BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: ORDER/GR/PU/2022-23/16306)

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) RULES, 1995.

In respect of:

Rajinder Singh (PAN: BLOPS6216C)

In the matter of M/s. MPS Infotecnics Ltd. (Earlier known as Visesh Infotenics Ltd.)

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted an investigation to ascertain whether shares underlying Global Depository Receipts (GDRs) of MPS Infotecnics Ltd., (hereinafter referred to as **"MPS"/ "Company")** were issued with proper consideration and whether appropriate disclosures in compliance with Listing Agreement, if any, were made by MPS with respect to GDRs. The period under investigation was during issuance of GDRs i.e. November 01, 2007 to December 31, 2007 (hereinafter referred to as "**investigation period**").

2. During the course of investigation, it was inter-alia observed by SEBI that MPS failed to inform Bombay Stock Exchange (BSE) of the account charge agreement entered into with BANCO EFISA, S.A. (hereinafter referred to as "BANCO"), a bank based in Lisbon, Portugal, where the proceeds of GDR were deposited,

delisting of GDRs on Singapore Stock Exchange and the termination of GDR facility by Depository i.e. Bank of New York Mellon. It was also observed that MPS had not disclosed an amount of US $ 8.88 million (as on March 31, 2008) lying in its account with BANCO as contingent liability in its financial statements for the financial year 2007-08. By not disclosing the contingent liability in its financial statements, MPS had not adhered to the provisions of Audit Standard (AS) – 29 issued by Institute of Chartered Accountants of India (ICAI).

3. It was also observed that MPS had devised a fraudulent, deceptive and manipulative scheme through the arrangement of Credit Agreement entered by Clifford Capital Partners A.G.S.A. (hereinafter referred to as "CLIFFORD") with BANCO, wherein the subscription amount of GDRs was paid by CLIFFORD by availing a loan from BANCO and Account Charge agreement entered into with BANCO by MPS by pledging the proceeds of GDR as collateral against the loan availed by CLIFFORD. The aforesaid arrangement was not disclosed in public domain, which not only misled investors with such false and misleading information, but also enabled MPS to made investors to believe that the said GDR issue was genuinely subscribed by the foreign investors and influenced the decision of investors to deal in the shares of MPS. The aforesaid manipulative and deceptive act had resulted in allotment of GDRs without actual receipt of consideration.

4. It was also observed that the Board of MPS had passed a Resolution in its Meeting on October 19, 2007, wherein decision was taken to open an account

with BANCO and also to authorize BANCO to use the GDR proceeds as security against loan. The said Board Resolution, inter alia, included opening of a bank account with BANCO for the purpose of receiving subscription money in respect of the GDR issue of the Company. The company had authorized Mr. Rajinder Singh(hereinafter referred to as the "**Noticee**") to enter into any escrow agreement or similar arrangements and authorized BANCO to use the funds deposited in its bank account as a security in connection with loans sanctioned to CLIFFORD. The Noticee executed the Account Charge Agreement with BANCO on behalf of Company. Therefore, it's alleged that the Noticee had acted as a party to the fraudulent, manipulative and deceptive GDR scheme of MPS.

APPOINTMENT OF ADJUDICATING OFFICER

5. Based on the findings of the investigation, SEBI initiated Adjudication proceedings against the Noticee and appointed Shri Biju S, Chief General Manager, as the Adjudicating Officer (hereinafter referred as **AO**) vide Order dated January 9, 2018 under Section 19 read with Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (Adjudicating Rules) to inquire into and adjudge Sections 15HA of the SEBI Act for the alleged violations committed by the Noticee under Section 12 A (a) (b) and (c) of SEBI Act read with Regulation 3 (a) (b) (c) (d) and 4 (1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

6. Subsequently, vide Order dated February 12, 2018, Shri. Satya Rajan Prasad was appointed as the Adjudicating Officer in the said matter in the place of Shri Biju S. Thereafter, vide order dated May 17, 2019 the undersigned has been appointed as the Adjudicating Officer in the instant matter. The proceeding is therefore been carried forward where they had been left off by the previous AO and an opportunity of personal hearing was granted as detailed hereinafter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. A Composite Show Cause Notice dated May 28, 2018 (hereinafter referred to as **'SCN'**) was issued by the erstwhile AO to the Noticee under the provisions of Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held against the Noticee and why penalty should not be imposed on the Noticee under the provisions of Sections 15HA of the SEBI Act for the alleged violations specified at para 2 above. The aforesaid SCN was served upon the Noticee.

