BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: ORDER/GR/RR/2020-21/10162-10165)

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:

SL. No.	Name of the Entity	PAN
1	Peeyush Aggarwal	AACPA6470C
2	Sanjiv Bhavnani	AAGPB6500Q
3	Karun Jain	AAEPJ1629C
4	Rajinder Singh	BLOPS6216C

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

(The aforesaid entities are hereinafter individually referred to as Noticee 1 to Noticee 4 and collectively referred to as "the Noticees")

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").

   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).

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.

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 (Noticee 4) 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. It was further observed that the Noticee 1 to 3 were part of the Board meeting which approved the resolution dated October 19, 2007 and Noticee 4 executed the Account Charge Agreement with BANCO on behalf of Company. Therefore, its alleged that the Noticees had acted as parties to the fraudulent, manipulative and deceptive GDR scheme of MPS.

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the findings of the investigation, SEBI initiated Adjudication proceedings against the Noticees 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 Noticees 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.

   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

3. A Show Cause Notice dated May 28, 2018 (hereinafter referred to as **'SCN'**) was issued by the erstwhile AO to the Noticees 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 Noticees and why penalty should not be imposed on the Noticees

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 Noticees.

4. 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. Its 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 Mr. Rajinder Singh (Noticee 4) 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, Mr. Rajinder Singh (Noticee 4), 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 1 was a non-executive and non-independent director, Noticee 2 was Managing Director and CEO, Noticee 3 was Executive and Non-Independent Director and Noticee 4 was Non-executive and independent Director of MPS. The Noticee1 to 3 were present in the board meeting dated October 19, 2007 and Noticee 4 executed the Account Charge Agreement with BANCO on behalf of Company. Therefore, its alleged that the Noticees had acted as a party to the abovementioned fraudulent, manipulative and deceptive scheme by MPS.

i) In light of the above it is alleged that the Noticees 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.

5. In response to the aforesaid SCN dated May 28, 2018, Noticee 1, 2 and 3 filed their replies. However, Noticee 4 did not submit any reply to SCN. Reply of Noticees (wherever available,), is summarised as under:

<u>Reply submitted by the Noticee 1</u>

Noticee 1 vide its reply dated January 21, 2019 and November 11, 2020 made its submissions to the SCN which is summarised as below:

- *At the outset, I deny all the allegations imposed on me vide notice dated May 28, 2018.*
- *Incomplete inspection of documents, SEBI has not provided original/certified documents*
- *Documents/evidence received under treaty from Portugal can't be used as evidence in Court of Law. It can only be used for information.*

- *Deny of having executed account charge agreement with anybody. Fake rubber seal used on the account charge agreement*
- *It is alleged that company had authorized Shri Rajender Singh to enter into any escrow or similar arrangement and authorized Banco to use the funds deposited in its Bank account as security in connection with loans, if any availed. The Directors (Including me) were present and approved the board meeting dated October 19, 2007 passing above resolution.*
- *On 19th October, 2007, the company passed a board resolution for opening a bank account with Banco Efisa for depositing the GDR proceeds. The format of the bank resolution was emailed by Mr. Rajinder Singh Negi.*
- *Since the format of board resolution was provided by Mr. Rajiner Singh Negi, claiming it to be 'specific format' of resolution of Banco Efisa, there was no scope of making any alterations in the same and thus the company had to pass the resolution on the same lines as received from Mr. Rajinder Singh Negi, which was otherwise out of routine language. However, it is submitted that before the resolution for opening of bank account with Banco Efisa was passed, the Board had deliberated upon the draft resolution which it had received from Banco Efisa through Mr. Rajinder Singh Negi and Mr. Sanjiv Bhavnani. During the deliberations the other board members had raised queries with regard to the language used in the resolution to which Mr. Rajinder Singh Negi, (who was present and attended the Board Meeting dated 19.10.2007) and Mr. Sanjiv Bhavnani had informed the Board that the draft of the resolution placed before the board is a standard resolution which the Banco had asked in order to open a bank account with them. Even in the Performa Resolution, no authority was given to Mr. Rajinder Singh Negi to create any charge on GDR proceeds or any other asset (including the Bank Accounts of the Company).*
- *The whole matter revolves around the fact that the cash so received by the company for GDR issue and deposited in the bank account held with Banco was never pledged for any loan availed by any third party and hence was freely available and utilized for the purpose for which GDR issue was floated. The company & Director Shri Peeyush Aggarwal became victim of*

the ugly play of lead manager and other entities involved in the whole episode of the GDR issue.

Reply submitted by the Noticee 2

Noticee 2 vide its reply dated January 30, 2019 made his submissions to the SCN which is summarised as below:

- *I joined Visesh Infotechnics Ltd. upon acquisition of business of my company Infotechnics India Ltd by the Company in July 2002.*
- *I resigned from the Company on July 24, 2008 and served 3 months' notice till October 2008. I had requested the Company to announce my resignation several times and as the Company did not announce it, I lodged complaint against Company to Registrar Of Companies, Stock Exchange and Banks on April 8, 2010. I had also filed complaints to NSE, BSE on April 29, 2010 requesting exchanges to investigate into affairs of the Company.*
- *I have filed complaint with Additional Commissioner of Police, Economic Offences Wing, Crime Branch, Delhi Police on July 12, 2010 against Peeyush Aggarwal and Chairman Karun Jain for fraudulent transfer of my shares in Infotechnics India Limited, cheating and defrauding me for an amount of Rs. 5 crore and fraudulently showing my signatures on the balance sheet of Visesh Infotecnics Limited.*
- *I had no idea of the party "Clifford Capital Partners" or their role in the subscription of the GDR issue. I was aware of the fact that were in public domain regarding GDR issue and since I carry a Technical background, was not so involved in financial activities of the Company.*
- *If there was indeed a Board Meeting of the Company on October 19, 2007, I certainly was not invited to attend it.*
- *I was the only IT professional on the Board of the Company and my hands full with meeting customers and managing projects. All financial and secretarial matters were handled by Mr. Karun Jain under the Directions of Mr. Peeyush Aggarwal.*

- *I joined Visesh Infosystems Ltd as CEO and Joint MD in 2002 when the Company acquired the business of my business of my Company, Infotecnics India Ltd.*
- *I transferred 10 lakh shares of my holding in Visesh Infotechnics Ltd at the behest of Mr Peeyush Aggarwal to parties nominated by the Advisors to the GDR issue as a loan to the Company. When I failed to get back my money from the Company after my resignation despite assurance, I had no option but to resort to legal action.*
- *I have no role in the matter investigated and that I myself am a victim of the Company and its management.*
- *I request to kindly strike off my name as a party to the Company and its acts and omissions.*

Reply submitted by the Noticee 3

Noticee 3 vide its reply dated June 14, 2018, denied all the allegations imposed on him in the SCN dated June 13, 2018. Further, he had resigned from the Company as executive director on October 15, 2014 and was relieved from duties with effect from January 14, 2015. Noticee 3 further requested inspection of original documents relied upon in the matter.

6. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules and Rule 4(3) of SCR Adjudication Rules, hearing opportunities were provided to the Noticees.

   In this regard, Noticee 1 was provided opportunity of personal hearing on January 25, 2019 and February 15, 2019 by the erstwhile Adjudicating Officer. Subsequently, Noticee 1 was provided opportunity of personal hearing before me on April 16, 2020, September 23, 2020, September 28, 2020 and October 7, 2020. The authorised representative of Noticee 1 attended hearing before me on October 7, 2020 and submitted his post hearing reply on November 11, 2020.

Noticee 2 was provided opportunity of personal hearing on January 25, 2019 by the erstwhile Adjudicating Officer which was attended by the Noticee. Subsequently, Noticee 2 was provided opportunity of personal hearing before me on April 16, 2020 and September 23, 2020. The Noticee 2 himself attended hearing before me on September 23, 2020 and Noticee 2 had no post hearing reply to submit.

Noticee 3 was provided opportunity of personal hearing on January 25, 2019 and February 15, 2019 by the erstwhile Adjudicating Officer. Subsequently, Noticee 3 was provided opportunity of personal hearing before me on April 16, 2020 and September 23, 2020. Noticee 3 did not attended hearing before me.

Noticee 4 was provided opportunity of personal hearing on January 25, 2019 and February 15, 2019 by the erstwhile Adjudicating Officer. Subsequently, Noticee 4 was provided opportunity of personal hearing before me on April 16, 2020 and September 23, 2020. Noticee 4, vide email dated sought details of adjudication proceedings to which vide email dated September 7, 2020, Noticee 4 was provided with copy of SCN, Hearing Notice and proof of affixture of hearing notice detailing link of unserved SCN. However, the Noticee 4 neither attended hearing nor submitted any reply to SCN.

7. 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 Noticees opportunities of being heard and submit their replies in the matter. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record including the replies of the Noticees.

<u>CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS</u>

8. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticees is that they have 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 Noticees have 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?*

9. 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.

Relevant provisions of SEBI Act 1992:

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

JJIssue I: Whether the Noticees have 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?

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

a) From the facts of the case, I find that the Noticee 1 was a non-executive and non-independent director, Noticee 2 was Managing Director and CEO, Noticee 3 was Executive and Non-Independent Director and Noticee 4 was 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 Mr. Rajinder Singh Negi (Noticee 4) 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, Mr Rajinder Singh Negi (Noticee 4) signed the agreement which acted as a security to the loan availed by CLIFFORD for subscription of GDRs. It was further observed that the Noticees were 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 Noticee 1 to 3 were part of the Board meeting which approved the resolution dated October 19, 2007 and Noticee 4 executed the Account Charge Agreement with BANCO on behalf of Company. Therefore, its alleged that the Noticees 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 Noticees in the fraudulent manipulative and deceptive GDR scheme by MPS, my observations on reply submitted by Noticees are given in subsequent paragraphs.

k) I observe that Noticee 1 and Noticee 3 had sought inspection of original documents/evidence in the matter to which, vide hearing notice dated January 29, 2019, the erstwhile Adjudicating Officer had informed Noticee 1 and Noticee 3 that all relied upon documents were provided to him along with SCN.

l) With regard to Noticee 1 and Noticee 3 seeking original or certified true copies of documents relied upon in the matter along with any communication with agencies, regulator within India and outside India, I note that the copies of the documents relied upon, were obtained by SEBI during investigation, through overseas securities market regulators. As copies of all the documents relied upon by SEBI in the SCN was already provided to Noticee 1 and Noticee 3, I find that no prejudice has been caused to Noticee 1 and Noticee 3 in defending their interest and contesting the allegation made against it in the SCN.

m) It is contended by Noticee 1 that documents/evidence received under treaty from Portugal can't be used as evidence in Court of Law. It can only be used for information.

With regard to the above contention of the Noticee, I note that the present adjudication proceedings are in the nature of quasi-judicial proceedings wherein the provisions of Indian Evidence Act, 1872 are not strictly applicable. Notwithstanding the applicability of the said Act, Section 65 (a) of the said Act itself allows admissibility of a document as secondary evidence when the original is in possession of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court (BANCO EFISA Bank in the instant case). Further, in accordance with section 66(6) of the Indian Evidence Act, 1872, it is not required to give notice to produce the secondary evidence if the person in possession of the document is not subject to the process of the court (BANCO EFISA Bank in the instant case). Thus, I find that even in accordance with the provisions of the Indian Evidence

Act,1872, the copies of the Pledge Agreement, Loan Agreement, Escrow Agreement, account statement of bank/loan accounts maintained with BANCO Bank are admissible as secondary evidence in the present proceedings.

Further, I note that, copies of the documents relied upon were obtained by SEBI during investigation, through the overseas securities market Regulators in exercise of powers under Section 11(2)(ib) of the SEBI Act, 1992. Hence, I do not find any merit in the contention raised by the Noticee1 in this regard.

n) Noticee 1 in his reply has further submitted that since the format of board resolution was provided by Mr. Rajiner Singh Negi, claiming it to be 'specific format' of resolution of Banco Efisa, there was no scope of making any alterations in the same and thus the company had to pass the resolution on the same lines as received from Mr. Rajinder Singh Negi, which was otherwise out of routine language. During the deliberations the other board members had raised queries with regard to the language used in the resolution to which Mr. Rajinder Singh Negi, (who was present and attended the Board Meeting dated 19.10.2007) and Mr. Sanjiv Bhavnani had informed the Board that the draft of the resolution placed before the board is a standard resolution which the BANCO had asked in order to open a bank account with them.

   With regard to above submission by Noticee 1, I find that he has not submitted any documentary evidence on raising queries with regard to the language used in the Board resolution dated October 19, 2007. Therefore, I do not accept the above contention of Noticee 1.

o) From the fact of the case, I observe that Noticee 2 was Managing Director and CEO of the Company.

   Noticee 2, in his reply has stated that he had no idea of the party "Clifford Capital Partners" or their role in the subscription of the GDR issue he was from Technical background, he was not so involved in financial activities of the Company. Further, he was not invited to attend Board Meeting of the Company on October 19, 2007.

From the material available on record, I observe that Noticee 2 had attended and approved the Board resolution dated October 19, 2007. Therefore, I do not accept the above contention of Noticee 2.

Noticee 2 had further stated that he has lodged complaints against Company and police complaint against Peeyush Aggarwal and Karun Jain and stated that he himself is a victim of the Company and its management. In my view, the above submission has no relevance for the present proceedings against Noticee 2.

p) From the documents available on record, I observe that SCN and Hearing Notice was served upon Noticee 4 at his address available on record. Thereafter, upon receipt of his email id from Exchange, Notice of Hearing was to which Noticee 4 replied and sought copies of SCN and hearing notice issued against it. In this regards, above mentioned documents were provided to Noticee 4. However, Noticee 4 neither attended hearing before me nor filed his reply.

From the fact of the case, I find that Noticee 4 was Non-executive and independent Director of MPS. 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 Mr. Rajinder Singh (Noticee 4) 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, Noticee 4 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. Despite giving opportunity of personal hearing and file his submissions against charges levelled against him in the SCN, Noticee 4 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. Noticee 4 did not seriously disprove his involvement in the fraudulent act of GDR manipulation and did not raise any objection regarding violation of the PFUTP Regulations. Therefore, though Noticee 4 was an independent director of the Company, 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.

q) In addition to the above observations, I am of the view that Noticee 1 to Noticee 3 being in the responsible position in the company i.e., non-executive and non-independent director, Managing Director and CEO, Executive and Non-Independent Director of MPS respectively, they were duty-bound to raise a red flag on observing that the funds raised through GDR issuance are not being utilized by the Company. However, they failed to bring any evidence before me to justify that they had raised objection to the fraudulent GDR scheme by MPS.

In addition, I note that Noticee 1 to 3 being the directors 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.

Further, I note that Section 27 of SEBI Act also deals with offences by Companies. In the said provision, Section 27(1) says that, in case of a default by a company, every person who at the time the offence 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 offence and shall be liable to be proceeded against and punished accordingly.

r) I find that Noticee 4 was Non-executive and independent Director of MPS. I am of the view that he holds a greater responsibility towards protection of interest of minority shareholders of the Company. Noticee 4 had signed the Account Charge Agreement with BANCO. Therefore, I am of the view that he had actively participated in the fraudulent scheme of GDR issue by MPS.

s) In view of the above, I am of the view that the allegations made against the Noticees 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 not 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."

11. In view of the foregoing, I am convinced that the Noticees are 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?

12. 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.

13. 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 Noticees. I note that the Noticees have 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

14. 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 Noticees:

Noticee	Violation	Penal Provisions	Penalty (Rs.)
Peeyush Aggarwal	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. 10,00,000/- (Rupees Ten Lakh Only)
Sanjiv Bhavnani			Rs. 10,00,000/- (Rupees Ten Lakh Only)
Karun Jain			Rs. 10,00,000/- (Rupees Ten Lakh Only)
Rajinder Singh			Rs. 20,00,000 /- (Rupees Twenty Lakh Only)

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

15. 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.

16. 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

17. 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 I), 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 and legal charges along with	

18. 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.

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

Date: January 27, 2021 **G RAMAR**

Place: Mumbai **ADJUDICATING OFFICER**