSE Bye-laws, Rules and Regulations and circulars by which MISL as a member is to comply with. Further, the proceedings initiated by SEBI are separate proceedings for contravention of provisions of the SEBI Act, SCRR, Stock Broker Regulations, SEBI (Portfolio Managers) Regulations, 1993 and various circulars issued by SEBI for which MISL as a registered intermediary must also comply with. Hence, I find the contention of MISL that the same amounts to double jeopardy is untenable as these two proceedings, are for violation of separate provisions of laws, i.e. action against its member by a stock exchange under its bye laws and action against a registered intermediary (stock broker) under the provisions of SEBI Act, 1992, SCRA and the rules/regulations made thereunder, for which separate proceedings have been envisaged by law.

21. Regarding Noticee no. 4 to 10, I have perused the replies of these Noticees except Noticee no. 6 (since deceased) and the material available on record. In their replies, these Noticees have contended as under:

- (i) They were the independent non-executive directors of MISL;
- (ii) They have resigned from the board of MISL i.e. Noticee no. 8 on February 07, 2018, Noticee no. 4 on December 15, 2019, Noticee no. 7 on December 17, 2019 and Noticee no. 10 on January 17, 2020;

- (iii) They were not involved in the day to day affairs of MISL;
- (iv) Noticee no. 4, and 7 have not attended any board meeting;
- (v) Noticee no. 4, 5, 7 and 10 have not received any remuneration, salary, compensation or benefits of any kind from the company;
- (vi) Noticee no. 9 was only a legal consultant and received only professional legal fees from MISL.

22. I note that in the interim order, directions were issued against these Noticees, as they were the directors of MISL. I note that there are no specific allegations against the Noticees no. 4, 5, 6, 7, 8 and 10 in the alleged violations by MISL or their involvement in the day to day affairs and management of the company in the NSE Report. In view of the submissions made, allegations made in the SCN and material available on record, I find that at present, the directions against the Noticee no. 4, 5, 7, 8, and 10, as given in the interim order, need not be continued.

23. Regarding Noticee no. 9, I note that it has been *prima facie* alleged in the interim order that MISL had collected investments (securities/funds) from certain clients with commitment of periodic payment as returns on their investment. These clients were mostly under MISL's branch code VD and VD2 or client code starting with "MX". VD is the abbreviation of Mr. Vikram Duggal. MISL in its reply dated July 15, 2020, has submitted that Noticee No. 9 was managing the complete VD Group trading by leading marketing team and continuously holding meetings with VD group clients for development of business and also submitted copy of a letter dated November 27, 2014, purported to be signed by Noticee no. 9 on behalf of MISL. Noticee no. 9 vide his reply dated August 04, 2020, has stated that he never gave any permission to run a group by his name neither he has any knowledge about the said group or signed any document pertaining to the formation of said group. The Noticee no. 9 has also submitted a copy of an order dated July 24, 2020 passed by the Metropolitan Magistrate, wherein, the Metropolitan Magistrate, Saket Court, New Delhi with regard to certain FIR's filed against MISL and some of its directors, has *inter alia* held that the accused no. 6, Vikram Duggal (Noticee no. 9 in the present case) being a former legal consultant or former independent

director with no authority, cannot be made liable for registration of FIR. In view of the submissions made, allegations made in the SCN and material available on record, I find that at present, the directions against the Noticee no. 9, as given in the interim order, need not be continued. However, it is clarified that observations to discontinue the directions against Noticee no. 9, shall not bar/affect MISL or the investors in bringing any claim/action against Noticee no. 9 in accordance with law.

24. I also note that Noticee no. 6 (Sanjay Mohan Uniyal) is deceased as on June 22, 2017 and in this regard, the company has provided a copy of the death certificate of Noticee no. 6 vide its email dated June 16, 2020. Therefore, directions issued, against Noticee no. 6, in the interim order are revoked.

25. In view of the observations made above, I find that Noticee no. 1, as a stock broker and Noticees no. 2 and 3, as its executive directors have failed to make out any case for revocation of the directions issued vide the interim order dated April 30, 2020 and the *prima facie* observations made in the interim order does not call for any interference against the Noticees no. 1, 2 and 3. I find that the *prima facie* violation of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular No. SEBI/MRD/Policy/AT/Cir- 19/2004 dated April 21, 2004, SEBI Circular No. MRD/DoP/SE/Cir-11/2008 dated April 17, 2008, SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, Rule 15 of SCRR read with Regulation 17 of Stock Broker Regulations, Section 12(1) of SEBI Act, 1992 read with Rule 8 (1) (f) and 8 (3) (f) of SCRR and Regulation 3 & 14(1)(a) of SEBI (Portfolio Managers) Regulations, 1993, as alleged against the Noticees no. 1, 2 and 3 in the interim order, hold good.

26. In view of the aforesaid findings, I, in exercise of the power conferred upon me under Sections 11(4), 11B and 11D read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby, direct that –

- (i) the directions issued in the interim order dated April 30, 2020, against Noticees no. 1, 2 and 3, are confirmed;
- (ii) the directions issued in the interim order dated April 30, 2020 against Noticee no. 4, 5, 6, 7, 8, 9 and 10 are revoked. It is clarified that aforesaid observations against Noticees no. 4, 5, 7, 8, 9 and 10 have been made in the light of the material available on record and the responses of these noticees to the *prima facie* violations alleged in the interim order, however, if upon further examination of the matter, these noticees are found to be indulged in the day to day operation or in violation of securities laws, appropriate action under securities laws shall follow against these notices.

27. In para 6 (iv) of the interim order, the Noticees were directed to provide a full inventory of all their assets, whether movable or immovable, or any interest or investment or charge in any of such assets, including details of all their bank accounts, demat accounts and mutual fund investments immediately to NSE and BSE but not later than 5 working days from the date of receipt of the interim order. The stock exchanges and the clearing corporations are directed to ensure that shortfall of clients funds are made good through realization of funds through the assets of Noticee no. 1, 2 and 3 also, in accordance with their bye-laws.

28. The present order has been passed under disciplinary proceedings against the Noticees for the violation of the Securities Laws. Claims of clients of MISL shall be entertained or disposed of as per the bye-laws of stock exchanges/depositories.

29. Stock Exchanges (BSE and NSE) are directed to take further necessary action against the member i.e. MISL, in accordance with their bye-laws.

30. This order shall come into force with immediate effect.

31. A copy of this order shall also be sent to all the Noticees, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

Sd/

Place: Mumbai

ANANTA BARUA

Date: September 11, 2020

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA