BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.IVD/GCL/AO/DRK-AKS/EAD-3/371/37-13]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Against:

Gibs Computers Ltd.
Radha Bhuvan, 1st Floor
121, Nagindas Master Road
Mumbai - 400023
PAN No. AABCG0096L

FACTS IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed during the course of market surveillance that certain entities namely, Maruti Securities Ltd. (hereinafter referred to as '**Maruti**'), Kundan Leasing and Finvest P. Ltd. (hereinafter referred to as '**Kundan**'), Chandra Financial Services P. Ltd. (hereinafter referred to as '**Chandra**'), Jay Investrade P. Ltd. (hereinafter referred to as '**Jay**') and HSM Financial Services P. Ltd. (hereinafter referred to as '**HSM**') had executed synchronized deals at Bombay Stock Exchange Ltd. (hereinafter referred to as '**BSE**') in five scrips namely, Cals Refineries Ltd. (hereinafter referred to as '**Cals**'), Confidence Petroleum India Ltd. (hereinafter referred to as

‘**Confidence**’), Bang Overseas Ltd. (hereinafter referred to as ‘**Bang**’), Shree Precoated Steels Ltd. (now known as Ajmera Realty & Infra India Ltd.) (hereinafter referred to as ‘**SPSL**’) and Temptation Foods Ltd. (hereinafter referred to as ‘**Temptation**’).

2. SEBI also noticed certain inter-linkages between Maruti and Maniar Group (Shri Harsh Shirish Maniar, Shri Jay Shirish Maniar, Chandra, Kundan, Jay, HSM, Shanti Financial Services P. Ltd. (‘**Shanti**’) are collectively referred to as the ‘**Maniar Group**’.) in the form of off-market transactions as well as synchronized deals. It was also noticed that Maruti and Maniar Group had executed off-market transactions with third parties in the aforesaid five scrips. Maruti, Maniar Group and other entities were identified and are collectively referred to as **Connected Clients**.

3. On the basis of the above findings, SEBI, initiated a formal investigation into the matter. The main focus of the investigation was to ascertain any violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 by the connected clients and other entities and to ascertain whether the funds from the securities market have been routed through these connected clients to the Ketan Parekh group companies.

<u>APPOINTMENT OF ADJUDICATING OFFICER</u>

4. I was appointed as the Adjudicating Officer and the same was communicated vide proceedings of the Whole Time Member appointing Adjudicating Officer dated 03.12.2012 under Section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘**SEBI Act**’) read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘Rules’) to inquire into and adjudge under Section 15 HB of the SEBI Act for

the violation of SEBI order dated 12.11.2007 passed in the matter of Shri Ketan Parekh (hereinafter referred to as '**KP**') and other entities related to him alleged to have been committed by Gibs Computers Ltd. (formerly known as 'Goldfish Computers Pvt. Ltd.') (hereinafter referred to as '**noticee**').

SHOW CAUSE NOTICE, HEARING AND REPLY

5. A Show Cause Notice dated 11.01.2013 (herein after referred to as **'SCN'**) was served on the noticee by "Registered Post Acknowledgement Due" in terms of the provisions of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 requiring the noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on the noticee under Section 15HB of the SEBI Act.

6. In the said notice, it was alleged that CJ Dalal used the market mechanism and the Maniar Group created layers of transactions to transfer the funds to KP entities including the noticee who in turn paid to Madhavpura Mercantile Co-operative Bank (hereinafter referred to as '**Co-op Bank**'). Further, it was also alleged that there have been instances where funds have been transferred from the noticee through Acme and Maniar group to the stock brokers account.

7. Noticee vide its letter dated 21.01.2013 requested for extension of 15 days time to submit a reply to the SCN. Vide letter dated 23.01.2013 noticee was granted time till 11.02.2013 to submit a reply to the SCN. Noticee vide its letter dated 11.02.2013 submitted a reply to the SCN as follows:

- Noticee denies the existence or otherwise of the so called "Maniar Group" and "Connected Clients" as alleged in the SCN.

- Noticee denies that funds from the securities market have been routed through it as wrongly alleged or otherwise and therefore, the contents discloses no cause of action or any allegations which supports the purported charge sought to be levied against it.

- Shri Jigar Pandya, Shri Shirish Maniar and Shri Jagdish Pandya have been charge-sheeted by Central Bureau of Investigation. However, the same being totally extraneous to the matter, noticee's comments thereon is not necessitated. Moreover, the contention that Shri Mukesh Joshi, Director of Luminant Investments Pvt. Ltd. who was the erstwhile Director of Acme Craft Pvt. Ltd. (hereinafter referred to as '**Acme**') till 31.05.2006 and still continues being the authorized signatory of the Bank account for Acme does not entail that Acme is a KP related entity. Noticee denies and disputes the same. It is submitted that mere conjectures cannot form the basis for a sweeping allegation that is sought to be made therein.

- Noticee denies any the allegation of its involvement in the securities market in terms of buying, selling or otherwise dealing or associating with the securities market in any manner, whether directly or indirectly.

- Noticee submits that it had borrowed from time to time, from Acme as well as from others and had given loans to KNP Securities Pvt. Ltd. (hereinafter referred to as '**KNP**') and others from time to time. It is alleged that some of which was in turn utilized for repayment of loan to MMCB by KP Group. Further the SCN has alleged that the Income Tax Department has observed that there "were multiple layers through the money was transferred" and that from the fund flow chart it was observed that "funds had originated from the connected entities" and were "transferred through multiple layers" to Acme to the Noticee to KNP to MMCB. Noticee denies the said allegations as the said allegations are not accurate or correct, since we had borrowed from Acme and given loans to KNP, it is ex facie clear that it could never have been alleged that Noticee was a party to the "multiple layers through whom the money was transferred" or that "funds had originated from the connected clients".

- The aforesaid transactions and all payments are also duly reflected and disclosed even in its Income Tax records. Noticee craves leave to refer to and rely upon the same.

- Noticee regrets to offer any comments on the observation that in the month of August 2008, a sum of ₹ 26.43 crores was paid by KP group companies to MCCB as we have no means to verify the same. In any event it is submitted that we had received loans of ₹ 24.23 crores only from Acme and the observation in the SCN regarding payment of ₹ 26.43 crores remains unsubstantiated and uncorroborated.

- The loan taken and given are its own and not for or at the behest of any 3rd party or as a front entity of any 3rd party as incorrectly assumed or otherwise. Noticee was not a party to allegations that “funds had originated from the connected entities” and were “transferred through multiple layers” to Acme to the Noticee to KNP to MMCB” as incorrectly assumed in the said SCN. Noticee had borrowed and lent in our normal course of business and are not at all concerned with the dealings of or of the allegation that “funds had originated from the connected entities”. In fact there are almost regular financial transactions between Noticee and Acme and Noticee has from time to time borrowed from Acme and has also made repayments. Such loans are accounted for on a running account basis and there is nothing wrong with the same and the same is permissible in law. Therefore any adverse inference is totally uncalled for and unwarranted. It may be added that Noticee has borrowed from other entities besides Acme and have loaned to entities other than KNP in our normal business and as such no adverse inference may be drawn from the fact that Noticee had borrowed from Acme and loaned to KNP.

- Noticee states and submits that it was not at all aware as to how Acme had received the funds that it had loaned to Noticee or that the same were tainted with any fraud or mischief as alleged. It is submitted that Noticee was not party to the same or aware of the same, and had no means of discovering the same. Noticee repeats and reiterates that it had received loans in its normal course of business and hence no adverse inference may be drawn against Noticee as it cannot be alleged to have acted in connivance or otherwise with the said “connected clients” or otherwise. Noticee further states that the SCN fails to establish any relation any between the other persons/entities and Noticee, as alleged. The allegations are merely bald statements without any credence and material proof and the same are denied. Noticee denies that it was funded indirectly or otherwise by “Connected Clients” as alleged or otherwise. Noticee vehemently denies the allegations of being indirectly funded as the same are not only baseless and untenable but also without any credence and material proof. Noticee also denies that it is a part of the alleged “the” multiple layers through the money was transferred. Further Noticee denies the connection between other entities as is sought to have been established which has no bearing on the Noticee as it is neither connected nor has anything material been provided to establish any connection between Noticee and the said entities. Therefore, this factor cannot be resorted to, to insinuate that Noticee was party to any conspiracy as alleged in the said SCN or otherwise.