8. The fact of the case and the allegations made in the SCN are summarised below:

   a) SEBI had conducted investigation during November 01, 2007 to December 31, 2007 regarding the issuance of Global Depository Receipts (hereinafter referred to as "GDRs") by M/s. MPS Infotecnics Ltd. It was observed that M/s. MPS Infotecnics Ltd. issued 46,54,762 Global Depository Receipts (GDRs) (US$9.99 Million, approximately Rs. 39.42

Crores) on December 04, 2007. Summary of GDRs issued by M/s. MPS Infotecnics Ltd is as under:

GDR issue date	No. of GDRs Issued (mn.)	Capital raised (US$ mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
04-Dec-2007	4.65	9.99	ICICI Bank Ltd., Mumbai	93,09,524 equity shares of FV `10 (1 GDR= 2 equity share)	Bank of New York Mellon	Hythe Securities Ltd., London	Banco Efisa	Singapore Stock Exchange

b) During the course of investigations, it was observed by SEBI that CLIFFORD signed a Credit Agreement dated October 29, 2007 with BANCO, for payment of subscription amount of US$ 10 million for GDR issue of the company. It was further observed that Noticee 4, on behalf of the Company, signed an Account Charge Agreement dated October 30, 2007 with BANCO (the company pledged GDR proceeds as collateral against the loan availed by CLIFFORD). It was further observed that the Board of Directors of the Company at its meeting held on December 04, 2007, allotted 4,654,762 GDRs representing 9,309,524 Equity Shares having par value Rs 10/- at an offer price of $2.148 per GDR which made investors believe that the said GDR issue was genuinely subscribed by the foreign investors whereas the subscription of GDR issue was through the above said arrangement of Credit Agreement and Account Charge Agreement by CLIFFORD and the Company respectively.

c) The aforesaid fraudulent arrangement of Credit Agreement and Account Charge Agreement resulted in subscription of GDR issue of the company and the aforesaid arrangement was not disclosed by MPS. Further, the company submitted a false list of GDR subscribers to SEBI. The corporate announcements made by the Company were meant to mislead the investors that the GDRs were fully subscribed whereas the GDR issue was indirectly supported by the company itself. It's alleged that the aforesaid failure by Company influenced the decision of investors to deal in the shares of MPS.

d) From the documents available on record, following utilization of the GDRs was observed:

Date of debit in MPS' account with Banco	Amount of USD debited in MPS' account with Banco	Date of credit to MPS' Indian bank account	Amount of funds received by MPS in India (INR)	Remarks
07/01/2008	950,000.00	08/01/2008	3,72,57,726.00	Received in Indian bank account of MPS with DBS Bank
07/01/2008	150,000.00	NA	NA	Legal Charges for Lead manager
09/01/2008	17,798.00	NA	NA	Lead manager's Fee
03/04/2008	200,000.00	NA	NA	Paid to Global Absolute Research P. Ltd
29/01/2009	100,000.00	30/01/2009	48,48,695.00	Received in Indian bank account of MPS with Citi Bank
20/03/2009	8,883,210.75	NA	NA	Amount adjusted by Banco to loan account of Clifford
14/04/2009	14,908.57	NA	NA	Amount adjusted by Banco to loan account of Clifford
11/06/2015	48,597.57	15/06/2015	30,69,642.55	Received in Indian bank account of MPS with HDFC Bank
TOTAL	**10,364,514.89**			

e) It was observed from the company's deposit account (a/c no: 6434108525008) with BANCO that an amount of US $8.80 million was transferred to its current account with BANCO (i.e. a/c no: 6341085.15.001) on March 20, 2009 and there was no balance lying in the deposit account as on March 20, 2009. It was observed that an amount of $8.89 million, US $0.01 million were debited to company's current account on March 20, 2009 and April 14, 2009 respectively. It was further observed that an amount of US $8.89 million (principal amount due- US $8,798,450, interest due- US $84760.75) was due from CLIFFORD to BANCO on March 20, 2009 and accordingly an amount of US $8.89 million was adjusted by BANCO towards the outstanding loan amount of CLIFFORD, as the company has guaranteed to the Loan taken by CLIFFORD through account charge agreement. It was further observed that an amount of US $0.01 million was adjusted by BANCO on April 14, 2009 as default interest for failure to pay the loan outstanding on due date.

f) Therefore, from the aforesaid, it was noted that CLIFFORD was the sole subscriber to the GDR issue, it has defaulted in repayment of Loan and also received GDRs, thereby GDRs to the extent of US $8.90 million were issued at free of cost. Hence, it was alleged that the issuance of GDRs at free of cost to the extent of US $8.90 million to CLIFFORD at the cost of other investors was fraudulent.

g) It was further observed from the corporate announcements made by the company to stock exchange during the investigation period that the company did not inform stock exchange with regard to account charge agreement entered with BANCO for subscription of GDRs of the company which was price sensitive information and could have impacted the price of scrip.

h) It was noted from the copy of the minutes of the Board Meeting dated October 19, 2007 that the company had authorized the Noticee to enter into any escrow agreement or similar arrangements and authorized Banco to use the funds deposited in its bank account as a security in connection with loans if any availed. On the basis of authorization given by the Board, the Noticee, signed the agreement which acted as a security to the loan availed by Clifford for subscription of GDRs. It was further observed that the Noticee was Non-executive and independent Director of MPS. The other director of MPS were present in the board meeting dated October 19, 2007, while the Noticee executed the Account Charge Agreement with BANCO on behalf of Company.

i) Therefore, in light of the above it is alleged that the Noticee acted as party to the fraudulent scheme of GDR issue by MPS which is in violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4(1) of SEBI (PFUTP) Regulations, 2003.

9. In response to the aforesaid SCN dated May 28, 2018, the Noticee neither submitted his reply in the matter nor did he attend the personal hearing, despite both being duly served on him.

10. Thereafter, an order dated January 27, 2021 (hereinafter referred to as the "**earlier order**"), was passed against the Noticee including the other directors, *inter alia* holding that the Directors of MPS and the Noticee had aided and abetted the fraudulent scheme of self- financing of GDR issue by the company and had *inter alia* imposed a penalty of Rs. 20,00,000/-(Rupees Twenty Lakh Only) on the Noticee.

11. The Noticee had appealed the aforesaid order before the Hon'ble SAT stating that he was never served the SCN and had been asked to file a reply on or before September 23, 2020. Vide order dated February 22, 2022, the Hon'ble Tribunal found that the SCN in the matter was served on the Noticee on September 07,

2020. Accordingly, it stated that adequate opportunity was not given to the Noticee, to file his reply, violating the principles of natural justice and accordingly, quashed the said order qua the Noticee and remanded the case with a direction to pass a fresh order after giving an opportunity of hearing. Further, the Hon'ble SAT in this regard, directed the Noticee to appear before the AO on March 04, 2022 on which date SEBI will serve a SCN along with the annexures and thereafter the AO will proceed in accordance with law. Accordingly, vide letter dated March 04, 2022, a copy of the SCN along with the annexure was provided to the Noticee. Further, vide e-mail dated April 18, 2022 an opportunity of personal hearing was also granted to the Noticee on April 27, 2022. The authorized representative had sought for a short adjournment vide e-mail dated April 19, 2022. Accordingly, a last and final opportunity of hearing was granted to the Noticee on April 29, 2022, vide e-mail dated April 21, 2022, which was attended by the authorized representative of the Noticee. Subsequently, the Noticee vide e-mail dated April 28, 2022, had filed his written submissions in response to the SCN, the contents whereof is summarized as given below:

<u>Reply submitted by the Noticee</u>

- The Noticee was on the Board of the Directors of MPS Infotecnics Limited (formerly known as Visesh Infotech Ltd. as a Non-Executive Independent Director from October 19, 2007 to September 02, 2009. The Noticee had resigned from the Board of Directors of the Company in 2008 and accordingly, from the company with effect from September 02, 2009 and thereafter ceased to have any effect with it.

- These allegations made against the Noticee relate to events dating back to more than 12 years. Since then most of the significant time has elapsed the Noticee does not even access to documents/ information to suitably defend his rights.

- The Noticee was just an "invitee" to the said Board Meeting, where, as an invitee our Client was never involved in the decision making process. Further, he had no reason to suspect any wrongdoing on part of the Company and he was just asked to act as the authorized signatory of the Company for entering into an agreement with Banco. Accordingly, the Noticee in good faith signed a document titled, Account Charge Agreement dated October 30, 2007, with Banco. The Noticee was not privy and party to such credit agreement between Clifford and Banco dated October 29, 2007, ("Credit Agreement") which was signed in Mauritius. Further, the Noticee was located in London at that moment. Therefore, he was not aware of the arrangement mentioned in the credit Agreement.

- The Noticee was not aware of the purpose of the Account Charge Agreement he signed. In absence of any specific mention about the alleged Account Charge Agreement in the Minutes/ Board Resolution of the Meeting even assuming that the agenda for the meeting was circulated before the meeting, he cannot be held liable for the manipulative game plan in advance.

- The GDR issue was approved much before the Noticee was appointed as the Non-executive Director, therefore, he cannot be made liable for the actions done by the Company. Moreover, all of this fraudulent arrangement was made prior to him being appointed as a Non-Executive and Independent director.

12. Taking into account the aforesaid facts, I am of the view that principles of natural justice have been followed in the matter by granting the Noticee an opportunities of being heard and submit his reply in the matter. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record including the reply of the Noticee.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

13. I have carefully examined the allegations against the Noticee and his replies to the SCN and the documents / material available on record. I observe that the

allegation levelled against the Noticee is that he has violated various provisions of SEBI Act and SEBI PFUTP Regulations, 2003. After perusal of the material available on record, I have the following issues for consideration, viz.

I. *Whether the Noticee has violated Section 12A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4(1) of SEBI (PFUTP) Regulations, 2003?*

II. *Does the violation, if any, attract monetary penalty under Section 15 HA of 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 SEBI Act?*

14. Before moving forward, it is pertinent to refer to the relevant regulatory provisions which reads as under:

Relevant provisions of SEBI PFUTP Regulations, 2003:

3. No person shall directly or indirectly—

a) buy, sell or otherwise deal in securities in a fraudulent manner;

b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a *recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.*

4. Prohibition of manipulative, fraudulent and unfair trade practices

1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

<u>Relevant provisions of SEBI Act 1992:</u>

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A.No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder

Issue I: Whether the Noticee has violated Section 12A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4(1) of SEBI (PFUTP) Regulations, 2003?

15. I have perused the facts of the case, gist of allegations made against the Noticee as per the SCN, summary of the submissions made by the Noticee, documents available on record and my findings thereof are specified below:

a) From the facts of the case, I find that the Noticee was the Non-executive and independent Director of MPS.

b) In the board meeting dated October 19, 2007, a resolution of the board of directors was considered to open a bank account with BANCO EFISA, S.A., a bank based in Lisbon, Portugal, for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company.

c) Further, the resolution also authorized the Noticee to enter into any escrow agreement or similar arrangements and authorized BANCO to use the funds deposited in its bank account as a security in connection with loans if any availed. On the basis of authorization given by the Board, the Noticee signed the agreement which acted as a security to the loan availed by CLIFFORD for subscription of GDRs. It was further observed that the Noticee was also present in the said board meeting dated October 19, 2007.

d) The relevant extract of the Board resolution dated October 19, 2007 is as under:

"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."

e) The relevant extracts of the Account Charge Agreement dated October 30, 2007 are 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."

f) I observe that the opening para of the 'Account Charge Agreement' dated October 30, 2007 refers to the loan agreement executed by CLIFFORD with the BANCO for borrowing an amount of USD 10 million. I further note that the Company had deposited an amount not exceeding US $10,000,000 (i.e. GDR proceeds received from Clifford) as security for all the obligations of CLIFFORD under the Loan Agreement (i.e. Credit Agreement dated October 29, 2007) entered into between CLIFFORD and BANCO whereby CLIFFORD had taken the loan of USD 10 million from BANCO for the purpose of subscribing to the GDR issue of the Company. It is very categorically mentioned in the 'Account Charge Agreement' that upon payment of all or part of the amounts due under the Loan Agreement (which has also been referred to as secured obligations), the Company could have withdrawn equivalent amount from its account with the BANCO.

g) I further observe that CLIFFORD had entered into Credit Agreement dated October 29, 2007 with BANCO for obtaining loan for an amount of USD 10 million with the only purpose of subscribing to the GDR issue of the Company and, further, MPS had entered into an 'Account Charge Agreement' dated October 30, 2007 with the BANCO for securing the loan taken by CLIFFORD from BANCO under the Credit Agreement dated October 29, 2007. I, further, note from the terms of 'Account Charge Agreement' dated October 30, 2007 entered into between the Company and the BANCO that only upon payment of all or part of the amounts due under the said Credit Agreement (entered into between CLIFFORD and BANCO), MPS could have withdrawn an equivalent amount from its bank account with BANCO. The 'Account

Charge Agreement' dated October 30, 2007 was executed between the Company and the BANCO just next day of entering into Credit Agreement dated October 29, 2007 between CLIFFORD and BANCO. The 'Account Charge Agreement' entered into between the Company and the BANCO specifically mention the loan obtained by CLIFFORD from BANCO and provide security to the same to BANCO. Thus, the Company had pledged the GDR proceeds with the BANCO, under 'Account Charge Agreement' dated October 30, 2007, to secure the rights of BANCO as lender against the loan given to CLIFFORD for subscribing the GDR issue of the Company.

h) The Company had submitted during investigation that there were 4 allottees/subscribers to GDR issue of MPS. However, it was observed that CLIFFORD was the only subscriber to the said GDR issue. Had the abovementioned arrangement/mechanism was not adopted, the GDR issue of the Company would not have been subscribed. Thus, the Company had facilitated subscription of its own GDR issue by entering into an arrangement where subscriber (CLIFFORD) obtained loan from the BANCO for subscribing the GDR issue of the Company, and the Company pledged the GDR proceeds with BANCO for securing the loan taken by CLIFFORD from the BANCO.

i) In view of the above, it is alleged that MPS had devised a fraudulent, manipulative and deceptive scheme through arrangement of Credit Agreement and Account Charge Agreement for issuance of GDRs. It is observed that the three directors were part of the Board meeting which approved the resolution dated October 19, 2007 and Noticee executed the Account Charge Agreement with BANCO on behalf of Company. Therefore, it is alleged that the Noticee had acted as a party to the abovementioned fraudulent, manipulative and deceptive scheme by MPS.

j) In addition to the above observations on the involvement of the Noticee in the fraudulent manipulative and deceptive GDR scheme by MPS, my observations on reply submitted by Noticee is given in subsequent paragraphs.

16. The Noticee had stated that he was on the Board of the Directors of MPS Infotecnics Limited (formerly known as Visesh Infotech Ltd.) as a Non-Executive Independent Director from October 19, 2007 to September 02, 2009. Further, he also stated that he resigned from the Board of Directors of the Company in 2008 and continued to work until he resigned from the Company on September 02, 2009 after which he ceased to have any effect with it. With regard to these statement of facts, I have no comments to offer.

17. With regard to the contention of the Noticee, that the allegations made against the Noticee relate to events dating back to more than 12 years and since then most of the significant time has lapsed, due to which the Noticee does not even access to documents/ information to suitably defend his rights, I note that in the present case, SEBI investigated issue of GDRs in the overseas markets by the Indian companies on receipt of a complaint, in the year 2009, 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 such subscribers subscribed the GDRs without any valid consideration and sold the underlying shares in the securities market in India. Accordingly, where such modus operandi was prima facie observed such GDR issues were examined. SEBI initiated investigation as soon as SEBI came to know that such companies have adopted the modus operandi as referred to above. Since, the GDRs are issued abroad and related transactions were carried out 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 had also to collect this information from the concerned entities and then to furnish to SEBI. Thus, the process of collection of information in the matter was complex, tedious and time consuming. It is noted that in most of these cases Mr. Arun Panchariya and his connected entities were found to be involved in most of these cases. One of the connected entity of Arun Panchariya i.e. Pan Asia Advisors Ltd. even contested the jurisdiction of SEBI over the GDRs which was ultimately decided by Hon'ble Supreme Court in SEBI Vs. Pan Asia Advisors Ltd. & Anr. (2015) 14 SCC 71 on July 06, 2015. It is noted from SEBI order dated June 16, 2016 that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014. In this case, a Show Cause Notice dated May 28, 2018 was issued to 4 entities including the Noticee. Since the SCN served to the Noticee had returned undelivered, it was served to the Noticee vide e-mail dated September 07, 2020. However, the Noticee neither attended the personal hearing on September 23, 2020 nor filed his reply in the matter. Therefore, Adjudication order dated January 27, 2021 was passed ex-parte against the Noticee. Thereafter, the said order was challenged in the Hon'ble SAT, which had vide its order dated February 22, remanded the matter.

18. In this regard, I would like to rely upon the judgment of Hon'ble SAT in the case of **Ravi Mohan & Ors. vs. SEBI** (SAT Appeal No. 97 of 2014, DoD 16/12/2015) wherein it was held that : -

".....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no.114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit

in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice....” In this context I find it relevant to refer to the order passed by Hon’ble SAT in the case of ***Metex Marketing Pvt. Ltd. vs. SEBI*** (order dated June 4, 2019) wherein Hon’ble SAT held that:

“This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation.”.

19. I also refer to the judgment of the Hon’ble SAT in ***Pooja Vinay Jain Vs SEBI*** [SAT Appeal No. 152 of 2019], wherein it has *inter alia* been held as under:

“11. On the issue of delay, in the case of Ashok Rupani (supra), this Tribunal, inter-alia, noted the ratio in the case of Rakesh Kathotia and Ors. vs. SEBI [Appeal No 7 of 2016 decided on May 27, 2019]. Paragraph No. 7 of the case of Ashok Rupani Judgment is as under :-

"7. In ***Mr.*** *Rakesh Kathotia & Ors. vs. SEBI (Appeal No. 07 of 2016 decided by this Tribunal on 27.05.2019) proceedings were quashed on account of inordinate delay. The said decision is squarely applicable to the instant case. For facility, the relevant paragraph of the order is extracted hereunder:*

"23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR 6 (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in Bhavnagar University v. Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) Vol.11 SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695. The Supreme Court recently in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294 held:

"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."

The decision would show that the power to initiate the proceedings must be exercised by the authorities within a reasonable time. This would depend upon the facts and circumstances of the case, nature of the default / statute and prejudice caused to the noticee.

In the present case, the appellant neither put a plea of prejudice before the AO nor before us. It was simply stated that since the proceedings were launched by respondent SEBI after a period seven years, the same should be quashed on the ground of delay. The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same. Further, as explained by the learned counsel for the respondent as recorded in paragraph No. 6.4 above, large numbers of entities and transactions were analyzed by SEBI which took some time."

20. In the facts and circumstances of the present matter, I note that the investigation has been conducted and proceedings have been initiated in reasonable time. In view of what has been stated herein above, I hold that the time taken in the initiation of the present proceedings, has in no way has caused any prejudice to the interests of the Noticee.

21. The Noticee has also contended that he was just an "invitee" to the said Board Meeting, where, as an invitee he was never involved in the decision making process. Further, the Noticee stated that he had no reason to suspect any wrongdoing on part of the Company and he was just asked to act as the

authorized signatory of the Company for entering into an agreement with Banco. The Noticee also stated that he in good faith had signed a document titled, Account Charge Agreement dated October 30, 2007, with Banco. The Noticee then stated that he was not privy and party to such credit agreement between Clifford and Banco dated October 29, 2007, ("Credit Agreement") which was signed in Mauritius. Further, the Noticee also stated that he was located in London at that moment, because of which, he was not aware of the arrangement mentioned in the credit Agreement. Then the Noticee stated that he was not aware of the purpose of the Account Charge Agreement he signed and in absence of any specific mention about the alleged Account Charge Agreement in the Minutes/ Board Resolution of the Meeting even assuming that the agenda for the meeting was circulated before the meeting, he cannot be held liable for the manipulative game plan in advance. Thereafter, the Noticee stated that the GDR issue was approved much before he was appointed as the Non-executive Director, therefore, he cannot be made liable for the actions done by the Company. Additionally, the Noticee stated that all of this fraudulent arrangement was made prior to he being appointed as a Non-Executive and Independent director.

22. With regard to the above, contention of the Noticee, I note that the Noticee has explicitly admitted in his written submissions that he was the Non-Executive Independent Director of MPS at that relevant point in time and he did have the requisite authorization from MPS for entering into the said pledge agreement

and that it was him who had signed the said pledge agreement (thereby leaving no scope for any dispute about the genuineness of his signature). He has also not denied/disputed any of the findings in the earlier order on the fraudulent scheme executed by the company for self-financing of its own GDR issue. In this regard, it is noted that as the Non-executive and independent Director of MPS, the Noticee held a significant position in the company which cannot be taken lightly. Section 27 of the SEBI Act contemplates action for violation of any provision of the SEBI Act or any Regulation framed thereunder for every such person who at the time of the contravention was in charge of and/or responsible to the company for the conduct of the business of the company. In this regard, the contents of section 27 of the SEBI Act, is reproduced herein below;

27. [Contravention by companies.]

(1) Where [a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder] has been committed by a company, every person who at the time the [contravention] was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the [contravention] and shall be liable to be proceeded against and punished accordingly: [emphasis supplied]

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the [contravention] was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such [contravention].

(2) Notwithstanding anything contained in sub-section (1), where an [contravention] under this Act has been committed by a company and it is proved that the 169[contravention] has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the [contravention] and shall be liable to be proceeded against and punished accordingly.

23. Therefore, the Noticee being the Non-Executive Independent Director had a greater responsibility towards protection of interest of minority shareholders of the Company and cannot say that he was not "responsible to, the company for the conduct of the business of the company".

24. In addition, I note that Noticee being the Non-Executive Independent Director of MPS, had been vested with substantial powers in connection with the issue of GDRs of MPS, an artificial juristic person, and the directors assume the character as "officer in default" for any violation. In this regard, it is pertinent to rely upon the provisions of Section 5 of the Companies Act, 1956 (section 2(60) of the Companies Act, 2013) read with Section 27 of the SEBI Act. Additionally, I would also like to quote the observations of the Hon'ble Supreme Court of India in the matter of **Shri N. Narayanan vs. SEBI** decided on 26.04.2013, wherein it was observed that -*"... Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence."* Further, Hon'ble High Court

of Madras in **Madhavan Nambiar vs Registrar of Companies** (2002 108 Comp Cas 1 Mad) has held that –*"... Section 5 of the Companies Act defines the expression "officer who is in default".* The expression means either (a) the managing director or managing directors; (b) the whole-time director or whole-time directors ; (c) the manager ; (d) the secretary ; (e) any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act; (f) any person charged by the board with the responsibility of complying with that provision; (g) any director or directors who may be specified by the board in this behalf or where no director is so specified, all the directors.

25. Further, from the facts of the case I observe that Board resolution dated October 19, 2007 included opening of a bank account with BANCO for the purpose of receiving subscription money in respect of the GDR issue of the Company. The company had authorized the Noticee to enter into any escrow agreement or similar arrangements and authorized BANCO to use the funds deposited in its bank account as a security in connection with loans. Therefore, the Noticee had executed the Account Charge Agreement with BANCO on October 30, 2007 wherein the company pledged GDR proceeds as collateral against the loan availed by CLIFFORD. I note that the Noticee did not object on execution of the Account Charge Agreement where under the entire GDR proceeds was utilized to secure the loan obtained by BANCO. Further, upon perusal of the Account Charge Agreement signed by the Noticee refers to the Credit Agreement in several places and the Credit agreement was in fact a part of the Account Charge

Agreement, therefore, I do not find merit in the Noticee's contention that he was not privy and party to such credit agreement between Clifford and Banco dated October 29, 2007 and therefore was not aware of the arrangement mentioned in the credit Agreement.

26. Further, the Noticee has admitted to signing the Account Charge Agreement, as the Non-Executive Independent Director. Since a Non-Executive director is involved in policy making and planning exercises of a company, their responsibilities include monitoring of the executive director and acting in the interest of stakeholders of the company. It could not be reasonably possible that the Noticee, did not know or understand the fraudulent scheme of MPS, had signed the Account Charge Agreement without understanding the meaning and purport of the same in the arrangement of the GDR subscription and despite being the Director of MPS, which was the recipient of the GDR proceeds from MPS, did not understand the scheme of self-financing of GDRs. The ignorance as sought to be pleaded by the Noticee in all these counts is per se unacceptable. I therefore hold that the Noticee was an important part of the aforesaid fraudulent scheme and he had the means and resources to understand the nature of the said scheme and despite that, he had aided and abetted the execution of the said scheme. His pleadings to the effect that he had merely acted in his capacity as an employee also cannot be accepted as participation in a fraudulent scheme related to the securities market, cannot be condoned merely because the concerned person was "acting the capacity of an employee", despite

having the means to understand the fraudulent nature of the transactions being undertaken by MPS, especially when he was holding a senior and significant position in the company and is an "officer in default". I do not find merit in his contention that he was not aware of the purpose of the Account Charge Agreement he signed and therefore cannot be held liable for the manipulative intention of the company. Therefore, I find that he was well aware of the fraudulent, manipulative and deceptive GDR scheme of MPS and by signing the Account Charge Agreement, he acted as a party to the above scheme of MPS.

27. Therefore, I am of the view that being the Noticee was Non-executive Independent Director of MPS, holds a greater responsibility towards protection of interest of minority shareholders of the Company and by signing the Account Charge Agreement with BANCO, I find that he had actively participated in the fraudulent scheme of GDR issue by MPS. Accordingly, the allegations made against the Noticee for violation of Section 12A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d), 4(1) of SEBI PFUTP Regulations, 2003 has been established.

Issue II: Does the violation, if any, attract monetary penalty under Section 15HA of SEBI Act?

The provisions of Section 15HA of the SEBI Act, 1992 read as under:

<u>SEBI Act 15HA - "Penalty for fraudulent and unfair trade practices–</u>

"If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

28. In view of the foregoing, I am convinced that the Noticee is liable for monetary penalty under Section 15HA of SEBI Act for violation of Section 12A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d), 4(1) of SEBI PFUTP Regulations, 2003.

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

29. The provisions of Section 15J of the SEBI require that while adjudging the quantum of penalty, 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.*

30. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that no quantifiable figures or data are available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default committed by the Noticee. I note that the Noticee has violated Section 12A(a),

(b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d), 4(1) of SEBI PFUTP Regulations, 2003.

ORDER

31. After taking into consideration all the facts and circumstances of the case, gravity of violations and the material on record, and also the factors stipulated in Section 15J of the SEBI Act, 1992, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, hereby impose following penalties on the Noticee:

Noticee	**Violation**	**Penal Provisions**	**Penalty (Rs.)**
Rajinder Singh **(PAN: BLOPS6216C)**	Section 12A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d), 4(1) of SEBI PFUTP Regulations, 2003	Section 15HA of the SEBI Act, 1992	**Rs. 20,00,000** /- (**Rupees Twenty Lakhs Only**)

32. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

33. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of

India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

34. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT→ Orders → Orders of AO→ PAY NOW

35. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA 1), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051."

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount)	

36. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to,

recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

37. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: May 04, 2022 **G RAMAR**

Place: Mumbai **ADJUDICATING OFFICER**