

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**

**CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER**

**FINAL ORDER**

**Under Sections 11, 11(4A), 11B(1) and 11B(2) of the Securities and Exchange Board of India Act, 1992**

**Order in the matter of Disclosure Requirements pertaining to trading in the scrip of Marksans Pharma Ltd.**

**In re: Violations of provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015**

**In respect of:**

**SCN SEBI/HO/IVD/ID16/OW/P/2020/7039/1 dated February 24, 2020 – SCN-1  
SCN SEBI/HO/IVD/ID16/OW/P/2020/7031/1 dated February 24, 2020 – SCN-2**

| <b>Noticee No. for the purpose of order</b> | <b>Name of the Entity</b>     | <b>PAN</b> |
|---------------------------------------------|-------------------------------|------------|
| 1                                           | Mr. Pereira Sebastian Ruzario | AEWPP4711R |
| 2                                           | Mr. Harshavardhan Panigrahi   | AKTPP1644A |

1. Securities and Exchange Board of India (“**SEBI**”) was in receipt of an examination report from NSE in the matter of Marksans Pharma Limited (hereinafter referred to as “**MPL/Company**”) wherein certain entities were shortlisted for suspected insider trading. During further examination by SEBI, it was also observed that certain employees of MPL, who were also “designated persons” of MPL, had executed contra trades in violation of Clause 10 of the Code of Conduct specified in the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the “**PIT Regulations**”).

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*Order in the matter of Disclosure Requirements pertaining to trading in the scrip of Marksans Pharma Ltd.*

2. Thereafter, the matter was taken up for further detailed investigation to determine whether there was any violation of the Code of Conduct or disclosure requirements in terms of the PIT Regulations by Noticee No. 1. The period of investigation is from May 31, 2015, to December 31, 2016 (hereinafter referred to as the **“Investigation Period/ IP”**). During the investigation period, it was observed that Noticee No. 2 was the Compliance Officer of MPL. Pursuant to the investigation, two separate Show Cause Notices (SCNs) dated February 24, 2020, were issued to both the Noticees

**Brief allegations in the SCN issued to Noticee No. 1:**

3. As per the approved Code of Conduct of MPL formulated by MPL under Regulation 9 of the PIT Regulations and applicable during the investigation period, Noticee No. 1 was a designated person during the investigation period. Hence, the following clause of the Code of Conduct was applicable to Noticee No. 1:

*“...trading by Designated persons and their immediate relatives, even when trading window is open, shall be subject to pre-clearance by the Compliance Officer if the value of the proposed trade whether in one transaction or in a series of transactions over any calendar quarter will aggregate in excess of Rs. 10 lacs.”*

4. As the value of trading done by the Noticee No. 1 during the calendar quarters July-September 2015, October-December 2015 and October-December 2016, exceeded the threshold value of Rs. 10 lakhs on various occasions, he was required to take pre-clearance for those trades from the Compliance Officer of MPL, which he failed to do in violation of the Code of Conduct of MPL as well as Clause 6 of Schedule B read with Regulation 9(1) of the PIT Regulations.
5. As per the trade log of Noticee No. 1, in twenty instances during the investigation

period, his trading in the scrip of MPL had crossed the threshold of Rs. 10 lakhs in a calendar quarter, for which disclosure was required to be made in terms of Regulation 7(2)(a) of the PIT Regulations to the Company. However, no such disclosures were made by Noticee No. 1 to the Company.

6. As per the Code of Conduct of MPL, framed pursuant to Clause 10 of Schedule B read with Regulation 9(1) of the PIT Regulations, the company has provided a period of 6 months during which a person shall not execute a Contra trade. Further, as per Clause 10 of the Code of Conduct read with Regulation 9(1) of the PIT Regulations, profit arising out of such contra trades are liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund (IPEF).
7. From a perusal of the trading data of Noticee No. 1, as per the trade logs received from NSE and BSE, it is observed that he had entered into 71 contra trades during the investigation period and made a profit of Rs. 6,49,624.09/- MPL, vide letter dated July 10, 2017, had informed the Noticee that the amount of profit earned from contra trades is Rs. 19,51,620.59/- and the same has to be deposited with the Investor Protection and Education Fund. Vide letter dated August 28, 2017, MPL had sent a reminder to Noticee No. 1 for depositing the aforesaid amount with the company for remitting to SEBI-IPEF and informing him that he has been debarred from buying, selling or otherwise dealing in shares of MPL either by himself or through his immediate relative.
8. However, the profits earned through contra trades by Noticee No.1 have not yet been disgorged and transferred to the SEBI-IPEF.
9. In view of the above, it is alleged that Noticee No. 1, being a designated person

of MPL, has (a) not obtained pre-clearances from the compliance officer of MPL for trades in the scrip of MPL which have exceeded Rs. 10 lakhs during certain calendar quarters, (b) not disclosed his trades in the scrip of MPL which have exceeded the threshold of Rs. 10 lakhs in a calendar quarter and (c) undertaken contra trades and not disgorged the profits earned from contra-trades executed in the scrip of MPL.

**Brief allegations in the SCN issued to Noticee No. 2:**

10. It was observed during the investigation period that in twenty (20) instances the trading of Noticee No. 1 in the scrip of MPL crossed the threshold of Rs. 10 lakhs in a calendar quarter and disclosure for these trades was required to be made by Noticee No. 1 in terms of Regulation 7(2)(a) of the PIT Regulations. Further, MPL was required to make disclosures w.r.t. the same to the Exchange(s) on becoming aware of the transaction(s), in terms of Regulation 7(2)(b) of the PIT Regulations.
11. Vide email dated November 18, 2019, information was sought from the RTA of MPL, Bigshare Services Pvt. Ltd. (hereinafter referred to as “**RTA**”) regarding the policy of the RTA for submission of BENPOS/ shareholding/ transaction details of the promoters/ employees/ designated persons of MPL to the company during the period May 01, 2015, to December 31, 2016. The RTA further informed that all the reports were sent through email to the email ID of the Company Secretary and Compliance Officer of MPL.
12. It is alleged that MPL became aware of Noticee No. 1, through the weekly data, crossing the threshold of Rs. 10 lakhs four (04) times during the investigation period for which disclosure was required to be made by MPL in terms of Regulation 7(2)(b) of the PIT Regulations. BSE and NSE, vide emails dated

November 20, 2019, have confirmed that they have not received any disclosures from MPL under Regulation 7(2)(b) of the PIT Regulations for the transactions done by Noticee No. 1 in the scrip of MPL for the said instances.

13. As per the PIT Regulations, the Compliance Officer is required to administer the Code of Conduct formulated by a company and hence, monitor trading by their designated persons as per Regulation 9(3) of the PIT Regulations. In view of the above, it is alleged that Noticee No. 2 did not make disclosures to the exchanges in respect of the transactions of Noticee No. 1, even though he was aware of the same.

**Service of SCNs, Personal Hearing and Submissions of Noticees:**

14. I note that the SCNs have been duly delivered to the Noticees. I note that Noticee No. 1 has replied vide email dated May 05, 2020, while Noticee No. 2 has replied vide letter dated March 09, 2020. While Noticee No. 2 sought a personal hearing in the matter, no such request was made by Noticee No. 1; however, in the interest of natural justice, an opportunity of personal hearing on July 09, 2020, was granted to both the Noticees. Both the Noticees attended the hearing personally and reiterated their submissions made earlier. Pursuant to the hearing, no additional submissions have been received from Noticee No. 1, while Noticee No. 2 provided certain submissions vide his email dated July 09, 2020.

15. The submissions made by Noticee No. 1 are as below:

- 15.1. Regarding the shares I had bought in the year 2016 and had made a loss by all the shares were squared off from my account, I have not made any profit.

15.2. I am not aware of any rules and regulations of the company for share trading, all my shares I had bought in the year 2016.

15.3. I am very sorry for hurting the company for all the problem due to me, was faced by the company. Due to this, the company had issue me a letter that all my increments, LTA and promotion is stopped, from last six years.

15.4. I have my family along with my old age parents living along with them, I have no future for my children, I request you kindly have mercy on me, I beg.

16. It was observed that during the investigation Noticee No. 2 had submitted that the administration department of MPL had circulated the Code of Conduct to all the employees through e-mails and it was also displayed on the notice board and website of the Company for information of the employees. At the relevant time under reference, E-mail ID of Noticee No. 1 was not in the records of MPL and hence, he was informed about the Code through the notice board and website. This submission of Noticee No. 2 was provided to Noticee No. 1 for his comments and he was also provided another opportunity of hearing, if he so desired. Vide letter dated January 21, 2021, Noticee No. 1 submitted the following:

16.1. It is correct that the Code of Conduct is available on the company website and notices/ intimations are displayed on the notice board for information of employees.

16.2. He does not recall having seen the Code of Conduct on the notice board or website at that time, by oversight.

No submissions were made by him as regards another personal hearing.

17. The submissions made by Noticee No. 2 to the SCN and pursuant to hearing are as below:

- 17.1. We deny and do not admit that Noticee No. 2 has violated Regulation 7(2)(b) read with Regulation 9(3) of the PIT Regulations by not making disclosures to the exchange in respect of the transactions of Mr. Pereira, as Noticee No. 2 was not aware of the same. Noticee No. 2 was not aware of the transactions of Mr. Pereira crossing the threshold of Rs. 10 lakh during the given quarters as alleged.
- 17.2. It is true that the RTA of MPL provides weekly BENPOS and BENPOS as at the end of every quarter. These reports run into hundreds of pages and the company had 574 employees during year 2015-16 and 717 employees during year 2016-17. It is quite impossible to track each and every employee's trading in the scrip of MPL. Therefore, as mentioned earlier trading in the shares by Promoters, Directors and KMPs and employees upto Manager level and employees in the accounts, taxation, treasury, finance, legal and secretarial department in the corporate office of MPL are specifically tracked on weekly basis to ensure compliance of the Company's Insider Trading Code of Conduct. Other employees including peons are excluded from weekly tracking. Additionally, transactions involving 1,00,000 shares or more are also specifically monitored on regular basis.
- 17.3. Under the Company's Insider Trading Code of Conduct, all employees of the Company are asked to give their shareholding as at the end of each quarter and also their trading details during the quarter, irrespective of the number of shares involved on quarterly basis. In the present case also, Noticee No. 1 should have given his shareholding as at the end of every quarter as well as buy and sale details during the quarter which he has not done. Further, when his total dealings in a quarter exceeds threshold of Rs. 10 lakhs, he should have obtained pre-clearance from the Noticee and

should have informed the trading details which also he did not. He has even not mentioned either verbally or otherwise about his trading in the shares of MPL. Whereas other employees have been disclosing their shareholding regularly and an employee shareholder who sold his shares which crossed the threshold, obtained pre-clearance as well disclosed his sale which MPL intimated to the stock exchanges. Copies of the same are attached.

17.4. It is practically not possible on part of Noticee No. 2 to maintain every week's trading data of each and every employee across a calendar quarter to ascertain whether cumulative transaction has crossed the threshold. Onus is always on the employee to seek pre-clearance and also to inform trading in case it exceeds the threshold limit of Rs. 10 lakhs.

17.5. Noticee No. 1 has once disclosed his shareholding of only 500 shares in the Company while proposing candidature of a person for the office of director of MPL under the Companies Act. Copy of such proposal is enclosed.

17.6. Noticee No. 2 has always acted in good faith believing its employees.

17.7. MPL/ Noticee No. 2 became aware of the transactions of Noticee No. 1 only when SEBI provided his transaction details. Even at this time also MPL/ Noticee No. 2 could not file the disclosure with the stock exchanges as the information was not complete for filing. On receipt of trading details from SEBI, Noticee No. 1 has been asked time and again to provide relevant data, which he has failed to provide till date. Due to non-availability of complete information, Noticee No. 2 has not been able to file required disclosure with the exchanges.

17.8. MPL has taken stern action against Noticee No. 1 by suspending his yearly salary increment, bonus and LTA payment since the year 2016-17 till the case will be disposed of. Further, MPL has deposited a sum of Rs. 67,170/- towards annual salary increment, bonus and LTA of Noticee No. 1 for the year 2016-17 into the SEBI IPEF. MPL has also permanently debarred Noticee No. 1 from dealing in shares of MPL.

17.9. In view of the aforesaid, it was quite impossible for MPL/ Noticee No. 2 to have knowledge of trading of Noticee No. 1 in the shares of MPL, when there was no pre-clearance sought nor disclosure made and therefore, it is incorrect to say that Noticee No. 2 was aware of the transactions. The onus of seeking pre-clearance and disclosure is always on the employee as it is not possible for MPL/ Noticee No. 2 to imagine any possible transaction by any employee requiring pre-clearance.

17.10. Even if Noticee No. 2 violated Regulation 7(2)(b) read with Regulation 9(3) of the PIT Regulations by not making disclosure to the stock exchanges, as alleged, though not admitted, the violation, if any, is technical in nature and unintentional. It is just a procedural lapse. There is no mala fide intention and no *mens rea* involved. Further, no gain or advantage of any nature has occurred to Noticee No. 1 and no loss or harm caused to any investors. Therefore, violation, if any, is pardonable.

17.11. Noticee No. 2 requests to view the matter with leniency and withdraw the SCN.

### **Issues for Consideration and Findings:**

18. I have considered the allegations of the SCN, submissions made by the Noticees and the material available on record. The following issues arise for consideration and each is dealt with separately under different headings.

18.1. ***Issue No. 1: Whether Noticee No. 1 has (a) failed to take pre-clearance for his trades in the scrip of MPL that have exceeded the threshold value during certain quarters, (b) failed to disclose the trades in the scrip of MPL that have crossed the threshold during certain quarters and (c) entered into contra-trades, in violation of the provisions charged in SCN?***

18.2. ***Issue No. 2: Whether Noticee No. 2 (a) had adequate access to information regarding the transactions of Noticee No. 1 and (b) despite having adequate access to information regarding the same, he has failed to discharge his responsibilities, in violation of the provisions charged in SCN?***

18.3. ***Issue No. 3: If the answer to Issues No. 1 and/ or 2 are affirmative, what directions, if any, should be issued against the Noticees?***

**Issue No. 1: *Whether Noticee No. 1 has (a) failed to take pre-clearance for his trades in the scrip of MPL that have exceeded the threshold value during certain quarters, (b) failed to disclose the trades in the scrip of MPL that have crossed the threshold during certain quarters and (c) entered into contra-trades, in violation of the provisions charged in SCN?***

19. I note that the following allegations have been levelled against Noticee No. 1:

19.1. He was a designated person as per the Code of Conduct of MPL.

19.2. While being a designated person, has failed to take pre-clearance from the Compliance Officer of MPL for his trades in the scrip of MPL which have exceeded the threshold value of Rs. 10 lakhs on various occasions.

19.3. He has also not disclosed the above-mentioned trades to MPL.

19.4. While being a designated person, has entered into 71 contra trades during the investigation period and the profit earned from these contra trades is Rs. 6,49,624/- and the same was not deposited in IEPF

20. I note here that as per the Code of Conduct of MPL formulated by the company under Regulation 9 of the PIT Regulations and approved by its Board of Directors on May 30, 2015, Clause 3(g)(iv) states that *"All Employees in the Accounts, Taxation, Treasury, Finance, Legal and Secretarial Departments of the Company and in the Corporate Office."* come under the definition of a "Designated Person".

21. Vide letter dated June 30, 2017, MPL has communicated to SEBI that Noticee No. 1 is a designated person of MPL. Vide email dated July 18, 2019, MPL has confirmed that during the investigation period, Noticee No. 1 was Head Office Assistant (Head Peon). I note that Noticee No. 1 has not made any submissions regarding his status as a designated person of MPL and therefore, in view of the material available on record, I find that during the investigation period, Noticee No. 1 was a designated person of MPL and was therefore, required to comply with the provisions of the Code of Conduct formulated by MPL.

22. The defense of Noticee No. 1 for the allegations leveled against him is that he was unaware of the rules and regulations of MPL regarding trading in the scrip of the Company. I note that Noticee No. 1 has, vide his own submissions dated November 22, 2019, accepted that he has traded in multiple scrips, including the

scrip of MPL and as such, he is not a novice or is not new to trading in the securities markets. Further, Noticee No. 1 has also confirmed that he was aware that the Code of Conduct was available on the website of MPL and that notices/intimations are placed on the notice board for information of employees. In view of the same, I cannot accept his submission that he was not aware of the Code of Conduct of MPL or that due to oversight he had not seen the Code of Conduct on the website/ notice board. The Code of Conduct of MPL clearly mentioned that persons working in the corporate office are designated persons and has also laid out the nature of the disclosures to be made by them. There is also no dispute that Noticee No. 1 was working in the corporate office.

23. I note here the following provisions of the SEBI Act and the PIT Regulations:

***Code of Conduct.***

***9. (1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.***

***SCHEDULE B***

***[See sub-regulation (1) and sub-regulation (2) of regulation 9]***

***Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders***

***1...***

***...***

***6. When the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.***

***Penalty for contravention where no separate penalty has been provided.***

***Section 15HB.***

***Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.***

24. Investigation has revealed that the trading of Noticee No. 1 in the scrip of MPL has crossed the threshold of Rs. 10 lakhs during the calendar quarters of July-September 2015, October-December 2015 and October-December 2016. As per the Code of Conduct of MPL and Clause 6 of Schedule B read with Regulation 9(1) of the PIT Regulations, the trading of a designated person in the scrip of MPL shall be subject to pre-clearance from the Compliance Officer if the value of the proposed trade, whether in one transaction or in a series of transactions over a calendar quarter aggregate in excess of Rs. 10 lacs. I note that Noticee No. 1 has submitted that he had purchased these shares in 2015 and was not aware of any rules and regulations of MPL. He has also accepted that he has bought/ sold these shares without telling the Company. The Compliance Officer of MPL has also submitted that Noticee No. 1 has not taken pre-clearance from MPL for the trades executed in these quarters. I note that the details of these instances were provided in the SCN to Noticee No. 1 and he has not disputed the same. Hence, in view of the same, I hold that the Noticee No. 1, while being a designated person, failed to take pre-clearance from the Compliance Officer of MPL for his trades in the scrip of MPL, which have exceeded the threshold value of Rs. 10 lakhs on various occasions.

25. Hence, in view of finding mentioned above, I find that Noticee No. 1 is in violation of the Code of Conduct of MPL as well as Clause 6 of Schedule B read with

Regulation 9(1) of the PIT Regulations and is liable for penalty under Section 15HB of the SEBI Act.

