BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO: Order/PB/VP/2023-24/29525-29524]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

Aris International Limited

PAN: AACCA4052H

In the matter of Aris International Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) received a Draft Letter of Offer ("**DLoF**") dated September 01, 2022, from Fedex Securities Private Limited, the Manager to the offer (hereinafter referred to as "**MB**"). The open offer was for the acquisition of 3,90,400 equity shares of face value ₹ 10/- (Rupees Ten Only) each representing 26% of the total equity and voting share capital of Aris International Limited (hereinafter as **"The Noticee/ Target Company/ Company"**) by Mr. Ramesh Mishra (hereinafter referred to as **"Acquirer"**) at a price of ₹ 10/- per share in terms of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST Regulations**").

2. During the examination of the DLoF, the examination team observed that one of the Noticee's Independent Directors, Mr. Nitin Oza had a shareholding of 2.04% in the Target Company as on September 30, 2022. The examination team sought details of shareholding and declaration of the Independent Directors in terms of section 149 of the Companies Act, 2013. The MB vide letter dated November 02, 2022, and November 09, 2022, has submitted that Mr. Nitin Oza was holding 2.04% shares of the Noticee which were bought from Mr. Avinash Tiwari (another Independent Director of Target Company). The MB provided copies of the declarations given by both Mr. Nitin Oza and Mr. Avinash Tiwari under section 149(7) of the Companies Act, 2013.

3. The examination team vide email dated February 02, 2023, had sought details pertaining to the appointment/ re-appointment of Independent Directors viz., Mr. Nitin Oza and Mr. Avinash Tiwari. The Noticee vide email dated February 03, 2023, submitted the details which are summarized as under:

Sr. No	Name of the Independent Director	Date of Appointment/ Re-appointment	Tenure up to
01	Mr. Avinash Tiwari	05/09/2013	30/09/2014
02	Mr. Avinash Tiwari	30/09/2014	29/09/2019
03	Mr. Avinash Tiwari	30/09/2019	29/09/2024
04	Mr. Nitin Oza	13/02/2012	19/09/2013
05	*Mr. Nitin Oza	18/05/2020	13/11/2022

* Mr. Nitin Oza was appointed as an Independent Director w.e.f. September 19, 2020.

4. Further, the Noticee had submitted that with effect from November 14, 2022, the designation of Mr. Nitin Oza has changed from Non-Executive Independent Director to Non-Executive Non-Independent Director. It was further submitted that pursuant to the increase in Share Capital of the Noticee due to preferential

issues, the percentage of shareholding of Mr. Nitin Oza has been reduced from 2.04% to 0.63% as per the Shareholding Pattern for the quarter ended December 2022.

5. During the examination, BSE submitted details of the shareholding of Mr. Avinash Tiwari and Mr. Nitin Oza. It was observed by the examination team that Mr. Avinash Tiwari was holding 2.04% shareholding at the time of appointment as an Independent Director of the Target Company from September 05, 2013, and he continued to hold the same till the time he sold his entire shareholding to Mr. Nitin Oza on January 31, 2019. Mr. Avinash Tiwari had submitted that he was holding 94100 shares which constituted 1.74% of paid-up capital prior to May 06, 2013. Due to the forfeiture of 8,00,400 equity shares of the Target Company on May 06, 2013, Mr. Tiwari's percentage increased from 1.74% to 2.04%. Mr. Nitin Oza was appointed as an Independent Director with effect from September 19, 2020. At the time of appointment as an Independent Director, he was also holding more than 2% Shareholding and Voting power in the Target Company. Mr. Nitin Oza submitted that he had purchased the entire holding of 94100 equity shares of Mr. Avinash Tiwari. His directorship was later changed to Non-Independent Director w.e.f. November 14, 2022.

6. In view of the above it was alleged in the SCN that the Noticee was aware of the fact that Mr. Avinash Tiwari and Mr. Nitin Oza were holding more than 2% of the voting power in the company at the time of their appointment as Independent Directors, which makes them ineligible to be appointed as Independent Director as per criteria of Independent Director given in regulation 16(1)(b)(vi)(C) read with regulations 4(1)(g) of LODR Regulations. Based on

the above facts it was alleged in the Show Cause Notice (hereinafter referred to as **"SCN"**) that the Noticee has violated provisions of regulation 16(1)(b)(vi)(C) read with regulation 4(1)(g) of LODR Regulations and therefore, liable for monetary penalty under section 15HB of Securities and Exchange Board of India Act, 1992

APPOINTMENT OF ADJUDICATING OFFICER

7. SEBI, in exercise of powers under section 19 read with sub-section (1) of section 15-I of the SEBI Act and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**Adjudication Rules**"), appointed me as the Adjudicating Officer **(AO)** *vide* order dated April 28, 2023, to inquire into and adjudge the alleged violations stated in the SCN.

SHOW CAUSE NOTICE, HEARING AND REPLY

8. The SCN No. AO/PB/VP/22316/2023 dated May 31, 2023, was issued to the Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed under section 15HB of the SEBI Act for the alleged violation specified in the said SCN.

9. An opportunity of a personal hearing was granted to the Noticee on July 17, 2023, vide hearing notice dated July 05, 2023. Mr. Ramesh Mishra, Director of the Noticee, and Mr. Siddha, Advocate appeared on July 17, 2023, and reiterated the submissions made vide reply dated July 13, 2023, and requested to take a lenient view in the matter.

10. I note that the Noticee in its reply dated July 15, 2022, has admitted that Mr. Avinash Tiwari and Mr. Nitin Oza were holding more than 2% of the voting power at the time of their appointment as Independent Directors. However, the Noticee has submitted that during the relevant period, the paid up capital of the company was less than Rupees ten crore (₹10 crore) and the networt of the company was less than Rupees twenty five crore (₹ 25 crore) and therefore the provisions of regulation 15(2) along with regulation 17(1) regarding Board of Directors was not applicable to the company.

11. The relevant portion of the reply of the Noticee is reproduced as under:

i. *It was submitted that Mr. Avinash Tiwari had submitted that he was holding 94100 shares which constituted 1.74% of paid up capital prior to May 06, 2013. Due to the forfeiture of 8,00,400 equity shares of the Target Company on May 06, 2013, Mr. Tiwari's percentage increased from 1.74% to 2.04%. Mr. Nitin Oza was appointed as an Independent Director w.e.f. September 19, 2020. At the time of being appointed as an Independent Director, he was also holding more than 2% Shareholding and Voting power in the Target Company.*

ii. *Mr. Nitin Oza submitted that he had purchased the entire holding of 94100 equity shares of Mr. Avinash Tiwari. He was later changed to Non-Independent Director w.e.f. November 14, 2022.*

iii. *With reference to para 8 & 9 of the SCN it is submitted by the Noticee that chapter IV refers to the Obligations of Listed entity which has listed its specified securities. Regulation 15(2) states the applicability. Regulation 15 (2) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 states that:*

> *"The compliance with the corporate governance provisions as specified in regulations 17, 12[17A,] 18, 19, 20, 21,22, 23, 24, 13[24A,] 25, 26, 27 and clauses (b) to (i) of sub-regulation (2) of regulation 46 and para C, D and E of Schedule V shall not apply, in respect of –*
> *(a) the listed entity having paid up equity share capital not exceeding rupees ten crore and net worth not exceeding rupees twenty-five crore, as on the last day of the previous financial year:*
> *Provided that where the provisions of the regulations specified in this regulation becomes applicable to a listed entity at a later date, such listed entity shall comply with the requirements those regulations within six months from the date on which he provisions became applicable to the listed entity….*

The Company hereby submits that the company during the relevant period was not meeting the said criteria as the paid-up capital was less than ₹ 10Cr. To meet the requirements as stipulated as per regulation 15 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 to comply the applicability **both the conditions need to be satisfied**.