- Para 12 of SCN depicts the fund flow pattern of the repayment made by Noticee to Acme. Noticee had borrowed funds from Acme and therefore Noticee was bound to repay back the same to them and accordingly the repayment was made by Noticee on various dates as entailed in the SCN. However, the end use of the funds repaid by Noticee to Acme was never known to Noticee. It is submitted that Noticee was not party to the same or aware of the same, and had no means of discovering the same. Noticee repeats and reiterates that it had received and repaid loans in its normal course of business and hence no adverse inference may be drawn against Noticee as it cannot be alleged to have acted in connivance or otherwise with the said “connected clients “ or otherwise.

- It is pertinent to note that the said SCN itself records that loans have been repaid to Acme only but on the other hand it is alleged that the fund flow from Acme has been to the Maniar Group. In any event therefore it cannot be even remotely suggested that Noticee was funded by Maniar Group. Furthermore, the funds transfer of ₹ 1 Crore alleged to have been done on 2.02.2008 and the funds transfer of ₹ 30 Lakh alleged to have been done on 7.07.2008 are also disputed and denied as no such transfers were ever done by us on the aforesaid dated with Acme.

8. Noticee in its reply had also sought for inspection of documents. Vide letter dated 15.02.2013 noticee was informed that its request for inspection of documents has been forwarded to the concerned department and the noticee was advised to address further communication if any, in that regard to the concerned department directly. Further, the noticee was granted 15 days of time from inspection to submit a reply to the SCN,

9. It is observed from the records that the noticee had carried out the inspection of documents on 02.04.2013 and pursuant to the inspection vide letter dated 08.04.2013 noticee was provided with copy of certain documents sought by it at the time of inspection. However, no additional reply was received from the noticee. Considering the facts and circumstances of the case, an opportunity of hearing was provided to the noticee vide hearing notice dated 03.05.2013 to appear on 20.05.2013 at

SEBI Bhavan, Mumbai and the noticee was also advised to submit a detailed / complete reply, if any to the SCN by 10.05.2013.

10. In response to the same, noticee vide its letter dated 10.05.2013 submitted that its previous reply dated 11.02.2013 may be considered as its detailed reply to the SCN. Further, the noticee authorized Shri Rajesh Khandelwal, Advocate as its authorized representative (hereinafter referred to as '**AR**') to appear for the scheduled hearing.

11. The AR at the time of the hearing reiterated the submissions made in noticee's reply dated February 11, 2013. Further the AR submitted that the noticee has not traded directly or indirectly in the securities market and therefore has not violated the SEBI order dated November 12, 2007 as alleged in the SCN. The noticee has agreed to submit an undertaking that the noticee has not traded directly or indirectly in the market. The AR has also undertaken to submit the supporting documents if any for borrowing and repayment of loan from and to Acme. The AR has also undertaken to submit supporting documents if any to establish the objects of the noticee and whether the noticee borrows or lends money to other entities on similar terms and conditions. Also the AR has undertaken to submit its annual report for pre-investigation period, during the investigation period and after the investigation period as applicable. Finally, the noticee has undertaken to submit a clarification as to whether it is connected / related to Acme. The above undertakings / supporting documents were to be submitted within 10 days from the date of hearing. As undertaken the noticee vide its letter dated 27.05.2013 submitted certain undertakings / supporting documents.

CONSIDERATION OF EVIDENCE AND FINDINGS

12. I have taken into consideration the facts and circumstances of the case and the material made available on record. The allegation in the present matter is that the noticee received funds which was generated in the market and

eventually paid to Co-op Bank as loans due by KP entities which led to the violation of SEBI WTM Order dated 12.11.2007.

13. The noticee has submitted that it is not related / connected to Acme. However, it is seen from the records that Shri Mukesh Kantilalal Joshi is a Director in a Ketan Parekh Entity namely Luminant Investments Pvt. Ltd. and was the Director of Acme till 31.05.2006 but is still the authorized signatory of the bank account of Acme. From the aforesaid it is seen that although Shri Mukesh Kantilalal Joshi has ceased to be the Director of Acme, he still holds a significant position in Acme. Thus, it can be construed that Acme is a Ketan Parekh related / connected entity.

14. It is observed from the investigation report (hereinafter referred to as '**IR**') that funds have been transferred on 5 days i.e. July 28 to 31, 2008 and on August 2, 2008. The details are as under:-

- SRM Exploration Ltd. (promoter of Cals), on July 26, 2008, transferred ₹ 4 crore to HSM which was on July 28, 2008 re-routed amongst the Maniar group and then transferred to Acme and then to the noticee and KNP on the same day i.e. July 28, 2008.