26. Moving ahead, I note the following provisions of the SEBI Act and the PIT Regulations:

***Disclosures by certain persons.***

***7 (1)...***

***7 (2) Continual Disclosures.***

***(a) Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;***

***Section 15A***

***If any person, who is required under this Act or any rules or regulations made thereunder,—***

***(a) ...***

***(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;***

27. Investigation has revealed that the trading of Noticee No. 1 in the scrip of MPL has crossed the threshold of Rs. 10 lakhs in 20 instances during the investigation period. As per the Code of Conduct of MPL and under Regulation 7(2)(a) of the PIT Regulations, every employee shall disclose to the Company the number of such securities acquired or disposed of within two trading days of such trading if the value of the securities traded, whether in one transaction or in a series of transactions over any calendar quarter, aggregates to a traded value in excess of

Rs. 10 lakhs. The details of these twenty instances are as below:

**Table 1**

| <b>Calendar Quarter</b>        | <b>Date on which trade value &gt; Rs 10 lakhs</b>                                              | <b>Trade Value (in Rs.)</b>                                                                | <b>Required Date of disclosure</b>                                                             | <b>Date on which disclosure was made</b> |
|--------------------------------|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|------------------------------------------|
| July 1, 2015 – Sep 30, 2015    | 06/08/2015<br>18/08/2015<br>24/08/2015<br>27/08/2015<br>09/09/2015<br>22/09/2015<br>24/09/2015 | 1030508.75<br>1009396.75<br>1049125.9<br>1012343.8<br>1040051.9<br>1147895.35<br>3442886.4 | 10/08/2015<br>20/08/2015<br>26/08/2015<br>31/08/2015<br>11/09/2015<br>24/09/2015<br>28/09/2015 | No disclosure was made                   |
| Oct 1, 2015 to Dec 31, 2015    | 01/10/2015<br>09/10/2015<br>27/10/2015<br>10/11/2015<br>17/11/2015<br>01/12/2015<br>10/12/2015 | 1018085.3<br>1030876.65<br>1002804.15<br>1044914.5<br>1003855.3<br>1031997.65<br>1034790.3 | 06/10/2015<br>13/10/2015<br>29/10/2015<br>12/11/2015<br>19/11/2015<br>03/12/2015<br>14/12/2015 | No disclosure was made                   |
| Jan 1, 2016 to March 31, 2016  | 16/02/2016                                                                                     | 1000296.6                                                                                  | 18/02/2016                                                                                     | No disclosure was made                   |
| April 1, 2016 to June 30, 2016 | 17/05/2016                                                                                     | 1017588                                                                                    | 19/05/2016                                                                                     | No disclosure was made                   |
| July 1, 2016 – Sep 30, 2016    | 14/07/2016<br>21/09/2016                                                                       | 1009170.9<br>1003797.1                                                                     | 18/07/2016<br>23/09/2016                                                                       | No disclosure was made                   |
| Oct 1, 2016 – Dec 31, 2016     | 13/10/2016<br>01/12/2016                                                                       | 1006173.05<br>1001203.7                                                                    | 17/10/2016<br>05/12/2016                                                                       | No disclosure was made                   |

28. Noticee No. 1 has submitted that he has bought/ sold these shares without telling the Company. He has also contended that he has traded in multiple scrips, including scrip of MPL in 2015, and while trading in multiple scrips, he could not pay his dues and shares in his account were squared off. I note that details of these 20 instances were provided in the SCN and Noticee No. 1 has not disputed the same. Apart from a bald statement that these are square off transactions, he has not provided any details of the transactions which were in the nature of square

off transactions.

29. In any case, I note that Regulation 7(2)(a) of PIT Regulations requires that whenever the traded value, either through a single transaction or in a series of transactions, exceeds the specified threshold, then the number of securities acquired or disposed of has to be disclosed to the company. As per the language of Regulation 7(2)(a), it is noted that the compliance obligation of an employee to make disclosure to the company triggers when:

29.1. he acquires or disposes of securities; and

29.2. the aggregated value of securities so traded aggregates to a traded value in excess of ten lakh rupees

30. In order to attract the obligation under Regulation 7(2)(a), both the above mentioned conditions should be fulfilled. I note that for the first condition, the mode of acquisition or disposal is not relevant. In other words, instances where the shares are disposed by way of squaring off are specifically exempt from disclosure requirements under this regulation.

31. Further, it is also relevant to note that the words 'trading' and 'trade' has been defined under Regulation 2(1)(l) of the PIT Regulations as follows:

2.(1)(a).....

*(l) "trading" means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly;*

32. As seen from the above, the term "trading" is widely defined and is intended to include all dealings in securities without any exclusions. Accordingly, "trades" and "traded value" under Regulation 7(2)(a) will have a wider meaning and therefore,

in my view, such square off transactions mentioned by Noticee No. 1 would also be covered within the ambit of this regulation. I also note that by way of his own submissions, Noticee No. 1 is aware of the square off transactions in his account i.e., he would be aware of the quantity of shares squared off and value of the resulting trade. Hence, this contention of Noticee No. 1 cannot be accepted.

33. The Compliance Officer of MPL has also submitted that Noticee No. 1 has not made any disclosures in this regard to MPL. Hence, in view of the above, I hold that Noticee No. 1 has failed to make disclosures to MPL for his trades in the scrip of MPL, which have exceeded the threshold value of Rs. 10 lakhs on 20 occasions.

34. Hence, in view of the above, I find that Noticee No. 1 is in violation of the Code of Conduct of MPL as well as Regulation 7(2)(a) of the PIT Regulations and is liable for penalty under Section 15A(b) of the SEBI Act.

35. I take note the following provisions of the SEBI Act and the PIT Regulations:

**SCHEDULE B**

**[See sub-regulation (1) and sub-regulation (2) of regulation 9]  
Minimum Standards for Code of Conduct to Regulate, Monitor and Report  
Trading by Insiders**

**1...**

**...**

**10. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and**

***Education Fund administered by the Board under the Act.***

36. As per the Code of Conduct of MPL, once a pre-cleared trade is executed, the trader shall not execute a contra trade within 6 months from the date of execution of the pre-cleared trade. Investigation has revealed that Noticee No. 1 has entered into 71 contra trades during the investigation period. The details of these instances are as below:

**Table 2 (In Rs.)**

| Sell Date  | Sell Qty. | Sell Price | Sell Value | Buy date   | Buy Qty. | Buy Price | Buy Value | Contra trade Qty. | Contra trade profit/(loss) |
|------------|-----------|------------|------------|------------|----------|-----------|-----------|-------------------|----------------------------|
| 15/05/2015 | 100       | 59.35      | 5935       | 10/06/2015 | 100      | 60.15     | 6015      | 100               | -80.00                     |
| 15/05/2015 | 150       | 59.35      | 8903       | 23/07/2015 | 150      | 85.65     | 12848     | 150               | -3945.00                   |
| 29/05/2015 | 50        | 60.18      | 3009       | 23/07/2015 | 50       | 85.65     | 4283      | 50                | -1273.40                   |
| 29/05/2015 | 500       | 60.18      | 30091      | 27/07/2015 | 500      | 87.20     | 43600     | 500               | -13508.97                  |
| 29/05/2015 | 100       | 60.18      | 6018       | 31/07/2015 | 100      | 105.60    | 10560     | 100               | -4541.79                   |
| 29/05/2015 | 850       | 60.18      | 51155      | 05/08/2015 | 850      | 104.25    | 88613     | 850               | -37457.74                  |
| 07/07/2015 | 150       | 90.16      | 13524      | 05/08/2015 | 150      | 104.25    | 15638     | 150               | -2113.87                   |
| 07/07/2015 | 200       | 90.16      | 18032      | 06/08/2015 | 200      | 104.60    | 20920     | 200               | -2888.50                   |
| 07/07/2015 | 1000      | 90.16      | 90158      | 07/08/2015 | 1000     | 110.62    | 110623    | 1000              | -20465.43                  |
| 07/07/2015 | 200       | 90.16      | 18032      | 13/08/2015 | 200      | 102.85    | 20570     | 200               | -2538.50                   |
| 07/07/2015 | 1000      | 90.16      | 90158      | 14/08/2015 | 1000     | 107.29    | 107288    | 1000              | -17130.58                  |
| 07/07/2015 | 1500      | 90.16      | 135236     | 18/08/2015 | 1500     | 109.05    | 163575    | 1500              | -28338.72                  |
| 07/07/2015 | 200       | 90.16      | 18032      | 20/08/2015 | 200      | 109.60    | 21920     | 200               | -3888.50                   |
| 07/07/2015 | 300       | 90.16      | 27047      | 24/08/2015 | 300      | 98.75     | 29625     | 300               | -2577.74                   |
| 07/07/2015 | 450       | 90.16      | 40571      | 25/08/2015 | 450      | 86.93     | 39117     | 450               | 1453.87                    |
| 28/07/2015 | 3050      | 94.09      | 286980     | 25/08/2015 | 3050     | 86.93     | 265126    | 3050              | 21853.86                   |
| 28/07/2015 | 450       | 94.09      | 42341      | 26/08/2015 | 450      | 87.07     | 39179     | 450               | 3162.05                    |

| Sell Date  | Sell Qty. | Sell Price | Sell Value | Buy date   | Buy Qty. | Buy Price | Buy Value | Contra trade Qty. | Contra trade profit/ (loss) |
|------------|-----------|------------|------------|------------|----------|-----------|-----------|-------------------|-----------------------------|
| 06/08/2015 | 1200      | 107.48     | 128975     | 26/08/2015 | 1200     | 87.07     | 104478    | 1200              | 24496.86                    |
| 07/08/2015 | 900       | 108.53     | 97675      | 26/08/2015 | 900      | 87.07     | 78359     | 900               | 19316.40                    |
| 10/08/2015 | 200       | 114.00     | 22800      | 26/08/2015 | 200      | 87.07     | 17413     | 200               | 5386.98                     |
| 12/08/2015 | 250       | 104.18     | 26044      | 26/08/2015 | 250      | 87.07     | 21766     | 250               | 4277.73                     |
| 12/08/2015 | 100       | 104.18     | 10418      | 31/08/2015 | 100      | 90.40     | 9040      | 100               | 1377.60                     |
| 12/08/2015 | 1000      | 104.18     | 104176     | 03/09/2015 | 1000     | 92.30     | 92300     | 1000              | 11876.04                    |
| 12/08/2015 | 1000      | 104.18     | 104176     | 04/09/2015 | 1000     | 85.29     | 85290     | 1000              | 18886.29                    |
| 12/08/2015 | 2650      | 104.18     | 276067     | 09/09/2015 | 2650     | 84.25     | 223263    | 2650              | 52804.01                    |
| 19/08/2015 | 500       | 111.70     | 55849      | 09/09/2015 | 500      | 84.25     | 42125     | 500               | 13723.60                    |
| 24/08/2015 | 1850      | 89.54      | 165641     | 09/09/2015 | 1850     | 84.25     | 155863    | 1850              | 9778.60                     |
| 24/08/2015 | 50        | 89.54      | 4477       | 15/09/2015 | 50       | 90.50     | 4525      | 50                | -48.21                      |
| 24/08/2015 | 1750      | 89.54      | 156688     | 16/09/2015 | 1750     | 86.85     | 151981    | 1750              | 4706.23                     |
| 24/08/2015 | 2500      | 89.54      | 223839     | 22/09/2015 | 2500     | 95.91     | 239775    | 2500              | -15935.67                   |
| 24/08/2015 | 3150      | 89.54      | 282038     | 24/09/2015 | 3150     | 104.69    | 329785    | 3150              | -47747.90                   |
| 26/08/2015 | 3000      | 88.94      | 266805     | 24/09/2015 | 3000     | 104.69    | 314081    | 3000              | -47276.38                   |
| 27/08/2015 | 2000      | 90.05      | 180100     | 24/09/2015 | 2000     | 104.69    | 209388    | 2000              | -29287.59                   |
| 28/08/2015 | 1000      | 93.35      | 93350      | 24/09/2015 | 1000     | 104.69    | 104694    | 1000              | -11343.79                   |
| 01/09/2015 | 2000      | 89.78      | 179568     | 24/09/2015 | 2000     | 104.69    | 209388    | 2000              | -29819.84                   |
| 09/09/2015 | 3850      | 84.78      | 326393     | 24/09/2015 | 3850     | 104.69    | 403071    | 3850              | -76678.58                   |
| 09/09/2015 | 1000      | 84.78      | 84777      | 28/09/2015 | 1000     | 104.33    | 104330    | 1000              | -19553.07                   |
| 09/09/2015 | 150       | 84.78      | 12717      | 30/09/2015 | 150      | 103.80    | 15570     | 150               | -2853.41                    |

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| Sell Date  | Sell Qty. | Sell Price | Sell Value | Buy date   | Buy Qty. | Buy Price | Buy Value | Contra trade Qty. | Contra trade profit/(loss) |
|------------|-----------|------------|------------|------------|----------|-----------|-----------|-------------------|----------------------------|
| 15/09/2015 | 150       | 90.20      | 13530      | 30/09/2015 | 150      | 103.80    | 15570     | 150               | -2040.00                   |
| 15/09/2015 | 1350      | 90.20      | 121770     | 01/10/2015 | 1350     | 107.14    | 144643    | 1350              | -22873.02                  |
| 18/09/2015 | 650       | 88.80      | 57720      | 01/10/2015 | 650      | 107.14    | 69643     | 650               | -11922.93                  |
| 18/09/2015 | 300       | 88.80      | 26640      | 08/10/2015 | 300      | 106.75    | 32025     | 300               | -5385.00                   |
| 18/09/2015 | 800       | 88.80      | 71040      | 13/10/2015 | 800      | 105.89    | 84714     | 800               | -13674.42                  |
| 22/09/2015 | 1200      | 98.14      | 117769     | 13/10/2015 | 1200     | 105.89    | 127072    | 1200              | -9302.40                   |
| 22/09/2015 | 800       | 98.14      | 78513      | 20/10/2015 | 800      | 104.70    | 83760     | 800               | -5247.18                   |
| 23/09/2015 | 700       | 95.24      | 66665      | 20/10/2015 | 700      | 104.70    | 73290     | 700               | -6624.71                   |
| 23/09/2015 | 1000      | 95.24      | 95236      | 23/10/2015 | 1000     | 104.15    | 104150    | 1000              | -8913.88                   |
| 23/09/2015 | 1000      | 95.24      | 95236      | 27/10/2015 | 1000     | 98.40     | 98400     | 1000              | -3163.88                   |
| 23/09/2015 | 1000      | 95.24      | 95236      | 05/11/2015 | 1000     | 100.65    | 100650    | 1000              | -5413.88                   |
| 23/09/2015 | 300       | 95.24      | 28571      | 09/11/2015 | 300      | 96.40     | 28920     | 300               | -349.16                    |
| 24/09/2015 | 200       | 105.57     | 21115      | 09/11/2015 | 200      | 96.40     | 19280     | 200               | 1834.50                    |
| 24/09/2015 | 3000      | 105.57     | 316718     | 10/11/2015 | 3000     | 99.23     | 297700    | 3000              | 19017.54                   |
| 24/09/2015 | 681       | 105.57     | 71895      | 13/11/2015 | 681      | 97.00     | 66057     | 681               | 5837.88                    |
| 24/09/2015 | 1500      | 105.57     | 158359     | 16/11/2015 | 1500     | 96.22     | 144325    | 1500              | 14033.77                   |
| 24/09/2015 | 500       | 105.57     | 52786      | 20/11/2015 | 500      | 96.00     | 48000     | 500               | 4786.26                    |
| 24/09/2015 | 1500      | 105.57     | 158359     | 23/11/2015 | 1500     | 98.70     | 148050    | 1500              | 10308.77                   |
| 24/09/2015 | 200       | 105.57     | 21115      | 26/11/2015 | 200      | 101.30    | 20260     | 200               | 854.50                     |
| 24/09/2015 | 3000      | 105.57     | 316718     | 01/12/2015 | 3000     | 105.56    | 316688    | 3000              | 30.04                      |
| 24/09/2015 | 2000      | 105.57     | 211145     | 08/12/2015 | 2000     | 101.97    | 203946    | 2000              | 7199.43                    |
| 24/09/2015 | 500       | 105.57     | 52786      | 16/12/2015 | 500      | 96.30     | 48150     | 500               | 4636.26                    |
| 24/09/2015 | 29        | 105.57     | 3062       | 22/12/2015 | 29       | 106.00    | 3074      | 29                | -12.40                     |

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| Sell Date  | Sell Qty. | Sell Price | Sell Value | Buy date   | Buy Qty. | Buy Price | Buy Value | Contra trade Qty. | Contra trade profit/ (loss) |
|------------|-----------|------------|------------|------------|----------|-----------|-----------|-------------------|-----------------------------|
| 24/09/2015 | 2600      | 105.57     | 274489     | 18/01/2016 | 2600     | 59.42     | 154497    | 2600              | 119991.83                   |
| 24/09/2015 | 450       | 105.57     | 47508      | 19/01/2016 | 450      | 60.95     | 27428     | 450               | 20080.13                    |
| 24/09/2015 | 700       | 105.57     | 73901      | 28/01/2016 | 700      | 60.00     | 42000     | 700               | 31900.76                    |
| 24/09/2015 | 2000      | 105.57     | 211145     | 09/02/2016 | 2000     | 58.05     | 116100    | 2000              | 95045.03                    |
| 24/09/2015 | 640       | 105.57     | 67566      | 12/02/2016 | 640      | 48.99     | 31355     | 640               | 36211.82                    |
| 29/09/2015 | 780       | 101.20     | 78936      | 12/02/2016 | 780      | 48.99     | 38213     | 780               | 40722.59                    |
| 29/09/2015 | 170       | 101.20     | 17204      | 22/02/2016 | 170      | 40.90     | 6952      | 170               | 10251.80                    |
| 29/09/2015 | 50        | 101.20     | 5060       | 04/03/2016 | 50       | 48.25     | 2413      | 50                | 2647.50                     |
| 06/10/2015 | 150       | 109.97     | 16495      | 04/03/2016 | 150      | 48.25     | 7238      | 150               | 9257.52                     |
| 06/10/2015 | 360       | 109.97     | 39588      | 23/03/2016 | 360      | 49.20     | 17712     | 360               | 21876.06                    |

37.I note that the details of these 71 instances, along with calculation of the profit/ loss generated through each contra trade, have been provided to Noticee No. 1 as part of the SCN. In his written submissions, Noticee No. 1 has neither disputed the execution of these contra trades nor has he made any submissions regarding the profit/ loss generated through each contra trade.

38.I note that the restriction on executing contra trades becomes applicable when any person becomes a Designated Person, as per the Code of Conduct of the company. I note here that as per the submissions of MPL, the Code of Conduct of MPL was approved by its Board on May 30, 2015, and became effective immediately. Hence, with effect from this date, Noticee No. 1 has become a Designated Person as per the Code of Conduct and the restriction on executing

contra trades became applicable on him. As already held above, Noticee No. 1 was aware of the Code of Conduct of MPL. Therefore, with effect from May 30, 2015, Noticee No. 1 was required to not execute contra trades in the scrip of MPL.