In the case of the company both the criteria were not meeting with, hence chapter IV requirements are not applicable to the company. The regulation 16(1)(b)(vi)(C) of LODR regulation is mainly deals with definition. The requirement of Independent Director as per SEBI LODR Regulation, 2015 not applicable to the Company.

iv. With reference to para no 9 of the Notice:- it is submitted that the regulation 16(1)(b)(vi)(C) and 4(1)(g) of LODR Regulations are reproduced below: -
Regulation 16 (1)(b)(vi)(C) of LODR Regulations read as under –

"16. (1) (b) "independent director" means a non-executive director, other than a nominee director of the listed entity:
(vi) who, neither himself ["/herself], nor whose relative(s) —
(C) holds together with his relatives two percent or more of the total voting power of the listed entity; or Regulation 4(1)(g) of LODR Regulations read as under –

"Principles governing disclosures and obligations.
4.(1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:
(g)The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

v. With reference to para 9 and 10 of the notice, it is submitted that the Regulation and any applicable law to be seen in their proper prospective not by mere textual reading. The Company and the Board with proper disclosure and voting above 1.74 % appointed Mr. Avinash Tiwari on 05th September, 2013 as an Independence Director of the Company. Chapter IV which includes 16 and composition of Regulation under the SEBI LODR not applicable to the company.

vi. It was further submitted that logical and true of the sprite to consider the appointment of Mr. Avinash at the time of appointment of Mr. Nitin on 18/05/2020 as an ID. The Company on the advice of SEBI changed the designation of Nitin from ID to Non-executive Director and the said deficiencies were already been cured and has no effect to the composition of the Board at that time and today. At the relevant time of Mr. Nitin's appointment, the composition was consist of 5-Director.

vii. The Regulation **17.** (1) is not applicable to the company.

viii. It is submitted that there was almost NIL volume of trading in the Stock Exchange during the period under review. The net worth of the Company was negative. Still the Board continued for revival and successful now.

ix. It is submitted that the original shareholding of Mr. Avinash Tiwari consisted of 94,100 equity shares of face value of ₹. 10/- each aggregating to 1.73%. Around 06th May, 2013 the company forfeited its un-paid shares and because of the same the no of shares of Mr. Avinash Tiwari remains the same and the percentage of holdings altered from 1.73%

to 2.04% an increase of 0.31%. The Paid-up capital of the Company as on 1/12/2012 was ₹ 5,42,05,000/- consist of 54,20,500 equity shares of ₹ 10/- each. The Share Holdings of Mr. Avinash Tiwari was consisting of 94,100 shares of face value of ₹ 10/- each i.e., 1.74%. The Company forfeited the un-paid shares and the same was notified by BSE vide its notice dated 6th May 2013. Hence from that day onwards the admitted capital of the Company at BSE was of ₹. 4,62,02,100/- consist of 46,20,210 equity shares of ₹ 10/- each. This was a corporate action. Because of this corporate action the holdings of Mr. Avinash Tiwari were though the same of 94,100 equity shares of face value of ₹ 10/- each but the percentage was altered and his holding was instead of 1.74% raised to 2.04%. This alteration was not a material significant factor to consider any individual to debar as an Independent Director.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have carefully perused the charges made against the Noticee the basis thereof, written and oral submissions of the Noticee, and the material available on record. The issue that arises for consideration in the present case are:

    I. Whether the Noticee has violated the provisions of regulation 16(1)(b)(vi)(C) read with regulation 4(1)(g) of LODR Regulations?

    II. Does the violation, if any, on the part of the Noticee attract a monetary penalty under section 15 HB of the SEBI Act?

    III. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?

13. Before moving forward, it will be appropriate to refer to the relevant provisions of regulation 16(1)(b)(vi)(C) read with regulation 4(1)(g) of LODR Regulations:

Regulation 16 (1)(b)(vi)(C) of LODR Regulations read as under -

"16. (1)

(b) "independent director" means a non-executive director, other than a nominee director of the listed entity:

(i)………..
(ii)……….
(vi) who, neither himself ["/herself], nor whose relative(s) —

(C) holds together with his relatives two per cent or more of the total voting power of the listed entity; or"

Regulation 4(1)(g) of LODR Regulations read as under -

***"Principles governing disclosures and obligations**.*
4. (1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:
(a) ….
(b)…..
……
(g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

14. I have carefully examined the alleged charges against the Noticee and the same are dealt with on merit as under:

***Issue No. I:* Whether the Noticee has violated the provisions of regulation 16(1)(b)(vi)(C) read with regulation 4(1)(g) of LODR Regulations?**

15. I note that it is alleged in the SCN that the Noticee had knowledge that both Independent Directors i.e. Mr. Avinash Tiwari and Mr. Nitin Oza were holding more than 2% of voting power in the company. It is further alleged in the SCN that the said Independent Directors were not meeting the eligibility criteria at the time of their appointment as Independent Directors. In spite of this Noticee allowed them to hold the position of Independent Director continuously for years without being eligible and thereby failed to abide by the provisions of

regulation 16(1)(b)(vi)(C) read with regulation 4(1)(g) and of LODR Regulations.

16. The details pertaining to the appointment / re-appointment of Independent Directors viz., Mr. Nitin Oza and Mr. Avinash Tiwari given in the SCN is reproduced as under:

Sr. No	Name of the Independent Director	Date of Appointment/ Re-appointment	Tenure up to
01	Mr. Avinash Tiwari	05/09/2013	30/09/2014
02	Mr. Avinash Tiwari	30/09/2014	29/09/2019
03	Mr. Avinash Tiwari	30/09/2019	29/09/2024
04	Mr. Nitin Oza	13/02/2012	19/09/2013
05	Mr. Nitin Oza	18/05/2020	13/11/2022

* Mr. Nitin Oza was appointed as an Independent Director w.e.f. September 19, 2020.

17. I note from the reply of the Noticee that it has submitted that the original shareholding of Mr. Avinash Tiwari consisted of 94,100 equity shares of the face value of ₹ 10/- each aggregating to 1.73%. It is further submitted that around May 06, 2013, the company forfeited its unpaid shares and because of the said forfeiture, the number of shares of Mr. Avinash Tiwari remained the same, and the percentage of holdings altered from 1.73% to 2.04% an increase by 0.31%. The Paid-up capital of the Company as on December 01, 2012, was ₹ 5,42,05,000/- consisting of 54,20,500 equity shares of ₹ 10/- each. It was submitted that from that day onwards, the admitted capital of the company at BSE was ₹ 4,62,02,100/- consisting of 46,20,210 equity shares of ₹ 10/- each and the forfeiture of shares by the company was a corporate action. It is submitted that because of this corporate action, the holdings of Mr. Avinash Tiwari remained the same, i.e. 94,100 equity shares of face value of ₹ 10/- each but the percentage of holding had increased from 1.74% to 2.04%.

18. I note that the Noticee has submitted that w.e.f. November 14, 2022, Noticee has changed the designation of Mr. Nitin Oza from Non-Executive Independent Director to Non-Executive Non-Independent Director. It is further submitted that pursuant to the increase in Share Capital of the Noticee due to preferential issues, the percentage of shareholding of Mr. Nitin Oza has been reduced from 2.04% to 0.63% as per the Shareholding Pattern for the quarter ended December 2022.

19. With respect to the allegation of violation of regulation 16(1)(b)(vi)(C) read with regulation 4(1)(g) of LODR Regulations the Noticee has submitted in its reply dated July 15, 2022 that Chapter IV of LODR Regulations refers to the obligations of the listed entity which has listed its specified securities. The Noticee has relied on the provision of regulation 15(2)(a) of the LODR Regulations, which provides applicability of compliance with corporate governance norms.

20. The Noticee has submitted that the provisions of regulation 15(2)(a) of LODR Regulations are not applicable to a listed entity having paid up equity share capital not exceeding rupees ten crore and net worth not exceeding rupees twenty-five crore, as on the last day of the previous financial year. It was further submitted that during the relevant period, the Noticee did not meet the above criteria as the paid up capital was less than ₹ 10 crore and net worth was below ₹ 25 crore. To meet the requirements as stipulated in regulation 15 of the LODR Regulations to comply with the applicability both the conditions need to be satisfied. In support of the said contention the Noticee has submitted its financial position during the relevant period as under:

Year	Capital(₹)	Reserve & Surplus(₹)	Net worth (₹)
31.3.2012	40,128,250	(46,306,333)	(61,78,083)
31.3.2013	46,201,000	(45,435,966)	765,034
31.3.2014	46,201,000	(46,152,361)	48,639
31.3. 2015	46,20,100	(45,59,808)	602,292
31.3.2016	46,20,100	(50,27,816)	(407,716)
31.3.2017	46,20,100	(59,97,874)	(13,77,774)
31.3.2018	46,20,100	(66,29,792)	(20,09,690)
31.3.2019	46,20,100	(65,40,081)	(19,19,981)
31.3.2020	46,20,100	(63,48,876)	(17,28,776)
31.3.2021	46,20,100	(59,88,798)	(13,68,698)
31.3.2022	46,20,100	(68,92,961)	(22,72,861)

21. I note from the provisions of regulation 4(1) (g) of LODR Regulations which require that the listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

22. I note from the provisions of regulation 16(1)(b)(vi)(C) of LODR Regulations that it provides for an eligibility condition for a director to be considered as independent. It says that "independent director" means a non-executive director, other than a nominee director of the listed entity who, neither himself or herself nor whose relative(s) holds together with his relatives two percent or more of the total voting power of the listed entity.

23. I note that regulation 15 (2) of the LODR Regulations states that compliance with the corporate governance provisions as specified in regulations 17, 17A, 18, 19, 20, 21,22, 23, 24, 24A, 25, 26, 27 and clauses (b) to (i) of sub-regulation (2) of regulation 46 and para C, D and E of Schedule V shall not apply, in respect of a listed entity having paid up equity share capital not exceeding rupees ten crore and net worth not exceeding rupees twenty five crore, as on

the last day of the previous financial year. I note that regulation 17 of the SEBI (LODR) Regulation, 2015 which deals with the Board of Directors of the listed entity including the composition of the Board requiring the minimum number of independent directors to be appointed, is not applicable to the Noticee. It is further submitted by the Noticee that there is no requirement on it to constitute various committees mentioned under the LODR Regulations; however, the company had constituted the same for better corporate governance. Hence, I agree with the submissions of the Noticee that it was not required to appoint an independent director in terms of the LODR Regulations. Hence, I find that the charges levelled in the SCN against the Noticee are not established.

ISSUE II: Does the violation, if any, on the part of the Noticee attract a monetary penalty under section 15 HB of the SEBI Act?

24. In view of the findings given in para 23 above I find that the Noticee has not violated the provisions of regulation 4(1)(g) read with regulation 16(1)(b)(vi)(C) of LODR Regulations.

ISSUES III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?

25. In view of the findings given in paras 23 and 24 I find that it is not a fit case for imposition of penalty.

ORDER

26. After taking into account the aforesaid findings and in exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I am of the view that no penalty is warranted to be imposed upon the Noticee in the instant matter and the SCN dated May 31, 2023 is disposed off accordingly.

27. In terms of rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee and to the Securities and Exchange Board of India.

Date: **September 28, 2023** **PARAG BASU**
Place: **Mumbai** **ADJUDICATING OFFICER**