- CJ Dalal and Burlington Finance Ltd. on July 29, 2008 transferred ₹ 6.83 crore and ₹ 2 crore respectively which was again re-routed through the Maniar Group entities on the same day and then transferred to Acme and then to the noticee and KNP on the same day i.e. July 29, 2008.

- Beejay Investment & Financial Consultants P. Ltd. (hereinafter referred to as '**Beejay**'), Chandra (from Bank of India a/c) and Investrick Securities Ltd. on July 30, 2008 transferred ₹ 1 crore, ₹ 40 lakh and ₹ 65 lakh which was on July 30, 2008 re-routed amongst the Maniar group and then transferred to Acme and then to the noticee and KNP on the same day i.e. July 30, 2008.

- Beejay transferred ₹ 1.35 crore to Chandra which was on July 31, 2008 re-routed amongst the Maniar and then transferred to Acme and then to the noticee and KNP on the same day i.e. July 31, 2008.

- CJ Dalal and Beejay transferred ₹ 6.43 crore and ₹ 15 lakh respectively to the Maniar group on August 2, 2008, which was then transferred to Acme and then to the noticee and KNP on the same day i.e. August 2, 2008.

KNP thereafter transferred a sum of ₹ 26.43 crore on 04.08.2008 to Co-op Bank through 12 demand drafts drawn on HDFC Bank.

- The breakup of the amount received from various entities is as under:-

			(₹ in crore)
i.	CJ Dalal (stock broker)	-	₹ 6.23
ii.	CJ Dalal client a/c (Kundan)	-	₹ 5.75
iii.	SRM Exploration Ltd. (promoter of Cals)	-	₹ 3.82
iv.	Beejay	-	₹ 2.50
v.	Burlington Finance Ltd.	-	₹ 2.00
vi.	Chandra (Bank of India a/c)	-	₹ 0.8325
vii.	CJ Dalal client a/c (Jay)	-	₹ 0.65
viii.	Investrick Securities P. Ltd.	-	₹ 0.65
	Total	-	₹ 22.4325

15. Further, it is also observed from the IR that there have been instances where funds have been transferred from the noticee through Acme and Maniar group to the stock brokers account. Some of the instances are as under:-

Sl. No.	Amount (₹)	Date of transaction	Fund flow pattern
1.	80 lakh	July 31, 2007	Gibs (ABN Amro) → Acme → Chandra → CJ Dalal
2.	20 lakh	November 2, 2007	Gibs → Acme → HSM → Indiabulls Securities Ltd.
3.	30 lakh	December 3, 2007	Gibs → Acme → Chandra → SPS Share Brokers P. Ltd.
5.	1 crore	February 25, 2008	Gibs → Acme → Chandra → MSL (BOI) → Pravin V Shah Stock Brokers
6.	1 crore	May 27, 2008	Gibs → Acme → MSL (BOI) → Chandra (BOI) → CJ Dalal
7.	1 crore	June 13,	Gibs → Acme → Gupta Equities P.

		2008	Ltd.
8.	30 lakh	July 7, 2008	Gibs → Acme → Chandra → SPS Capital Money
9.	15 lakh	September 16, 2008	Gibs → Acme → Chandra → CJ Dalal

16. The noticee has submitted that the aforementioned transactions are regular financial transactions between the noticee and Acme and noticee has from time to time borrowed from Acme and has also made repayments. The said transactions and all payments are also duly reflected and disclosed even in its Income Tax records. Further, the noticee has also submitted a copy of Board resolutions dated 17.12.1999 authorizing Directors of the noticee to borrow and repay loan and also the authority to make investments in other companies.