39. I note that to determine whether a Designated Person has executed contra trades or not will require examining only those Buy/ Sell trades that have occurred after the date he/ she became a Designated Person. In this regard, I note the following from the SCN:

39.1. The first trade that has occurred after the start of the IP is a Buy trade for 100 shares on 10/06/2015. In the SCN, this Buy trade has been considered as a contra trade to a Sell trade for 100 shares, which took place on 15/05/2015 i.e., the Buy contra trade has been referenced to a Sell trade that has taken place prior to Noticee No. 1 becoming a Designated Person. The relevant extract for this pair of trades is given below:

**Table 3 (in Rs.)**

| <b>Sell Date</b> | <b>Sell Qty.</b> | <b>Sell Price</b> | <b>Sell Value</b> | <b>Buy date</b> | <b>Buy Qty.</b> | <b>Buy Price</b> | <b>Buy Value</b> | <b>Contra trade Qty.</b> | <b>Contra trade profit/ (loss)</b> |
|------------------|------------------|-------------------|-------------------|-----------------|-----------------|------------------|------------------|--------------------------|------------------------------------|
| 15/05/2015       | 100              | 59.35             | 5935              | 10/06/2015      | 100             | 60.15            | 6015             | 100                      | -80.00                             |

39.2. Since Noticee No. 1 became a Designated Person w.e.f. May 30, 2015, after the first Buy trade on 10/06/2015 for 100 shares, Noticee No. 1 could not have sold shares within a period of 6 months after this date. However, it is observed that he has sold 5000 shares on 07/07/2015 and hence, a Sell trade for a quantity of 100 shares executed on 07/07/2015 becomes a contra trade to the Buy trade on 10/06/2015. In other words, the Buy Trade

on 10/06/2015 becomes the reference trade for the sell contra trade that has been executed on 07/07/2015. This pair of trades is as shown below:

**Table 4 (in Rs.)**

| Buy date   | Buy Qty. | Buy Price | Buy Value | Sell Date  | Sell Qty. | Sell Price | Sell Value | Contra trade Qty. | Contra trade profit/ (loss) |
|------------|----------|-----------|-----------|------------|-----------|------------|------------|-------------------|-----------------------------|
| 10/06/2015 | 100      | 60.15     | 6015      | 07/07/2015 | 100       | 90.16      | 9016       | 100               | 3001                        |

39.3. It would be appropriate to exclude the execution of trades made by the Noticee before he became a designated person either as reference trade or contra trade. However, any holding of the designated person prior to becoming the designated person would also need to be sold by him in a way that does not breach the contra trade norms after he became the designated person. The remaining 4900 shares sold on 07/07/2015 shall now become a reference trade for any buy trades that are executed within a period of 6 months after this date. As per the material in the SCN, the determination of contra trades for this remaining quantity sold on 07/07/2015 shall be as follows:

**Table 5 (in Rs.)**

| Sell Date  | Sell Qty. | Sell Price | Sell Value | Buy date   | Buy Qty. | Buy Price | Buy Value | Contra trade Qty. | Contra trade profit/ (loss) |
|------------|-----------|------------|------------|------------|----------|-----------|-----------|-------------------|-----------------------------|
| 07/07/2015 | 200       | 90.16      | 18032      | 23/07/2015 | 200      | 85.65     | 17130     | 200               | 902                         |
| 07/07/2015 | 500       | 90.16      | 45080      | 27/07/2015 | 500      | 87.2      | 43600     | 500               | 1480                        |
| 07/07/2015 | 100       | 90.16      | 9016       | 31/07/2015 | 100      | 105.6     | 10560     | 100               | -1544                       |
| 07/07/2015 | 1000      | 90.16      | 90160      | 05/08/2015 | 1000     | 104.25    | 104250    | 1000              | -14090                      |
| 07/07/2015 | 200       | 90.16      | 18032      | 06/08/2015 | 200      | 104.6     | 20920     | 200               | -2888                       |
| 07/07/2015 | 1000      | 90.16      | 90160      | 07/08/2015 | 1000     | 110.62    | 110620    | 1000              | -20460                      |

| Sell Date  | Sell Qty. | Sell Price | Sell Value | Buy date   | Buy Qty. | Buy Price | Buy Value | Contra trade Qty. | Contra trade profit/ (loss) |
|------------|-----------|------------|------------|------------|----------|-----------|-----------|-------------------|-----------------------------|
| 07/07/2015 | 200       | 90.16      | 18032      | 13/08/2015 | 200      | 102.85    | 20570     | 200               | -2538                       |
| 07/07/2015 | 1000      | 90.16      | 90160      | 14/08/2015 | 1000     | 107.29    | 107290    | 1000              | -17130                      |
| 07/07/2015 | 700       | 90.16      | 63112      | 18/08/2015 | 700      | 109.05    | 76335     | 700               | -13223                      |

39.4. Accordingly, pairing of a reference trade, which may be a Buy or a Sell, with a contra trade has to be determined in chronological order for the trades alleged to be contra trades in the SCN. Following the above principles, I observe that the following are the remaining contra trades, quantity involved in the contra trade and profit/ loss from these trades. The same are given in the table below:

**Table 6 (in Rs.)**

| Sell Date  | Sell Qty. | Sell Value       | Buy Date   | Buy Qty. | Buy Value        | Contra Trade Qty. | Profit/ Loss (Sell Value-Buy Value) |
|------------|-----------|------------------|------------|----------|------------------|-------------------|-------------------------------------|
| 07/07/2015 | 5000      | <b>450787.6</b>  | 10/06/2015 | 100      | 6015             | 100               | -66503.45                           |
|            |           |                  | 23/07/2015 | 200      | 17130            | 200               |                                     |
|            |           |                  | 27/07/2015 | 500      | 43600            | 500               |                                     |
|            |           |                  | 31/07/2015 | 100      | 10560            | 100               |                                     |
|            |           |                  | 05/08/2015 | 1000     | 104250           | 1000              |                                     |
|            |           |                  | 06/08/2015 | 200      | 20920            | 200               |                                     |
|            |           |                  | 07/08/2015 | 1000     | 110622.95        | 1000              |                                     |
|            |           |                  | 13/08/2015 | 200      | 20570            | 200               |                                     |
|            |           |                  | 14/08/2015 | 1000     | 107288.1         | 1000              |                                     |
|            |           |                  | 18/08/2015 | 700      | 76335            | 700               |                                     |
|            |           |                  |            |          | <b>517291.05</b> |                   |                                     |
| 28/07/2015 | 3500      | <b>329321.65</b> | 18/08/2015 | 800      | 87240            | 800               | -709.35                             |
|            |           |                  | 20/08/2015 | 200      | 21920            | 200               |                                     |
|            |           |                  | 24/08/2015 | 300      | 29625            | 300               |                                     |
|            |           |                  | 25/08/2015 | 2200     | 191246           | 2200              |                                     |
|            |           |                  |            |          | <b>330031</b>    |                   |                                     |

| Sell Date  | Sell Qty. | Sell Value       | Buy Date   | Buy Qty. | Buy Value        | Contra Trade Qty. | Profit/ Loss (Sell Value-Buy Value) |
|------------|-----------|------------------|------------|----------|------------------|-------------------|-------------------------------------|
| 06/08/2015 | 1200      | <b>128975</b>    | 25/08/2015 | 1200     | <b>104316</b>    | 1200              | 24659                               |
| 07/08/2015 | 900       | <b>97675</b>     | 25/08/2015 | 100      | 8693             | 100               | 19334                               |
|            |           |                  | 26/08/2015 | 800      | 69648            | 800               |                                     |
|            |           |                  |            |          | <b>78341</b>     |                   |                                     |
| 10/08/2015 | 200       | <b>22800</b>     | 26/08/2015 | 200      | <b>17412</b>     | 200               | 5388                                |
| 12/08/2015 | 5000      | <b>520880.2</b>  | 26/08/2015 | 2000     | 174120           | 2000              | 84305.45                            |
|            |           |                  | 31/08/2015 | 100      | 9040             | 100               |                                     |
|            |           |                  | 03/09/2015 | 1000     | 92300            | 1000              |                                     |
|            |           |                  | 04/09/2015 | 1000     | 85289.75         | 1000              |                                     |
|            |           |                  | 09/09/2015 | 900      | 75825            | 900               |                                     |
|            |           |                  |            |          | <b>436574.75</b> |                   |                                     |
| 19/08/2015 | 500       | <b>55848.6</b>   | 09/09/2015 | 500      | <b>42125</b>     | 500               | 13723.6                             |
| 24/08/2015 | 9300      | <b>832682.3</b>  | 09/09/2015 | 3600     | 303300           | 3600              | -13465                              |
|            |           |                  | 15/09/2015 | 50       | 4525             | 50                |                                     |
|            |           |                  | 16/09/2015 | 1750     | 151981.3         | 1750              |                                     |
|            |           |                  | 22/09/2015 | 2500     | 239775           | 2500              |                                     |
|            |           |                  | 24/09/2015 | 1400     | 146566           | 1400              |                                     |
|            |           |                  |            |          | <b>846147.3</b>  |                   |                                     |
| 26/08/2015 | 3000      | <b>266805</b>    | 24/09/2015 | 3000     | <b>314070</b>    | 3000              | -47265                              |
| 27/08/2015 | 2000      | <b>180100</b>    | 24/09/2015 | 2000     | <b>209380</b>    | 2000              | -29280                              |
| 28/08/2015 | 1000      | <b>93350</b>     | 24/09/2015 | 1000     | <b>104690</b>    | 1000              | -11340                              |
| 01/09/2015 | 2000      | <b>179567.75</b> | 24/09/2015 | 2000     | <b>209380</b>    | 2000              | -29812.25                           |
| 09/09/2015 | 5000      | <b>423886.4</b>  | 24/09/2015 | 5000     | <b>523450</b>    | 5000              | -99563.6                            |
| 15/09/2015 | 1500      | <b>135300</b>    | 24/09/2015 | 600      | 62814            | 600               | -21411                              |
|            |           |                  | 28/09/2015 | 900      | 93897            | 900               |                                     |
|            |           |                  |            |          | <b>156711</b>    |                   |                                     |
| 18/09/2015 | 1750      | <b>155400</b>    | 28/09/2015 | 100      | 10433            | 100               | -30812                              |
|            |           |                  | 30/09/2015 | 300      | 31140            | 300               |                                     |
|            |           |                  | 01/10/2015 | 1350     | 144639           | 1350              |                                     |
|            |           |                  |            |          | <b>186212</b>    |                   |                                     |
| 22/09/2015 | 2000      | <b>196282.05</b> | 01/10/2015 | 650      | 69641            | 650               | -16568.45                           |
|            |           |                  | 08/10/2015 | 300      | 32025            | 300               |                                     |
|            |           |                  | 13/10/2015 | 1050     | 111184.5         | 1050              |                                     |
|            |           |                  |            |          | <b>212850.5</b>  |                   |                                     |

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| Sell Date  | Sell Qty. | Sell Value      | Buy Date   | Buy Qty. | Buy Value        | Contra Trade Qty. | Profit/ Loss (Sell Value-Buy Value) |
|------------|-----------|-----------------|------------|----------|------------------|-------------------|-------------------------------------|
| 23/09/2015 | 4000      | <b>380944.5</b> | 13/10/2015 | 950      | 100595.5         | 950               | -34971                              |
|            |           |                 | 20/10/2015 | 1500     | 157050           | 1500              |                                     |
|            |           |                 | 23/10/2015 | 1000     | 104150           | 1000              |                                     |
|            |           |                 | 27/10/2015 | 550      | 54120            | 550               |                                     |
|            |           |                 |            |          | <b>415915.5</b>  |                   |                                     |
| 24/09/2015 | 19500     | <b>2058664</b>  | 27/10/2015 | 450      | 44280            | 450               | 293696.2                            |
|            |           |                 | 05/11/2015 | 1000     | 100650           | 1000              |                                     |
|            |           |                 | 09/11/2015 | 500      | 48200            | 500               |                                     |
|            |           |                 | 10/11/2015 | 3000     | 297700           | 3000              |                                     |
|            |           |                 | 13/11/2015 | 681      | 66057            | 681               |                                     |
|            |           |                 | 16/11/2015 | 1500     | 144325           | 1500              |                                     |
|            |           |                 | 20/11/2015 | 500      | 48000            | 500               |                                     |
|            |           |                 | 23/11/2015 | 1500     | 148050           | 1500              |                                     |
|            |           |                 | 26/11/2015 | 200      | 20260            | 200               |                                     |
|            |           |                 | 01/12/2015 | 3000     | 316687.5         | 3000              |                                     |
|            |           |                 | 08/12/2015 | 2000     | 203945.6         | 2000              |                                     |
|            |           |                 | 16/12/2015 | 500      | 48150            | 500               |                                     |
|            |           |                 | 22/12/2015 | 29       | 3074             | 29                |                                     |
|            |           |                 | 18/01/2016 | 2600     | 154496.7         | 2600              |                                     |
|            |           |                 | 19/01/2016 | 450      | 27427.5          | 450               |                                     |
|            |           |                 | 28/01/2016 | 700      | 42000            | 700               |                                     |
|            |           |                 | 09/02/2016 | 890      | 51664.5          | 890               |                                     |
|            |           |                 |            |          | <b>1764967.8</b> |                   |                                     |
| 29/09/2015 | 1000      | <b>101200</b>   | 09/02/2016 | 1000     | <b>58050</b>     | 1000              | 43150                               |
| 06/10/2015 | 510       | <b>56084.7</b>  | 09/02/2016 | 110      | 6385.5           | 110               | 30103.2                             |
|            |           |                 | 12/02/2016 | 400      | 19596            | 400               |                                     |
|            |           |                 |            |          | <b>25981.5</b>   |                   |                                     |

40. Therefore, from the alleged contra trades mentioned in the SCN, following above principle as mentioned in the above tables, I find that Noticee No. 1 has entered into 66 contra trades. I note that every contra trade has not resulted in a profit and there are contra trades which have also resulted in a loss. However, a plain

reading of Clause 10 of Schedule B to the PIT Regulations shows that the profit from each contra trade has to be disgorged or in other words, when determining contra trades executed over a period, what is required to be disgorged is not the net profit but the gross profit. Therefore, from the above table, I note that the profit generated from execution of contra trades is Rs. 5,14,359/- In view of Clause 10 of Schedule B to the PIT Regulations, Noticee No. 1 is required to disgorge this profits made from the contra trades to the SEBI-IPEF.

41. In view of the observations made above, I find that the allegations made against Noticee No. 1 in the SCN with respect to not obtaining pre-clearance for execution of trades, non-disclosure of these trades and execution of contra trades stand established.

***Issue No. 2: Whether Noticee No. 2 (a) had adequate access to information regarding the transactions of Noticee No. 1 and (b) despite having adequate access to information regarding the same, he has failed to discharge his responsibilities, in violation of the provisions charged in SCN?***

42. As regards, Noticee No. 2, I note that the allegation levelled against him is that he has not made the disclosures to the stock exchanges regarding certain transactions of Noticee No. 1, even though he was aware of the same.

43. The following material is available on record in respect of this allegation:

43.1. Noticee No. 2 is responsible for administering the Code of Conduct of MPL, which has not been disputed by him.

43.2. The RTA of MPL has confirmed that that it used to send weekly BENPOS and movement register to all its clients through email every Saturday/ Monday. Further, quarterly reports were sent to its clients through mail at the end of every quarter. The RTA has confirmed that for MPL, these reports were sent through email to the email ID [harshavardhan@marksanspharma.com](mailto:harshavardhan@marksanspharma.com) and [companysecretary@marksanspharma.com](mailto:companysecretary@marksanspharma.com), which is of Noticee No. 2.

43.3. On the basis of the analysis of the weekly reports sent by the RTA to Noticee No. 2, it is found that there were four instances where the trading of Noticee No. 1 in the scrip of MPL had crossed the threshold of Rs. 10 lakhs during the investigation period for which disclosure was required to be made by MPL. These four instances are as below:

**Table 7**

| Sr. No. | Required Date of disclosure      | Week (mm/dd/yyyy)        | Date on which trade value > Rs 10 lakhs | Trade Value (in Rs.) | Date on which disclosure was made |
|---------|----------------------------------|--------------------------|-----------------------------------------|----------------------|-----------------------------------|
| 1       | 18/08/2015 (July-Sept 2015 Qtr.) | 07/03/2015 to 07/10/2015 | 14/08/2015                              | 4,25,385.00          | No disclosure was made            |
|         |                                  | 07/24/2015 to 07/31/2015 |                                         | 2,66,624.40          |                                   |
|         |                                  | 07/31/2015 to 08/07/2015 |                                         | 10,462.60            |                                   |
|         |                                  | 08/07/2015 to 08/14/2015 |                                         | 5,53,834.50          |                                   |
| Total   |                                  |                          |                                         | 12,56,306.50         |                                   |
| 2       | 29/09/2015 (July-Sept 2015 Qtr.) | 08/14/2015 to 08/21/2015 | 25/09/2015                              | 2,35,969.80          | No disclosure was made            |
|         |                                  | 08/28/2015 to 09/04/2015 |                                         | 2,42,719.20          |                                   |
|         |                                  | 09/04/2015 to 09/11/2015 |                                         | 1,64,422.00          |                                   |

| Sr. No.      | Required Date of disclosure    | Week (mm/dd/yyyy)        | Date on which trade value > Rs 10 lakhs | Trade Value (in Rs.) | Date on which disclosure was made |
|--------------|--------------------------------|--------------------------|-----------------------------------------|----------------------|-----------------------------------|
|              |                                | 09/11/2015 to 09/18/2015 |                                         | 1,31,932.50          |                                   |
|              |                                | 09/18/2015 to 09/25/2015 |                                         | 4,36,540.55          |                                   |
| <b>Total</b> |                                |                          |                                         | <b>12,11,584.05</b>  |                                   |
| 3            | 20/10/2015 (Oct-Dec 2015 Qtr.) | 09/25/2015 to 10/02/2015 | 16/10/2015                              | 4,70,691.00          | No disclosure was made            |
|              |                                | 10/02/2015 to 10/09/2015 |                                         | 5,05,682.40          |                                   |
|              |                                | 10/09/2015 to 10/16/2015 |                                         | 2,09,836.00          |                                   |
| <b>Total</b> |                                |                          |                                         | <b>11,86,209.40</b>  |                                   |
| 4            | 24/11/2015 (Oct-Dec 2015 Qtr.) | 10/30/2015 to 11/06/2015 | 20/11/2015                              | 2,67,075.90          | No disclosure was made            |
|              |                                | 11/06/2015 to 11/13/2015 |                                         | 49,082.50            |                                   |
|              |                                | 11/13/2015 to 11/20/2015 |                                         | 10,14,505.37         |                                   |
| <b>Total</b> |                                |                          |                                         | <b>1330663.77</b>    |                                   |

44. In other words, Noticee No. 2, by virtue of being in possession of the information received from the RTA, was aware of these four instances where disclosure was required to be made to the stock exchanges.

45. Noticee No. 2 has refuted the allegation by submitting the following:

45.1. He was not aware of the transactions of Noticee No. 1, which have crossed the threshold of Rs. 10 lakhs.

45.2. The weekly and quarterly RTA reports run into hundreds of pages and it is impossible to track the trading of each and every employee in the scrip of MPL (the company had 574 employees during year 2015-16 and 717 employees during year 2016-17). Trading in the shares by Promoters,

Directors and KMPs and employees up to Manager level and employees in the certain departments in the corporate office of MPL are specifically tracked on weekly basis. Other employees including peons are excluded from weekly trading. Additionally, transactions involving 1,00,000 shares or more are also specifically monitored on regular basis.

45.3. The transactions of Noticee No. 1 are ranging from 58 shares to 10,508 shares on weekly basis. It is difficult to calculate cumulative transactions across a calendar quarter to ascertain the threshold limit. It is practically not possible on part of Noticee No. 2 to maintain every week's trading data of each and every employee across a calendar quarter to ascertain whether cumulative transaction has crossed the threshold.

45.4. As per the Code of Conduct of MPL, Noticee No. 1 has not provided his shareholding as at the end of each quarter and also his trading details during the quarter, irrespective of the number of shares involved. Noticee No. 1 has also not sought pre-clearance from him when his total dealings in a quarter exceeded the threshold of Rs. 10 lakhs.

45.5. Onus is always on the employee to seek pre-clearance and also to disclose trading in case it exceeds the threshold limit of Rs. 10 lakhs.

45.6. It is incorrect to say that Noticee No. 2 was aware of the transactions of Noticee No. 1 in the shares of MPL, when there was no pre-clearance sought nor disclosure made.

45.7. The violation, if any, is technical in nature and unintentional. It is just a procedural lapse. There is no mala fide intention and no mens rea involved. Further, no gain or advantage of any nature has occurred to Noticee No. 1 and no loss or harm caused to any investors.

46. Before proceeding further, I note that Noticee No. 2 has been designated as the Compliance Officer under the PIT Regulations to administer the Code of Conduct

and other requirements under the PIT Regulations. One of these requirements is to monitor the trades of designated persons, employees and their immediate relatives in order to meet the reporting requirements under the Code of Conduct of MPL. I note here that for effective monitoring of trades, it is the duty of Noticee No. 2 to obtain details of these trades and put in place a mechanism to analyze them in order to identify any deviations with the Code of Conduct.

47. I note that Noticee No. 2 has accepted that he was in receipt of the weekly and quarterly data of BENPOS and movement register. He has also not disputed the finding of the investigation that examination of the data provided by the RTA revealed that the trading of Noticee No. 1 in the scrip of MPL had crossed the threshold of Rs. 10 lakhs four times during the investigation period for which disclosure was required to be made by MPL.

48. I note that Noticee No. 2 has submitted that due to operational constraints he was not monitoring the transactions of Noticee No. 1. Here, I refer to Clause 9 of MPL's Code of Conduct, which is as below:

**9. Duties of the Compliance Officer**

***The Compliance Officer shall be responsible for setting forth policies, procedures and monitoring adherence to this Code and compliance of the Regulations, under the overall supervision of the Board. The Compliance Officer shall submit a report in this regard to the Board of Directors and the Audit Committee of the Company on quarterly basis. Without prejudice to the above, the Compliance Officer shall be responsible for the following:***

***(a) ...***

***(b) Monitor the trades of the Designated Persons, Employees and their immediate relatives.***

***(c) ...***

49. I also note the following provisions of the SEBI Act and the PIT Regulations:

***Disclosures by certain persons.***

***7 (2) Continual Disclosures.***

***(a) ...***

***(b) Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.***

***(c) Explanation. — It is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2).***

***Code of Conduct.***

***9. (1) ...***

***(2) ...***

***(3) Every listed company, market intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.***

***Section 15A***

***If any person, who is required under this Act or any rules or regulations made thereunder,—***

***(a) ...***

***(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;***

50. Hence, as per the Code of Conduct of MPL and Regulation 9(3) of the PIT Regulations, it is the duty and responsibility of Noticee No. 2 to monitor the trades of all designated persons, which included the trades of Noticee No. 1. I note that there is no exception provided in the Code of Conduct of MPL that trades of certain employees can be excluded from monitoring. Noticee No. 2 has also not provided

any document/ record to show that the practice followed by him with respect to monitoring transactions of employees of MPL has been approved by the Board of MPL or he that he had proposed any change to the Code in order to meet these exceptions. He has also not provided any document/ record to show that he has highlighted the constraints faced by him with respect to monitoring employee transactions to the Board of MPL.

51. While the Code of Conduct of MPL requires every employee to make continuous disclosures of their trading in the scrip of MPL in the prescribed format, I note that this requirement does not absolve the Compliance Officer from his duty and responsibility of separately monitoring the trades of every employee, especially when the information from which details of these trades could be ascertained, was being sent periodically to Noticee No. 2 by the RTA of MPL. The contention of Noticee No. 2 that the onus is on the employees to disclose their trades is misplaced as his duty to monitor the trades is independent of the disclosure requirements.

52. On a sample basis, from the extract of the weekly reports sent by the RTA to Noticee No. 2, I note that the following details of the weekly movement of shares of MPL in the account of Noticee No. 1 for the Quarter July-August 2015, are available with Noticee No. 2:

**Table 8**

| BIGSHARE SERVICES PVT. LTD       |       |                  |                          |     |      |                          |
|----------------------------------|-------|------------------|--------------------------|-----|------|--------------------------|
| Unit: MARKSANS PHARMA LTD FV 1   |       |                  |                          |     |      |                          |
| Report Name: Movement Register   |       |                  |                          |     |      |                          |
| Period: 07/03/2015 to 07/10/2015 |       |                  |                          |     |      |                          |
| DP ID                            | CL ID | Beneficiary Name | Balance as on 07/03/2015 | Buy | Sell | Balance as on 07/10/2015 |

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*Order in the matter of Disclosure Requirements pertaining to trading in the scrip of Marksans Pharma Ltd.*

|                                         |              |                           |                                 |            |             |                                 |
|-----------------------------------------|--------------|---------------------------|---------------------------------|------------|-------------|---------------------------------|
| IN300484                                | 16128760     | Sebastian Ruzario Pereira | 48658                           | 0          | 5000        | 43658                           |
| <b>Period: 07/24/2015 to 07/31/2015</b> |              |                           |                                 |            |             |                                 |
| <b>DP ID</b>                            | <b>CL ID</b> | <b>Beneficiary Name</b>   | <b>Balance as on 07/24/2015</b> | <b>Buy</b> | <b>Sell</b> | <b>Balance as on 07/31/2015</b> |
| IN300484                                | 16128760     | Sebastian Ruzario Pereira | 43658                           | 0          | 2800        | 40858                           |
| <b>Period: 07/31/2015 to 08/07/2015</b> |              |                           |                                 |            |             |                                 |
| <b>DP ID</b>                            | <b>CL ID</b> | <b>Beneficiary Name</b>   | <b>Balance as on 07/31/2015</b> | <b>Buy</b> | <b>Sell</b> | <b>Balance as on 08/07/2015</b> |
| IN300484                                | 16128760     | Sebastian Ruzario Pereira | 40858                           | 100        | 0           | 40958                           |
| <b>Period: 08/07/2015 to 08/14/2015</b> |              |                           |                                 |            |             |                                 |
| <b>DP ID</b>                            | <b>CL ID</b> | <b>Beneficiary Name</b>   | <b>Balance as on 08/07/2015</b> | <b>Buy</b> | <b>Sell</b> | <b>Balance as on 08/14/2015</b> |
| IN300484                                | 16128760     | Sebastian Ruzario Pereira | 40958                           | 0          | 5100        | 35858                           |

\* The date format in the above table is mm/dd/yyyy

53. I also note that the details of the share price of MPL, on a daily and weekly basis, are available with Noticee No. 2. Applying the share prices to the quantities of shares brought/ sold, it is possible for Noticee No. 2 to determine that the gross traded value of Noticee No. 1, in the scrip of MPL, exceeded Rs. 10 lakhs during the period July 03, 2015, to August 14, 2015. It is also the case of Noticee No. 2 that trading in the shares by Promoters, Directors and KMPs and employees up to Manager level and employees in the certain departments in the corporate office of MPL is specifically tracked on weekly basis. Noticee No. 2 has also submitted that transactions involving 100000 shares or more are also specifically monitored on a regular basis. This shows that a certain internal system to arrive at the triggering limit is in place, at least for these categories of employees, and if such a system is in place for one category, it can be extended to all the categories of designated persons. Specifically monitoring the transactions of only these

categories of employees shows that the practice followed by him was not consistent with the policy and that the chance of being aware of the transactions of the employees not being tracked has been consciously ruled out by Noticee No. 2. It is the duty and responsibility of Noticee No. 2 to put in place a comprehensive system, as per the Regulations, to analyze the weekly and quarterly reports provided the RTA. Further, I note that the RTA is an agent of MPL and Noticee No. 2 could have directed it provide reports in the format that would have enabled him to effectively monitor the trades of all designated persons.

54. I also note that the obligation to disclose these transactions is not only triggered by the disclosure made or pre-clearance sought by the concerned employee of the company but it is the responsibility of Noticee No. 2 to identify such triggers. Noticee No. 2 cannot take shelter under the excuse that it was the duty of Noticee No. 1 to inform him or seek pre-clearance from him for these trades. As already mentioned earlier, the responsibility of Noticee No. 2 to monitor the trades is independent of the reporting done by Noticee No. 1.

55. Hence, I note that the details of the transactions of Noticee No. 1 were in the possession of Noticee No. 2 and if he had effectively monitored the same, he would have been aware that Noticee No. 1 was carrying out trades in the scrip of MPL above the required threshold without seeking pre-clearance and was also not disclosing the same to MPL.

56. In view of the above, I hold that Noticee No. 2 had adequate access to information regarding the transactions of Noticee No. 1 and despite having access to the same, he has failed to discharge his responsibilities regarding monitoring the transactions of Noticee No. 1 and not making disclosures regarding the same to

the stock exchanges.

57. Hence, in view of the above, I find that that Noticee No. 2 is in violation of the Code of Conduct of MPL as well as Regulation 7(2)(b) read with Regulation 9(3) of the PIT Regulations and is liable for penalty under Section 15A(b) of the SEBI Act.

58. Hence, I hold that the allegations levelled against Noticee No. 2 in the SCN stand established.

***Issue No. 3: If the answer to Issues No. 1 and/ or 2 are affirmative, what directions, if any, should be issued against the Noticees?***

59. As the allegations levelled against the Noticees in the SCNs stand established and there is a violation of the provisions of securities laws, I shall now proceed to determine the directions that need to be issued against the Noticees that would be commensurate to the nature of their violations. Both the SCNs call for imposition of penalty on the Noticees under Section 11(4A) and 11B(2) read with Section 15A(b) and 15HB of the SEBI Act, 1992, and SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.

60. I note that Section 15A(b) and Section 15HB were amended vide the Securities Laws (Amendment) Act, 2014, and the amended provisions have taken effect from September 08, 2014. As the IP is after this date, the amended provisions existing at the time of the violations are being considered when determining the penalty to be levied on the Noticees. Hence, before I proceed further, the provisions of the relevant sections are reproduced below:

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*Order in the matter of Disclosure Requirements pertaining to trading in the scrip of Marksans Pharma Ltd.*

## ***Functions of Board***

### ***Section 11(4A)***

***Without prejudice to the provisions contained in sub-sections (1), (2), (2A), (3) and (4), section 11B and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.***

### ***Power to issue directions and levy penalty***

### ***Section 11B(2)***

***Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.***

### ***Penalty for failure to furnish information, return, etc.***

### ***Section 15A***

***If any person, who is required under this Act or any rules or regulations made thereunder,—***

***(a) ...***

***(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;***

***Penalty for contravention where no separate penalty has been provided.***

### ***Section 15HB.***

***Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.***

### ***Factors to be taken into account while adjudging quantum of penalty***

## **Section 15J**

***While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:—***

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;***
- (b) the amount of loss caused to an investor or group of investors as a result of the default;***
- (c) the repetitive nature of the default.***

61. I note that the SCN issued to Noticee No. 1 also calls for issuance of directions for disgorgement of profits made by him by executing contra trades, along with interest @ 10%. I note that the requirement of disgorgement of profits made from contra trades flows out of Clause 10 of Schedule read with Regulation 9(1) of the PIT Regulations. As the allegation of making profits from contra trades stand established, it follows that the profits need to be disgorged for remittance to the IPEF administered by SEBI. I note that, on the basis of the finding of contra trades, the amount of profit made by Noticee No. 1 from contra trades has been quantified to be Rs. 5,14,359/-. However, I note that MPL has deposited a sum of Rs. 67,170/- from the annual salary increment, bonus and LTA of Noticee No. 1 for the year 2016-17 into the SEBI IPEF. It would be appropriate to deduct this amount while quantifying the amount to be disgorged.

62. With regard to the application of interest @ 10%, I note here that as per the finding given in the table 5, the first instance of the contra trade has occurred on July 07, 2015, when Noticee No. 1 sold 100 shares of MPL, which has resulted in a profit. As this amount was also required to be disgorged, the interest should be made applicable on this amount from July 07, 2015, onwards. Hence, interest would have to be made applicable on each profit amount from the date on which it has occurred. As the calculation of such an interest component would be

cumbersome, I note here that the last such profit making contra trade has occurred on February 12, 2016. Therefore, the total profit made from the executed contra trades has finally been crystallized on this date. Hence, for ease of calculation of the interest component, the interest at 10% p.a. shall be made applicable from February 12, 2016, onwards.

63. I note here that vide DD dated June 04, 2018, MPL remitted Rs. 67,170/- towards SEBI IPEF for Noticee No. 1. Hence, the amount, with 10% interest p.a. that has accrued on Rs. 514,359/-, as on June 04, 2018, is Rs. 633,176/-. After deducting the amount remitted vide the demand draft, the balance liability to pay as on June 04, 2018 is Rs. 566,006/-. Therefore, the amount to be disgorged by Noticee No. 1 shall be Rs. 566,006/- with 10% interest p.a. calculated from June 04, 2018 till the date of payment.

64. While considering the factors to determine the penalty, I note that the Hon'ble Supreme Court, vide its judgment dated February 28, 2019, in the matter of SEBI vs. Bhavesh Pabari (2019) SCC 90, has held that provisions of Clauses (a), (b) and (c) of Section 15J are illustrative in nature and have to be taken into account whenever such circumstances exist and factors, other than those enumerated in the above Clauses of Section 15J, can also be considered when determining the quantum of penalty to be levied.

65. As the allegations levied against both the Noticees in the SCN, stand established, I note that imposition of directions/ penalty for the same follows. Section 15A(b) creates a liability for failure to make the requisite disclosures with a penalty, which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to maximum of one crore rupees. Similarly, for the violation of not having taken pre-clearance for his trades

and for execution of contra trades, as no separate provision for imposition of penalty for these particular violations is provided for, Section 15HB becomes applicable. This section provides for a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

66. With respect to Noticee No. 1, I note that while the disclosure related violations on his part are still continuing, there is no record on material to show that as a result of the default, any amount of disproportionate gain or unfair advantage has been accrued to him or loss has been caused to an investor/ group of investors. While violations of Noticee No. 1 have taken place on several instances during the investigation period, I note the following actions taken by MPL, against him in terms of its Code of Conduct also as Section 15J factors,

66.1. Suspending his yearly salary increment, bonus and LTA payment since the year 2016-17.

66.2. Permanently debarring him from dealing in shares of MPL.

66.3. Depositing a sum of Rs. 67,170/- from the annual salary increment, bonus and LTA of Noticee No. 1 for the year 2016-17 into the SEBI IPEF.

67. However, I note that the violations which attract penalty under Sections 15A(b) and 15HB of the SEBI Act stand established against Noticee No. 1. Hence, he is liable for penalty under these sections and in view of the action taken against him by MPL, as mentioned above, appropriate directions and imposition of penalty against Noticee No. 1 are incorporated in the operative part of the Order.

68. As regards Noticee No. 2, I note that his failure to make the disclosure to the stock exchanges is still continuing. The argument of Noticee No. 2 that the violation of disclosure is continuing because Noticee No. 1 has not provided the relevant data,

which will enable filing the disclosures with the stock exchanges, is unsustainable in law, since he has access to all the necessary information from the RTA. Section 15A(b) creates a liability for failure to make the requisite disclosures with a penalty, which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to maximum of one crore rupees.

69. When it comes to the assessment of Section 15J factors, there is no material on record to indicate that he has made any disproportionate gain or received any unfair advantage due to his default. While there is no material on record to indicate that any loss has been caused to an investor or a group of investors as a result of his default, I note that his default is repetitive in nature. Noticee No. 2 has also pleaded that the violation of not making disclosure to the stock exchanges, though not admitted by him, is technical in nature, unintentional and is a procedural lapse. There is no mala fide intention and no *mens rea* involved and he has pleaded for leniency in view of the same.

70. As already held above, the violation on part of Noticee No. 2 is due to the fact that he was not following the Code of Conduct laid down by the Company, though he himself was the person designated by MPL to administer the Code of Conduct. I note that he has deviated from the policy of the company, and was following a practice which has no approval from the Board of MPL. I note though paragraph 69 records some of the Section 15J factors, another factor under Section 15J that is to be noted is that Noticee No. 2 is functioning as Compliance Officer in administering the Code of Conduct on Insider Trading and in ensuring compliance with all other provisions of the PIT Regulations. The fact that the violation has been done by Noticee No. 2 as a Compliance Officer has been taken into consideration as one of the factors for deciding the appropriate penalty. It needs

no special mention that a deviation from the Code of Conduct cannot be lightly viewed. Hence, Noticee No. 2 is liable for appropriate penalty under Section 15A(b) of the SEBI Act and accordingly, appropriate directions and imposition of penalty against Noticee No. 2 are incorporated in the operative part of the Order.

### **ORDER**

71. In view of the above, I, in exercise of the powers conferred upon me under Section 11(1) and Section 11B(1), 11B(2), 11(4A) of the SEBI Act, 1992, read with Section 19 thereof, hereby issue the following directions:

71.1. Mr. Pereira Sebastian Ruzario shall disgorge the following amount:

| Noticee Number                                                                                                                                                                           | Noticee Name              | Profit made from Contra Trades to be disgorged (Rs.)              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|-------------------------------------------------------------------|
| 1                                                                                                                                                                                        | Sebastian Ruzario Pereira | Rs. 566,006/- (Five lakhs Sixty Six Thousand and Six Rupees only) |
| Disgorgement amount is the base amount. Simple interest at 10% p.a. to be calculated from June 04, 2018, till the date of payment within 45 days from the date of service of this order. |                           |                                                                   |

The above mentioned amount shall be credited to the IPEF through the online mode or by way of a demand draft (DD) in favour of the Board (i.e. SEBI – IPEF) payable at Mumbai. The bank account details of SEBI – IPEF for online transfer is given below:

|                     |                            |
|---------------------|----------------------------|
| Name of Beneficiary | SEBI – IPEF                |
| Bank Name           | Bank of India              |
| Bank Branch         | Bandra Kurla Complex (BKC) |
| Account Number      | 012210210000008            |
| IFSC Code           | BKID0000122                |

71.2. Mr. Sebastian Ruzario Pereira is restrained from accessing the securities market and from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever, for a period of one (01) year from the date of this Order.

71.3. Following penalty is levied on Mr. Sebastian Ruzario Pereira:

| <b>Under Section</b>                 | <b>Amount</b>                         |
|--------------------------------------|---------------------------------------|
| Section 15A(b) of the SEBI Act, 1992 | Rs. 1,00,000/- (Rs. One Lakh only)    |
| Section 15HB of the SEBI Act, 1992   | Rs. 2,00,000/- (Rs. Two Lakhs only)   |
| <b>Total</b>                         | Rs. 3,00,000/- (Rs. Three Lakhs only) |

71.4. A penalty of Rs. 4,00,000/- (Rs. Four Lakhs only) is imposed on Mr. Harshavardhan Panigrahi under Section 15A(b) of the SEBI Act, 1992.

72. Needless to say that in view of the prohibition on sale of securities, during the period of restraint, the existing holding, including units of mutual funds, of the Noticee No. 1 shall remain frozen.

73. If Noticee No. 1 has any open position in any exchange traded derivative contracts, as on the date of the Order, he can close out/ square off such open positions within 3 months from the date of Order or at the expiry of such contracts, whichever is earlier. Noticee No. 1 is permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this Order.

74. The penalty shall be paid by the Noticees within a period of forty-five (45) days, from the date of receipt of this order. Payment can be made online by following the below path at SEBI website [www.sebi.gov.in](http://www.sebi.gov.in)

**ENFORCEMENT → Orders → Orders of Chairman/Members → Click on PAY NOW or at <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html> and selecting Type of Category as 11B orders.**

75. The above directions shall come into force with immediate effect.

76. A copy of this Order shall be sent to the Noticees, the stock exchanges, depositories and RTAs for information and necessary action.

Sd/-

**DATE: March 05, 2021**

**PLACE: MUMBAI**

**MADHABI PURI BUCH  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA**