National Stock Exchange of India
Circular

Department: Investigation	
Download Ref No: NSE/INVG/56540	Date: April 28, 2023
Circular Ref. No: 108/2023	

To All NSE Members,

Sub: **Final Order in respect of Mr. Rajinder Singh in the matter of GDR issue of MPS Infotecnics Limited**

This is with reference to NSE circular no. NSE/INVG/43802 dated March 06, 2020 referring to SEBI Order no WTM/AB/IVD/ID-4/7171/2019-20 dated March 06, 2020 and NSE circular no. NSE/INVG/50771 dated December 24, 2021 referring to SAT order dated December 21, 2021.

SEBI now vide its order no. WTM/AB/IVD/ID4/26034/2023-24 dated April 28, 2023, has hereby directed that below entity is restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 5 years from the date of this order, the period of debarment already undergone by the below entity, from the date of SEBI's Final Order i.e., March 06, 2020 (SEBI Order No. WTM/AB/IVD/ID-4/7171/2019-20) to the date order passed by Hon'ble SAT i.e., December 21, 2021, via SAT Appeal No.: 360/2021 & Misc.App.No.444/2021 shall be set-off against the period of debarment of 5 years as directed in the present order.

Sr. No.	Name of the Entity	PAN
1	Mr. Rajinder Singh	BLOPS6216C

This Order shall come into force with immediate effect.

The detailed order is available on SEBI website (http://www.sebi.gov.in). Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page under "Home-Regulation-Members-Action against Members-Regulatory Actions".

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to contact the following officials:

Mr. Gaurav Damani (Extension: 22387), Mr. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of

National Stock Exchange of India Limited

Anand Jangir
Manager

National Stock Exchange of India

ANNEXURE: Final Order in respect of Mr. Rajinder Singh in the matter of GDR issue of MPS Infotecnics Limited

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Section 11(1), 11(4) and 11B of Securities and Exchange Board of India Act, 1992.

In respect of:

S. No.	Noticee No.	Name of the Noticee	PAN
1.	8	Mr. Rajinder Singh	BLOPS6216C

(The aforesaid entity is hereinafter referred to individually by his name or Noticee number)

In the matter of GDR issue of MPS Infotechnics Ltd. (formerly known as Visesh Infotechnics Ltd.)

1. Present order is being passed in compliance with order dated December 21, 2021, passed by Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as "**Hon'ble SAT**") in Appeal No. 413 of 2021 filed by Noticee no. 8 impugning order no. WTM/AB/IVD/ID-4/7171/2019-20 dated March 6, 2020 (hereinafter referred to as '**the Final Order'**) passed by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), whereby Honb'le SAT *inter alia* directed as under:

> *"2. The ground urged is that the impugned order is an ex-parte order and no opportunity of hearing was provided to the appellant.*
> *3. We find from paragraph no. 18 of the impugned order that the show cause notice was served by affixation at the last known address. According to the appellant, he had shifted from that address 10 years back and is living elsewhere and, accordingly, a show cause notice was never served. This fact has not been disputed by the respondent.*

4. Accordingly, we are of the opinion that since the appellant was not served with the show cause notice, he was denied the opportunity of filing a reply or appear before the WTM. Consequently, the impugned order dated March 6, 2020 and addendum order dated March 12, 2020 in so far as it relates to the appellant cannot be sustained and is quashed. The appeal is allowed. The matter is remitted to the WTM to decide the matter afresh after serving a show cause notice and proceeding from there onwards. In this regard, the appellant will appear before the WTM on January 5, 2022 on which date the show cause notice would be served."

2. I note that the Final Order was passed by SEBI disposing of the show cause notice dated January 31, 2018 (hereinafter referred to as the '**SCN**') issued to 8 Noticees including Noticee no. 8. The SCN alleged the violations of Section 12A(a), (b) & (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, "**SEBI Act, 1992**") read with Regulations 3(a), (b), (c) & (d) and 4(1), (2)(f), (k) & (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**") by MPS Infotecnics Limited (formerly known as Visesh Infotecnics Limited) (hereinafter referred to as "**MPS**") and violations of Section 12A (a), (b) & (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d) and 4(1) of PFUTP Regulations, 2003 by Noticee No. 2 to 8 therein.

3. The brief facts of the case and allegation against Noticee no. 8, as culled out from the SCN, are briefly narrated below:

   a) MPS Infotecnics Ltd.(**'MPS**'), which is a listed company on BSE, had issued 4.65 million Global Depository Receipts ('**GDRs**') (amounting to USD 09.99 million), on December 04, 2007. The GDR's were listed on Singapore Stock Exchange. Clifford Capital Partners A.G.S.A ('**Clifford**') was the sole subscriber to the entire GDRs issued by MPS.

   b) SEBI's investigation had revealed that Clifford had borrowed funds from a bank based in Lisbon named Banco Efisa, S.F.E.S.A. ('**Banco**'), for subscribing to the GDRs of MPS. For the purpose of borrowing, Clifford had entered into a

Credit Agreement dated October 29, 2007 (‘**Credit Agreement**’) with Banco. It was further revealed that MPS had provided security, for the loan taken by Clifford, by pledging the proceeds of GDR issue. For this purpose, Noticee no. 8, acting on behalf of MPS, had signed an Account Charge Agreement dated October 30, 2007 (‘**Account Charge Agreement’**) with Banco. Thus, the bank account in which GDR proceeds were held, was in the name of MPS but the amount deposited in the account was not at the disposal of MPS as the same was pledged as a collateral even prior to issuance of GDRs, for the loan availed by Clifford.

c) The SCN alleged that MPS did not disclose on BSE about the execution of Account Charge Agreement and Credit Agreement, instead, vide announcement made to BSE on December 05, 2007, MPS informed that its GDR issue was successfully subscribed. SCN also alleged that MPS had diverted GDR proceeds to the extent of USD 8.90 million. In view of the above act of concealing and suppressing the material facts about execution of Credit Agreement between Clifford (the sole subscriber of GDR issue) and Banco, for providing loan to subscribe to the GDR issue and also concealing the execution of Account Charge Agreement by MPS with Banco for providing security to the loan obtained by Clifford, and making wrongful announcement on the BSE. ,

4. I note that the Final Order had found Noticee no. 8 guilty, for being part of the scheme of fraudulently arranging funds for the subscription of GDR of MPS. Consequently, Noticee no. 8 was held to have violated the provision of Section 12A(a), 12A(b) and 12A(c) of the SEBI Act, 1992 and Regulations 3(a), 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations, 2003. Accordingly, vide the Final Order, Noticee no. 8 was restrained from accessing the securities market and dealing in the securities market for a period of five years. However, Noticee no. 8 preferred an appeal before the Hon’ble SAT against the Final Order. As observed earlier, Hon’ble SAT vide its order dated December 21, 2021, in Appeal No. 413 of 2021, quashed and set aside the Final Order in so far as it relates to Noticee no. 8 and remanded the matter for afresh consideration to SEBI.

5. In compliance with the directions of Hon'ble SAT, copy of the SCN alongwith its annexures, was provided to the Authorised Representatives of Noticee no. 8 on January 5, 2022. Subsequently, Noticee no. 8 had sought physical inspection of documents in the matter. However, due to the prevailing pandemic situation, the Advocates representing Noticee no. 8 were informed that physical inspection could not be provided, however, scanned copies of the documents relied upon in the SCN were provided to them. Subsequently, vide its email dated January 13, 2022, the said Advocates had sought copies of the minutes of certain board meetings of MPS. Since, these documents were not relied upon in the SCN, SEBI had initially refused to part with the same. However, after the decision of the Hon'ble Supreme Court of India in ***T. Takano v. SEBI and Anr.*** pronounced on February 18, 2022 **(Civil Appeal Nos. 487-488 of 2022),** Noticee no. 8 was granted an opportunity of physical inspection of documents on June 27, 2022. At this inspection, the Authorised Representative of Noticee no. 8 was *inter alia* provided with copy of the investigation report and all its annexures. However, the Advocates for Noticee no. 8 re-iterated their request for provision of copies of certain Board minutes of MPS, which they had demanded vide their earlier email dated January 13, 2022. Vide its email dated July 11, 2022, SEBI provided the copies of the said minutes of the board meetings of MPS dated 30/01/2007, 30/06/2007, 31/10/2007 and 04/12/2007. I note that after the providing these document, SEBI had also intimated to the Advocates for Noticee no. 8 that the inspection of documents in the said matter has been concluded. Subsequently, Noticee no. 8 filed his detailed reply dated September 30, 2022. Despite the conclusion of inspection of documents in July 2022, the Advocates representing Noticee no. 8, had raised fresh demand for the provision of further documents in their reply dated September 30, 2022. In its fresh demand for documents, Noticee no. 8 had sought:- *1) copy of the forensic audit report dated March 28, 2013; 2) correspondences exchanged between MPS and Banco; 3) all other relevant documents which are considered to be relevant for our Client to suitably defend his rights.* I note that the demand for these documents was raised for the first time at this stage. With respect to the demand for copy of forensic audit report dated March 28, 2013, I note that there is no reference to any such forensic audit report either in the SCN or the Investigation Report. I do not find any material on record

with a mention of such a report, hence, request for providing the same is untenable. Further, with regard to the demand for providing correspondence exchanged between MPS and Banco, I note that Noticee no. 8 has made a roving enquiry without mentioning any specific correspondence/document. Nonetheless, I find that Noticee no. 8 has already been provided with the copy of the Investigation Report and its annexures. Therefore, all the relevant correspondences that SEBI might have collected during investigation, have already been made part of the Investigation Report and provided to the Noticee no. 8. Thus, the request of Noticee no. 8, seeking copies of correspondences which are not even in the possession of SEBI or not even relied upon in the present case, cannot be entertained. Lastly, with respect to the demand of the Advocates for Noticee no. 8 to provide for "*all other relevant documents which are considered to be relevant for our Client to suitably defend his rights*", I find that the same is a nothing but a roving and fishing enquiry. Nonetheless, on perusal of the minutes of the 'Proceedings of inspection of documents' dated June 27, 2022', I find that all documents that are relevant to the present proceedings or relied upon by SEBI, have already been provided to Noticee no. 8. In view of the above, I find that all the concerns of Noticee no. 8 in respect of provision of documents / inspection of documents have been adequately addressed.

6. I shall now proceed to examine another preliminary contention raised by Noticee no. 8. According to him, the allegations made against him in the SCN relate to events dating back to more than 14 years prior to issuance of the SCN. It is his case that, since then, significant time has lapsed and he also does not have access to various documents/ information to suitably defend his rights. In this regard, I note that in the present case, SEBI investigated issue of GDRs in the overseas markets by the Indian companies regarding misuse of GDR route by few companies. The investigation *prima facie* revealed that in many of the GDR issues, money for subscribing to GDR was availed as a loan by the subscribers, from an overseas Bank wherein the issuer company gave security for such loan taken by the subscribers, by pledging/ creating charge on the GDR issue proceeds. It was also observed that the GDRs were subscribed without any valid consideration and the underlying shares were sold in the securities market in India. Accordingly, where

such modus operandi were *prima facie* observed, such GDR issues were examined. SEBI initiated investigation as soon as it came to know that such companies have adopted the modus operandi as referred to above. Since, the GDRs are issued abroad and related transactions occurred outside India, SEBI had to call information from the various entities situated abroad in such large number of fraudulent GDR issues. Such information *inter alia* included seeking information on diversion of funds and subsequent tracing of proceeds from large number of entities and the details of (a) GDR issuer companies, (b) custodian of securities, (c) overseas depository, (d) overseas banks, (e) subscribers of GDR issue (mostly overseas), (f) lead manager, (g) various layers of transactions, etc., which was not readily forthcoming. Therefore, SEBI had to collect information and documents from various sources including approaching the foreign regulators for assistance in procuring information and documents from the concerned entities situated outside India from many jurisdictions. The foreign regulators also had to collect this information from the concerned entities in order to furnish to SEBI. Thus, the process of collection of information in the matter was complex, tedious and time consuming.

7. I also note that SEBI had received alerts that certain FIIs/Sub-accounts were converting the GDRs held by them in those companies into equity shares to sell in the Indian markets within a short period after the issue of GDRs by those companies. As *prima facie* manipulative practices were suspected, SEBI vide an *ad–interim ex –parte* Order dated September 21, 2011 had *inter alia* barred Pan Asia Advisors Limited and Mr. Arun Panchariya from rendering services in connection with Indian market. Thereafter, SEBI passed final order dated June 20, 2013 prohibiting Pan Asia Advisors Limited and Mr. Arun Panchariya from accessing the securities market for a period of 10 years. In appeal, the Hon'ble SAT vide its majority judgment dated September 30, 2013 set aside SEBI's order dated June 20, 2013 on the ground of SEBI not having the jurisdiction over the creation and issuance of GDRs abroad. Aggrieved by the said order, SEBI moved the Hon'ble Supreme Court and the Court vide order dated July 06, 2015 in SEBI vs. Pan Asia Advisors Ltd.& Anr. (2015) 14 SCC 71 upheld SEBI's jurisdiction over

the GDR issues. Therefore, I note that the question of SEBI's jurisdiction over GDRs had not attained finality until 2015.

8. I note from SEBI order dated June 16, 2016 bearing reference no. WTM/PS/58/IVD/JUN/2016, that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014. MPS was one such GDR issuer where similar modus operandi was observed and the investigation was completed in October 2017. I note that after completion of the investigation, the SCN was issued to the eight Noticees on January 31, 2018. From the above facts and circumstances of the case, it cannot be said that there was inordinate and unnecessary delay in the matter as contended by Noticee no. 8. It may be pertinent to refer to the order of Hon'ble SAT in Jindal Cotex Ltd. and others Vs. SEBI (Appeal No. 376 of 2019 decided on 05.02.2020) wherein while dealing with an appeal emanating from the similar GDR issue wherein a plea of delay was also taken by the appellant therein, Hon'ble SAT observed as under:

> "............. Argumentson delay in investigation and consequently affecting natural justice are also devoid of any merit in the matter since this Tribunal is aware of the complexity involved in the entire manipulative GDR issue; how long it took SEBI to gain information relating to the various entities from multiple jurisdictions in the matter of PAN Asia Advisors Limited (Supra) and Cals Refineries Limited (Supra) etc................"

9. Similarly, in another GDR matter namely G. V. Films Ltd. Vs. SEBI. (Order dated February 15, 2021 in Appeal No. 168 of 2020) the Hon'ble SAT opined on the issue of delay in a similar matter pertaining to issue of GDRs as follows:

> "Having heard the learned counsel for the parties on this issue, we find that there is no doubt that there has been a delay in the issuance of the show cause notice after 10 years from the date of the GDRs issue. However, on this ground of delay, the proceedings cannot be quashed for the reasons that we find that an investigation was required to be done beyond the borders of India which took time."
>
> (Emphasis supplied)

10. As observed in the preceding paragraphs, I also note that all the documents relevant and / or relied upon for making allegations in SCN have been provided to the Noticee no. 8. Except for one unrelated document, Noticee no. 8 has not been able to point any specific document/ evidence which he could not retrieve due to passage of time, which renders him unable to put an effective defence in the matter. Hence, in view of the aforesaid facts and circumstances of the present case, I find that the delay, if any, in the present proceedings as alleged by the Noticee no. 8 and his contention in this regard is untenable.

11. Noticee no. 8 was granted an opportunity of personal hearing on September 30, 2022 at 2:30 PM. However, the Advocates representing Noticee no. 8 sought preponement of the scheduled time of hearing. Due to pre-scheduled engagements of the undersigned at the requested time, the hearing was re-scheduled on a later date i.e. October 11, 2022. The Advocate representing Noticee no. 8 was heard on the re-scheduled date. Subsequently, the Advocates representing Noticee no. 8 have also filed written submission dated October 22, 2022. The key contentions raised by Noticee no. 8 are summarized as follows:

  a. Noticee was on the Board of Directors of the Company as a Non-Executive and Independent Director from October 19, 2007s to September 02, 2009. The Noticee being a Non- Executive and Independent Director is no doubt a custodian of the governance of the Company. As in the present case, the Noticee has not attended any of the Board Meetings of the Company as highlighted above and therefore he cannot be aware and/or held responsible for what was decided behind his back.

  b. At the said time, when the Noticee was invited for the Board Meeting dated October 19, 2007, Noticee was in London, and was informed that the Company would open a bank account with Banco for receiving subscription monies in respect of GDR Issue. Thereafter, the Noticee was informed by the management of the Company to sign the Account Charge Agreement as he was based in London at that time. Pursuant to the Authority, the Noticee signed the Account Charge Agreement dated October 30, 2007 with Banco.

<u>Board Meeting dated October 19. 2007:</u>

c. The Noticee was simply an invitee to the Board Meeting dated October 19, 2007. In fact, the Noticee did not attend the Board Meeting dated October 19, 2007, neither through videoconferencing, nor physically and nothing has been brought on record by SEBI to show that the Noticee was present in the said meeting. On a plain reading of the Minutes of the Board Meeting dated October 19, 2007 {Annexure 6 to the SCN}, it merely authorises Banco to use the GDR proceeds deposited with them as a security in connection with the loan taken by the Company, if any, as well as to enter into escrow accounts or similar agreements. The Board Resolution does not specifically authorize the Noticee to create a pledge over the proceeds of the GDR Issue.

d. In order to create a charge over the proceeds of the GDR Issue, a specific resolution detailing the <u>borrower's name, nature. amount, purpose, security of loan etc. needs to be passed and such a resolution was never passed by the Board of Directors of the Company or the shareholders of the Company.</u> The said resolution was only for the purpose to open current escrow account with Banco for the purpose of receiving money in respect of GDR Issue of the Company and not for any other purpose.

e. A copy of the agenda of the Board Meeting was also not made available to the Noticee, and Minutes of the Board meeting, which was not attended by the Noticee does not even suggest, whether the execution of the Account Charge Agreement was discussed in the aforesaid meeting. <u>In fact. it is also a duty casted upon the Company/ certifying professionals/ officers to ensure that they provide correct. accurate, and reliable details of the resolution passed to the persons or authorities who acted upon these Certified True Copies.</u>

f. The falsification of any information mentioned in the Certified True Copy is a punishable offence as per Companies Act, 2013. Moreover, the Minutes of the Board Meeting dated October 19, 2007, were never made available to the Noticee and therefore the question of being aware of such pledge should never arise as the Board Meeting fails to show the presence and/or depict the role of the Noticee in the entire fraudulent scheme.

Account Charge Agreement integral part of Credit Agreement:

g. Merely because the Noticee was a signatory to the Account Charge Agreement does not mean that the Noticee has facilitated/ aided/ abetted the fraudulent scheme of self financing the GDRs. The approval and authentication at the first instance were the duty of the Company before passing such resolution. The Noticee being a Non-Executive and Independent Director cannot be held liable under any circumstances for such fraudulent scheme which was devised by the Company way back in January 2007, that is much before the Noticee was appointed as a Non-Executive and Independent Director of the Company.

h. In fact, the Account Charge Agreement does not mention/ specify regarding Clifford being subscriber to the GDR Issue or that USD 10 million would be used to subscribe the GDR Issue. On bare perusal of the Account Charge Agreement under the heading of "Loan Agreement" only shows that there was a Loan Agreement which was signed between Clifford and Banco, wherein Banco had agreed to lend to Clifford up to US$ 10,000,000.

i. One cannot draw an inference that the Loan Agreement which is being referred in the Account Charge Agreement is the specific Credit Agreement which was executed between Clifford and Banco. The Account Charge Agreement nowhere mentions while giving reference to the Loan Agreement that it was for subscription of GDRs. In fact, keeping the reference of Loan Agreement aside, the entire Account Charge Agreement does not depict that there was a Credit Agreement which was executed for subscription of GDRs.

j. The most important aspect being that the Credit Agreement was in fact executed just a day prior to the Account Charge Agreement. The Credit Agreement was executed on October 29, 2007, in Mauritius whereas the Noticee who was based in London at that time could not have been aware of such arrangement hatched by the Company. The Noticee is also not privy and party to such Credit Agreement, it was only based on the documents now provided to the Noticee along with the SCN, the Noticee has learnt that there is an express reference to Clifford's obligation to subscribe to the GDR's. The SCN apart from the above is unable to show/ prove as to how the Account Charge Agreement was an integral part of the Credit Agreement.

k. Even assuming that there is an argument raised, that by the doctrine of incorporation by reference' the Credit Agreement can be deemed to be a part of an Account Charge Agreement. As in the present case, the intention of the parties was never to incorporate the main contract (Credit Agreement) in its entirety into sub-contract (Account Charge Agreement). The Hon'ble Apex Courts in many of its judgments has; held that the following tests should be met for incorporation by reference: - "A mere reference is not sufficient and there should be a clear reference to the document; and the reference should clearly indicate an intention to incorporate the terms of particular contract."

l. If there had been such an intention, to give a clear reference, the Account Charge Agreement would bear a clear reference to the Credit Agreement specifying that the proceeds deposited will be used for subscription of the GDR of Company. Mere reference of a loan agreement cannot indicate and/or conclude that the Account Charge Agreement is an integral part of the Credit Agreement.

<u>Involvement of the Noticee In the Board Meetings:-</u>

m. Noticee was not present in the meetings of the Company during his entire tenure. The meetings dated January 30, 2007; June 30, 2007; October 31, 2007; and December 04, 2007, which were provided to the Noticee by way of an inspection, would depict that the Noticee was not present at the meetings of the Company during FY 2007-08 (including 2 meetings which were in fact conducted pursuant to the appointment of the Noticee).

n. Upon perusal of the Minutes of the meeting October 31, 2007, wherein the Noticee was not even present, falsely represents that it was based on the advice and recommendation of the Noticee, the Company had passed a resolution dated October 19, 2007, for opening a bank account with Banco. This fact can only portray that the Company being the Noticee No.1 in the present proceedings has been giving false representation from the very beginning and this only reflects the mala fide intention of the Company to entirely shift the blame on the Noticee who was not present in any of the meetings.

o. Furthermore, apart from the above Board Meetings, the Noticee had also reproduced an extract of the Annual Report of FY 2008- 09 in the Reply to show that the Noticee did not attend a single board meeting. Therefore, the Noticee had ceased to be a Non-Executive and Independent Director of the Company under Section 283 of the Companies Act, 1956 owing to the vacation of his office. The records speak volume that the Noticee was never part of the fraudulent scheme of the Company.

p. Lastly, the Auditor Certificate for December 2008 would also depict that the Auditor himself has certified that there was no fraud noticed and/ or reported by the Auditor. Also, the Audit Report further records that the Company has not granted any guarantee for loans taken from bank or financial institutions. Therefore, at no point could the Noticee raise any suspicion.

Not a beneficiary to the GDR proceeds and no diversion of funds-

q. Noticee was never a beneficiary to the GDR Proceeds. The GDR proceeds was in fact transferred to the account of the Company. The SCN in fact fails to show amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of default; the amount of loss caused to an investor or group of investors as a result of the default. The Noticee was also not part of any of the committee, including GDR Committee and Audit Committee of the Company.

r. Without prejudice to the aforesaid, vide Ex- Parte Orders dated March 06, 2020, along with an addendum to the order dated March 12, 2020, Noticee was restrained from accessing the securities market for five years from the date of the Ex- Parte Orders Noticee has been away from the Indian Securities Market for a period of 10 years including two and a half years from after the Ex-Parte Orders. Noticee already has been going through the restraint; and further imposing any such debarment on him would be excessive and unjust. Lastly, the Noticee has also not in any way misconducted with securities market during such period.

Consideration of submissions and findings thereon:

12. The core issue for consideration is whether Noticee no. 8 was part of the fraudulent scheme of facilitating the subscription of MPS's GDR issue, by enabling provision of guarantee on behalf of MPS, to the loan taken by the sole subscriber of GDR. It is alleged in the SCN that had the guarantee not been given by MPS, the GDR issue would not have been fully subscribed. Thus, the SCN alleges that Noticee no. 8 being the authorised signatory on behalf of MPS, played a role in the execution of the Account Charge Agreement on behalf of MPS that acted as guarantee for the loan taken by Clifford to subscribe to the GDR issue of MPS.

13. I note that Noticee no. 8 was the non-executive and independent director in MPS for the period from October 19, 2007 to September 2, 2009. In the board meeting of MPS dated October 19, 2007, a resolution of the board of directors was considered to open a bank account with Banco, a bank based in Lisbon, Portugal, for the purpose of receiving subscription money in respect of the GDR issue of MPS. Further, the resolution also authorized the Noticee no. 8 to enter into any escrow agreement or similar arrangements on behalf of MPS and authorized Banco to use the funds deposited in its bank account as a security in connection with loans if any availed. The relevant extract of the said Board resolution dated October 19, 2007 is as under:

ITEM NO. 2: APPOINTMENT ADDITIONAL DIRECTOR

The Chairman proposed the appointment of Mr. Rajinder Singh, as a director of the company. The Board considered the proposal and after deliberation following resolution was passed.

RESOLVED THAT pursuant to section 260 of Companies Act, 1956 and Article 101of the Articles of Association of the company, Mr. Rajinder Singh be and hereby appointed as Additional Director of the company and shall hold office till next Annual General Meeting of the company.

RESOLVED FURTHER THAT Mr. Karun Jain, Executive Director of the company, be and is hereby authorised to file FORM 32 with MCA in respect of the said appointment and do all other acts, deeds and things becessary in connection therewith.

ITEM NO. 3: OPENING OF BANK ACCOUNT WITH LISBON BANK

The Board considered the proposal of the opening account with Banco Elisa S.A. Lisbon (the Bank) or any of the branch of Banco Elisa S.A. Lisbon including offshore branch outside Inda for the proposed GDR issue of upto US $ 10 Million.

In this regard, the Chairman informed the Board that Company has to open an account with Banco Elisa S.A. Lisbon and suggested Mr. Rajinder Singh, Director of the Company be authorised to sign and execute the documents on behalf of the Company. After thorough discussion the following resolution was passed.

"RESOLVED THAT the bank account be kept opened with Banco Efisa S.A. ("the Bank") or any branch of Banco Efisa S.A., including the Offshore Branch, for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company.

RESOLVED FURTHER THAT Mr. Rajinder Singh, Director of the company be and is hereby authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by the Bank and to carry and affix common seal of the Company thereon, if and when so required.

RESOLVED FURTHER THAT Mr. Rajinder Singh, Director of the company, be and is hereby authorized to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said Banco Efisa S.A. or any of branch of Banco Efisa S.A, including the Offshore Branch, for the purpose of operation of and dealing with *the said bank account and carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of the Company.*

RESOLVED FURTHER that the Bank be and is hereby authorized to use the funds so deposited in the aforesaid bank account as security in connection with loans if any as well as to enter into any Escrow Agreement or similar agreements if and when so required."

14. I note that on the basis of aforesaid authorization given by the Board of MPS, the Noticee no. 8 signed the Account Charge Agreement which acted as a security to the loan availed by Clifford for subscription of GDRs. I note that the Noticee no. 8 has denied having attended the aforesaid Board meeting of MPS stating that he was in London at that relevant point in time. The copy of the minutes of the board meeting dated October 19, 2007, were provided to Noticee no. 8. In these minutes, I find that the attendance of Noticee no. 8 is recorded as 'Present' and he has been shown to have attended the meeting in his capacity as an 'invitee' and not as a 'director' since, at the time of commencement of the impugned board meeting, Noticee no. 8 was not officially appointed as a 'director' in MPS. His appointment as 'director' was approved after the commencement of the said board meeting as second agenda item and subsequently, the resolution authorising him to act on behalf of MPS for the operation and management of bank A/c. with Banco was passed. I find that such a claim of Noticee no. 8 is hollow without any supporting evidence. Thus, I find that, on one hand I am presented with an official record of the minutes of the board meeting of MPS, while on the other hand no proofs have been provided by Noticee no. 8 to substantiate his claim. Hence, his contention that he has not attended the aforesaid Board meeting cannot be accepted.

15. Pursuant to the passing of the aforesaid board resolution in the board meeting dated October 19, 2007, Noticee no. 8 executed the Account Charge Agreement with Banco, on October 30, 2007. I note that Noticee no. 8 has not denied the execution of the Account Charge Agreement by him. However, the Noticee no. 8 has contended that at the time of signing the account charge agreement he was not aware of the fact that this security was for the purpose of loan taken by the

subscriber to the GDR issue of MPS. The relevant extracts of the Account Charge Agreement are reproduced as under:

> “1. Loan agreement: Loan agreement means the Loan agreement signed between Clifford Capital (as borrower) and the Bank dated on or around the date of this Agreement by which the bank agreed to lend to Clifford Capital the maximum amount of upto US $10,000,000.
>
> 2. Account Charge Agreement: Subject to the terms of this agreement, Visesh deposited in its designated account with bank (hereinafter the Account) an amount not exceeding US $10,000,000 as security for all the obligations of Clifford Capital under the Loan Agreement (hereinafter the Secured Obligations) and with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the Account as well as the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such assignment and charge shall be a continuing security for the due and punctual payment and discharge of the secured obligations.
>
> Upon payment of all or part of the amounts due under the Loan Agreement, Visesh may withdraw from the Account the equivalent amount
>
> Upon payment and final discharge in full of all the secured obligations, this Agreement and the rights and obligations of the Parties shall automatically cease and terminate and the Bank shall, at the request of Visesh, release the deposit made in the Account.
>
> Visesh covenants with the Bank that it will on demand pay and discharge the secured obligations when due to the bank.
>
> At any time after the bank shall have demanded payment of all or any of the Secured Obligations the Bank may without further notice apply all or any part of the Deposit against the Secured Obligations in such order as the bank in it’s discretion determine
>
> Visesh hereby irrevocably appoints by way of security the Bank as the attorney of Visesh with full power in the name and on behalf of Visesh to sign, seal and deliver any deed, assurance, instrument or act in order to perfect this charge and at any time after an event of default by Visesh to sign, seal and

deliver any deed assurance, instrument or act which may be required for the purpose of exercising fully and effectively all or any of the powers hereby conferred to the Bank to take all necessary action whether in the nature of legal proceedings or otherwise to recover any moneys which may be held in the Account and to give valid receipts for payment of such moneys and also for the purpose of enforcement and of the security hereby created.

Visesh hereby warrants and declares that any and all such deeds, instruments and documents executed on its behalf by or on behalf of the Bank by virtue of this Agreement shall be as good, valid and effective, to all intents and purposes whatsoever, as if the same had been duly and properly executed by MPS itself and MPS hereby undertakes to ratify and confirm all such deeds, instruments and documents lawfully executed by virtue of the authority and power hereby conferred."

16. From a bare reading of the above clauses to the Account Charge Agreement, I find that this agreement had a clear reference to the Loan Agreement which was executed between Clifford and Banco for the loan taken by Clifford worth USD 10 million from Banco. Noticee no. 8 has contended that this reference to Loan Agreement does not indicate anything about the loan being taken by Clifford for subscribing to the GDR's of MPS, and thus, Noticee no. 8 cannot be held liable for being part of fraudulent scheme. I note that by canvassing this contention, Noticee no. 8 has sought to plead innocence from the knowledge of the execution of the Credit Agreement (Loan Agreement) and its contents, at the relevant time. However, I find that all such contentions of Noticee no. 8 are overshadowed by the facts of the case. I find that the reference to Loan Agreement in the Account Charge Agreement was very much clear. And if it was assumed that Noticee no. 8 had no knowledge about the contents of the Loan Agreement, then how did it agree to sign on the Account Charge Agreement which in its first paragraph itself has a direct reference to the Loan Agreement? I note that any similarly placed person of ordinary prudence as Noticee no. 8, would have pondered over the question as to what is this Loan Agreement for which MPS has agreed to act as guarantor? The inference that the Account Charge Agreement is an integral part of the Loan Agreement/ Credit Agreement, can easily drawn upon perusal of the aforesaid clauses of the Account Charge Agreement itself. The Account Charge Agreement has explicit

reference to the fact that MPS has agreed to provide security for the loan taken by Clifford worth USD 10 million. Any reasonable prudent person would have satisfied himself before signing, as to why was MPS acting as a guarantor for a loan taken by Clifford? Merely because there was no reference to the purpose of the loan taken by Clifford, in the Account Charge Agreement, does not help the case of Noticee no. 8. I find that such an argument is being taken by Noticee no. 8 merely to escape from the consequences of the present proceedings.

17. Noticee no. 8 has contended that he has not attended any of the Board meetings during his entire tenure, owing which his directorship from the board of MPS, stood vacated by virtue of Section 283(1)(g) of the Companies Act, 2013. I note that it is not factually correct that Noticee no. 8 did not attend any Board meeting during his tenure. The Annual Return of MPS for the FY 2007-08, shows that Noticee no. 8 had attended 3 Board meetings in FY 2007-08, after his appointment in October 2007. Therefore, the claims of Noticee no. 8 are incorrect. Furthermore, it would be incorrect to say that merely because Noticee no. 8 did not attend any Board meetings, hence, he ceases to be held liable for any business of the company. Directors of the company are informed about the progress in the Board Meeting through circulation of the draft minutes of the meeting and the Agenda of the Board meetings. It would be travesty to say that the director is absolutely unaware about the decisions of the Board merely because he failed to attend a particular board meeting. Nonetheless, the facts of the present case, clearly indicate that Noticee no. 8 was present in the impugned Board meeting dated October 19, 2007, in which it was decided to open a Bank A/c. with Banco for GDR issue of MPS. In the same Board meeting, Noticee no. 8 was authorised to operate and manage the said Bank A/c. and enter into necessary Agreements with regards to the said Bank A/c. It was also authorised that the proceeds of the Bank A/c. can be used as security for a loan. Subsequently, it was Noticee no. 8 who entered into (on behalf of MPS) the Account Charge Agreement with Banco, for creation of charge on the Bank A/c. of MPS, for the loan taken by Clifford. Thus, I find that, notwithstanding the fact of attendance of Noticee no. 8 in the subsequent Board meetings of MPS, from the other attenuating circumstances like signing of account charge agreement, his involvement in the perpetration of fraudulent scheme is clear.

18. Another contention raised by the Noticee no. 8 is that the auditor certificate of December, 2008 itself certifies that there was no fraud noticed or reported. The audit report further records that the company has not granted any guarantee for the loans taken from the banks or any financial institution. Therefore, Noticee no. 8 had no grounds for suspicion. I find that this contention is bereft of the merit on the ground that it seeks to rely on auditor's certificate to deny the existence any loan whereas Noticee no. 8 himself has signed the account charge agreement which made the MPS guarantor to the loan taken by Clifford. The signing of account charge agreement has been admitted by Noticee no. 8 himself, therefore, the contention of the Noticee no. 8 in this regard is not tenable. Furthermore, the reliance on Auditor Certificate of December 2008 is also not appropriate for the following reason. From the Investigation Report, I note that the first adjustment for repayment of Clifford's Loan from the MPS's Banco Bank A/c. took place on March 20, 2009, hence, the Auditor's Certificate for December 2008 could not have assessed this incident of fraud.

19. In view of the above, I find that none of the contentions raised by Noticee no. 8 have any merit. Rather, I find that role of Noticee no. 8 in perpetration of the fraudulent scheme of issue of GDRs by MPS is writ large. Thus, I find that Noticee no. 8 has violated Section 12A(a), (b) & (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d) and 4(1) of PFUTP Regulations, 2003.

20. Before parting, it would be appropriate to note that for the same violations separate adjudication proceedings for imposition of monetary penalty was also initiated against Noticee no. 8. In the adjudication proceedings, a penalty of Rs. 20 Lakh was imposed upon the Noticee no. 8 vide adjudication order dated January 27, 2021. The said adjudication order was impugned before Hon'ble SAT by Noticee no. 8 by filing Appeal no. 362 of 2021. The said appeal was disposed of by Hon'ble SAT vide order dated February 22, 2022 whereby the impugned order was remanded to adjudicating officer of SEBI. Thereafter, adjudication order dated May 04, 2022 was passed whereby a penalty of Rs. 20 Lakh was imposed on the Noticee no. 8. The said adjudication order was again challenged by Noticee no. 8 by filing

Appeal no. 467 of 2022 before Hon'ble SAT. Vide its order dated January 06, 2023, Hon'ble SAT upheld the order on merits, however, only the amount of penalty was reduced to Rs. 10 Lakh on grounds of parity with the penalty imposed on the managing director of MPS.

Directions:

21. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1),11(4) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, hereby direct that Noticee no. 8 is restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 5 years from the date of this order. During the period of restraint, the existing holding of securities including units of mutual funds of these Noticees shall also remain frozen. The period of debarment already undergone by the Noticee no. 8, from the date of SEBI's Final Order i.e. March 06, 2020 to the date order passed by Hon'ble SAT i.e. December 21, 2021, shall be set-off against the period of debarment of 5 years as directed in the present order.

22. The obligation of the Noticee no. 8, restrained/ prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of coming into force of this Order, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order. Further, all open positions, if any, of the Noticee no. 8, restrained/prohibited in the present Order, in the F & O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

23. This order comes into force with immediate effect.

24. A copy of this Order shall be forwarded to the Noticee no. 8, recognized stock exchanges, depositories and Registrars and Transfer Agents (RTA) of mutual funds for information and necessary action.

Sd/-

ANANTA BARUA

Date: April 28, 2022 **WHOLE TIME MEMBER**

Place: Mumbai **SECURITIES AND EXCHANGE BOARD OF INDIA**