17. However, from the records it may be seen that the noticee has not explained any of the aforesaid transactions as mentioned in pre paras 14 and 15. The noticee has merely stated that it had borrowed and repaid funds from and to Acme. However, no documentary evidence of loan taken and repayment to Acme viz terms and conditions of loan agreement, loan amount, date of entering of agreement or noticee's income tax record etc. has been submitted to substantiate noticee's claim. Rather it is seen from noticee's Auditors Report for the year 2007-08 that the noticee had granted interest free unsecured loans to 14 companies, a Director, relatives of a Director and a firm in which relatives of a Director are Partners, covered in the register maintained under Section 301 of the Companies Act, 1956 to the tune of ₹ 2,73,18,57,159 (₹ 273.18 crore) and as seen from the Balance Sheet had taken loans to the tune of ₹ 2,923,794,380 (₹ 292.37 crore). The Auditors Report states that the noticee has not obtained any term loans during the year. Further, the Auditors Report states that the noticee's net

worth has eroded and Auditor's are unable to express an opinion as to whether the Company can operate as a going concern. Also, noticee's accumulated losses at the end of financial year were more than 50% of its net worth. Noticee had incurred cash losses in the immediately preceding financial year also.

18. Similarly the Auditors Report for the year 2008-09 (during the investigation period) states that the noticee had granted interest free unsecured loans to 13 companies, a Director, relatives of a Director and a firm in which relatives of a Director are Partners, covered in the register maintained under Section 301 of the Companies Act, 1956 to the tune of ₹ 2,25,85,77,512 (₹ 225.85 crore) and as seen from the Balance Sheet had taken loans to the tune of ₹ 3,205,324,398 (₹ 320.53 crore). The Auditors Report states that the noticee has not obtained any term loans during the year. Further, the Auditors Report states that noticee's accumulated losses at the end of financial year were more than 50% of its net worth. The Auditors Report also states that the Company's net worth is eroded by more than 80% and Auditor's are unable to express an opinion as to whether the Company can operate as a going concern.

19. In view of the afore said financial statements / figures, opinion of Auditors regarding erosion of Company's net worth and its viability as a going concern, noticee granting interest free unsecured loans to the tune of more than ₹ 200 crore raises a doubt / suspicion about the genuineness of the transactions. Similarly, noticee receiving loans to the tune of more than ₹ 200 crore considering noticee's net worth is eroded by more than 80% raises a doubt / suspicion about the genuineness of the transactions.

20. From the records and in the absence of any supporting documents submitted by the noticee it can be concluded that the noticee's submission

that it had taken loans from Acme and repaid it to Acme is not legally tenable. Further the noticee has also not submitted any documentary evidence of noticee granting loans to other entities on similar terms and conditions especially interest free unsecured loans.

21. It is observed from the IR that the connected entities had executed trades amongst themselves through circular trading by entering into synchronized orders during the investigation period and created artificial volumes in the said 5 scrips. Further, from the IR it is observed that there are bank statements reflecting fund transfer amongst the connected entities and the noticee. Hence, it can be concluded that the connected entities used the market mechanism to generate money and had created layers of transactions to transfer the funds to the noticee who in turn paid to KNP who ultimately paid to Co-op Bank.

22. In view of the above facts and circumstances of the case it can further be concluded that the noticee has indirectly dealt in the market through front entities which has led to the violation of SEBI's directions which were issued vide order dated November 12, 2007 wherein the noticee was debarred from dealing in the market directly / indirectly for a period of 14 years.

23. The said violation of SEBI's order makes the noticee liable for penalty under Section 15 HB of the SEBI Act. The text of Section 15 HB is as follows:

SEBI Act, 1992

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

24. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules 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

25. With regard to the above factors to be considered while determining the quantum of penalty, it is observed that it is difficult to quantify the profit/ loss for the nature of violation committed by the noticee and no quantifiable figures are made 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 noticee's violation.

26. In view of the abovementioned conclusion and after considering the factors under Section 15J of the SEBI Act, I hereby impose the maximum penalty of ₹ 1,00,00,000/- (Rupees One Crore only) on the noticee as prescribed under Section 15 HB of the Securities and Exchange Board of India Act, 1992 for the violation of SEBI's order dated November 12, 2007 which is appropriate in the facts and circumstances of the case.

ORDER

27. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a penalty of ₹ 1,00,00,000/- (Rupees One Crore only) on Gibs Computers Ltd. having

PAN No. AABCG0096L in terms of the provisions of Section 15 HB of the Securities and Exchange Board of India Act, 1992 for the violation of SEBI's order dated November 12, 2007. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violation committed by the noticee.

28. The penalty shall be paid by way of Demand Draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to General Manager- IVD-ID4, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

29. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are being sent to Gibs Computers Ltd. having office at Radha Bhuvan, 1st Floor, 121, Nagindas Master Road, Mumbai - 400023 and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai

Date: June 26, 2013

D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER