WTM/AB/IVD/ID-4/7171/2019-20

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of MPS Infotecnics Limited (formerly known as Visesh Infotecnics Limited)

In respect of:

Sr. No.	Name of the Noticee	PAN/ DIN
1.	MPS Infotecnics Limited (formerly known as Visesh Infotecnics Limited)	AAACV4805B
2.	Clifford Capital Partners A.G.S.A	Not Available
3.	Mr. Peeyush Aggarwal	AACPA6470C
4.	Mr. Sanjiv Bhavnani	AAGPB6500Q
5.	Mr. S. N. Sharma	AOGPS4737Q
6.	Mr. Adesh Jain	AEGPJ3902G
7.	Mr. Karun Jain	AAEPJ1629C
8.	Mr. Rajinder Singh	Not Available

The aforesaid entities are hereinafter individually referred to by their respective names/notice numbers and collectively as "the Noticees".

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1. Present proceedings have emanated from the show cause notice dated January 31, 2018 (hereinafter referred to as, "**SCN**") issued to the Noticees, alleging violations of Section 12A(a), (b) & (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred

to as, "**SEBI Act, 1992**") read with Regulations 3(a), (b), (c) & (d) and 4(1), (2)(f), (k) & (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations, 2003'**) by MPS Infotecnics Limited (formerly known as Visesh Infotecnics Limited) (hereinafter referred to as "**the Company**"/ "**Noticee No. 1**"/ "**MPS**") and violations of Section 12A(a), (b) & (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d) and 4(1) of PFUTP Regulations, 2003 by Noticee No. 2 to 8. The Noticees were called upon to show cause as to why suitable directions under Sections 11(1), 11B and 11(4) of the SEBI Act, 1992 should not be issued against them. The copies of documents relied upon in the SCN were also provided to the Noticees, as detailed below:

Annexure No.	Details
1.	MPS letter dated June 05, 2015 to SEBI i.e. the reply given by the Compnay during examination of the matter
2.	lCICI Bank Ltd. e-mail dated October 19, 2015 whereby ICICI Bank Ltd. has provided the details of GDRs converted into equity shares
2A.	Corporate Announcements made by MPS with regard to issuance of GDRs to BSE which reflected that the GDR issue was successful and subscribed by the foreign investors
3.	Credit agreement dated October 29, 2007 entered into between Clifford and Banco whereby Clifford obtained loan from Banco for subscribing the GDRs of the Company
4.	Drawdown notice for an amount of US $10,000,000
5.	Copy of the resolution dated October 16, 2007 passed by the Clifford whereby its sole director approved the contents of Credit Agreement for availing loan of USD 10 million from Banco.
6.	Copy of Board resolution dated October 19, 2007 passed in the Board meeting of MPS wherein it was resolved to open bank account with Banco for the purpose of GDR issue and also authorized Banco to use the GDR proceeds in connection with any loan
7.	Bank account statement and other related documents

2. Subsequently, a supplementary show cause notice dated June 18, 2018 (hereinafter referred to as '**supplementary SCN**') was issued to the Noticee No. 1 calling upon it to show cause as to why suitable directions including the direction to bring back an amount

of USD 08.90 million should not be issued against it under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992. SCN and supplementary SCN are hereinafter collectively referred to as "**SCNs**".

3. As can be noted from the SCNs, the aforesaid SCNs came to be issued against the Noticees in view of the fact that Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") noticed that some arrangements were being perpetrated by certain persons/ entities in respect of issuance of Global Depository Receipts (hereinafter referred to as "**GDR**") and therefore, SEBI conducted investigation into the GDR issue of various companies including MPS for its GDR issue made on December 04, 2007, details of which are tabulated as below:

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

The GDRs of MPS were subscribed by only one entity Clifford Capital Partners A.G.S.A (formerly known as Seazun Ltd.), by obtaining a loan through credit agreement from the Banco Efisa, S.F.E., S.A., a bank based in Lisbon (hereinafter referred to as '**Banco'**) and further the Noticee No. 1 (MPS) had provided security for the loan obtained by Noticee No. 2 from Banco by pledging the GDR proceeds, through account charge agreement with the Banco.

4. The SCNs contained *inter alia* the following basic allegations:

a. MPS issued 4.65 million GDRs (amounting to USD 09.99 million), on December 04, 2007. Clifford was the sole subscriber to the entire GDRs issued by MPS and the

subscription amount was paid by obtaining loan (i.e. through credit agreement dated October 29, 2007) from Banco.

b. Mr. Rajinder Singh (Noticee No. 8), Director of MPS signed an account charge agreement dated October 30, 2007 with Banco which was an integral part of credit agreement entered into between the subscriber and the Banco. These agreements enabled the subscriber (i.e. Clifford) to avail a loan from Banco for subscribing GDRs of MPS.

c. The GDR issue may not have been subscribed in entirety had the Company not given any such security towards the loan taken by the subscriber from Banco. The arrangement of credit agreement and account charge agreement facilitated the subscription of GDR issue in entirety.

d. The bank account in which GDR proceeds were held, was in the name of MPS but the amount deposited in the account was not at the disposal of the company as same was pledged as a collateral even prior to issuance of GDRs, for the loan availed by Clifford.

e. The directors of MPS, namely, Mr. Peeyush Aggarwal (Noticee No. 3), Mr. Sanjiv Bhavnani (Noticee No. 4), Mr. S. N. Sharma (Noticee No. 5), Mr. Adesh Jain (Noticee no. 6) and Mr. Karun Jain (Noticee No. 7) who approved the board resolution and authorized Mr. Rajinder Singh (Noticee No. 8), director of MPS, to sign the agreement with Banco and authorized Banco to use funds as a security in connection with loan and Mr. Rajinder Singh (Noticee No. 8) who signed the account charge agreement, had acted as parties to the fraudulent scheme.

f. The Company did not inform BSE about the execution of account charge agreement which acted as a security for the loan availed by the sole subscriber and, instead, vide announcement made to BSE on December 05, 2007, MPS informed that its GDR issue was successfully subscribed. The company also diverted GDR proceeds to the extent of USD 8.90 million.

g. The above act of concealing and suppressing the material facts about execution of credit agreement between Clifford (subscriber of GDR issue) and Banco for providing loan to subscribe the GDR issue and execution of account charge agreement by the Company with Banco providing security to the loan obtained by Clifford, and making wrongful announcement on the BSE was in violation of the provision of the SEBI Act, 1992 and PFUTP Regulations, 2003.

5. SCNs also advised the Noticees to file their reply within a period of 21 days from the date of receipt of the SCNs. The Noticees filed their separate reply/representation. The contentions raised by the Noticees in their respective replies/written submissions are detailed separately in ensuing paragraphs.

6. The Noticee No.1 vide its letters dated February 26, 2018, March 17, 2018, April 23, 2018 and August 07, 2018, *inter alia*, sought extension of time for filing its reply. Subsequently, vide its letter dated May 10, 2018, Noticee No. 1 filed its reply. Further, vide another letter dated August 23, 2018, Noticee No. 1 filed additional reply in respect of the supplementary SCN dated June 18, 2018 issued by SEBI.

7. Clifford (Noticee No. 2), vide its letter dated March 07, 2018 has submitted that it had applied for the credit facility with Banco up to a maximum amount of USD 10,000,000 and had signed a credit agreement dated October 29, 2007 to subscribe the GDR issue of MPS. It has further stated that during the entire process of credit facility and subscription of GDR issue of MPS, it liaised only with Banco and was never in contact with the MPS.

8. Mr. Sanjiv Bhavnani (Noticee No. 4) submitted its reply dated February 21, 2018. Noticee nos. 5 and 6 vide their separate letters dated February 02, 2018 (by Noticee No. 5) and letters dated March 08, 2019, May 08, 2019 and May10, 2019 (by Noticee No. 6) *inter alia* made request for inspection of documents, sought time for filing reply and adjournment of hearing on some personal grounds.

9. After receipt of replies from the Noticees (except from Noticee No. 8 which has not filed any reply), in compliance with the principles of natural justice, the Noticees were provided

an opportunity of personal hearing on January 25, 2019 when Mr. Sanjiv Bhavnani (Noticee No. 4) appeared in person and submitted that he had joined MPS in the year 2002 when his company M/s Infotecnics India Ltd. was acquired by M/s Visesh Infotecnics Ltd. (former name of MPS). He made his submission mainly on the lines of his reply dated February 21, 2018 and stated that he had resigned from MPS on July 24, 2008 and since then he is fighting in Court for clearing his name from the records of the Company and also to recover his dues from MPS. In respect of issuance of GDRs, he has submitted that he is from technical background not having much knowledge about activities and that he has no idea about the GDR subscriber i.e. Clifford.

10. Noticee Nos. 1, 3, 5, 6 and 7 had requested for adjournment of hearing fixed on January 25, 2018 which was allowed and the matter was next scheduled for hearing on March 07, 2019 when it was again rescheduled to March 15, 2019. Based on another request received for adjournment from these Noticees, the matter was again rescheduled to April 29, 2019. It was noted that voting for Maharashtra assembly election was scheduled for Mumbai on April 29, 2019, and, therefore, the hearing was again rescheduled to May 15, 2019 when Ms. Parinati Jain, Company Secretary along with Ms. Darshi Shah, Company Secretary and Mr. Amit Shah appeared on behalf of the Noticee Nos. 1, 3 and 7 and made submissions mainly on the lines of reply dated May 10, 2019 of MPS. During the course of hearing, the authorized representative filed copies of seventeen documents which were referred to during the course of hearing and also filed various documents alongwith its reply and written submissions. The details of all such documents filed by the Company is as follows:

Documents submitted alongwith reply dated May 10, 2018	
1.	Copy of the minutes of the Board Meeting dated 30.01.2007 and the Extra Ordinary General Meeting dated 27.02.07
2.	Copy of the minutes of the Board meeting dated 30th June 2007 and the agreement between the Company and Global Absolute Research Pvt Ltd. Dated 10.07.2007 and the agreement between the Company and Hythe Securities Ltd. Dated 10.12.2006
3.	A copy of in principal approvals received from BSE
4.	A copy of the minutes of the meeting dated 19.10.2007

5.	Copy of the extracts of the Minutes of the meeting of the Board of Directors of the Company held on 19th October 2007
6.	Copy of the extracts of the Minutes of the meeting of the Board of Directors of the Company held on 31st December 2007
7.	A copy of the offer document issued by the Company dated 04.12.2007
8.	Copy of the letter dated 04.12.2007 by Banco addressed to Hythe Securities Ltd. With regard to receipt of subscription amount
9.	A copy of the initial list of subscribers/allottees dated 04.12.2007 addressed to the Company by the Lead Manager
10.	A copy of the minutes of the meeting dated 04.12.2007
11.	A copy of the intimation letter dated 4th December 2007 addressed to NSE and BSE
12.	A copy of the relevant listing approval received from SGX
13.	A copy of the Bank Account Statement in respect of account of the Company maintained with DBS Bank
14.	A copy of the Company's Statement of Account in respect of account maintained with Banco
15.	A copy of the Company's ledger account
16.	A copy of the letters dated 28th June, 2008, 1st August, 2008, 31.07.2008 and 18th October, 2008
17.	A copy of letter dated 28.11.2008 & reply of Banco Efisa dated 17.12.2008
18.	A copy of the emails exchanged between Ms. Neera Chandak and Ms. Catarina Saragoca Lopes da Luz, an official of Banco
19.	A copy of the relevant correspondences exchanged between the Company and Banco
20.	A copy of the letter dated 19.01.2009 received by the company on 13.03.2009
21.	A copy of the letter dated 19.01.2009 received by the company on 13.03.2009 with the Company's note
22.	A copy of the letter dated 16.03.2009
23.	Copies of the letters dated 18.03.2009 addressed to Banco's directors, Portuguese Embassy, Indian Embassy in Lisbon
24.	A copy of the letter dated 26.03.2009
25.	Copy of the letter sent by the company's Portuguese Advocates
26.	Copy of the letter dated 22nd June 2009 addressed by Advocates of Banco to the Company's Advocates
27.	Copy of the Board resolution dated 28th August 2009 passed by the Board of Directors of the Company appointing Mr. Chetan Puri as Company's Representative
28.	Copy of the letter dated 9th September 2009 by Mr. Chetan Puri to Banco
29.	Copy of the Banco's reply dated 24th September 2009

30.	Copy of the reply dated 24th September 2009
31.	A copy of the letters sent by Banco to the Company dated 15.04.2009 and 22.06.2009
32.	A copy of the criminal complaint dated 21.09.2009 filed with DIAP
33.	Copy of the explanatory statement of Mr. Peeyush Aggarwal sent to the officials of DIAP in the criminal complaint filed on 21.09.2009
34.	A copy of the pleadings of the parties involved in the civil suit petition pending adjudication before the Portuguese Civil Court
35.	A copy of the email dated 12.03.2018 sent by Company's Advocate at Portugal to the Company's Advocate at New Delhi
36.	A copy of the annual reports of the Company for the FY 2007-08 and 2008-09
37.	A copy of the invoices dated 15.12.2011, 2.07.2012 and Certificate of Accountant dated 14.07.12
38.	Copy of the letters exchanged with the Bank of New York Mellon and the Stock Exchanges and your good offices

Documents submitted during the course of hearing held on May 15, 2019

Sr. No.	Document Type	Dated
39.	Copy of letter / Email to SEBI by company providing List of Initial Allottees	5th June, 2015
40.	Copy of Letter / email received from Hythe Securities and Banco regarding List of Allottees of GDR	4th December, 2007
41.	Board Resolution for Appointing Rajinder Negi and opening Bank Account with Banco Efisa	19th October, 2007
42.	Minutes of Board declining creation of escrow / charge / lean / Loan for proposed GDR Issue	31st October, 2007
43.	Board Resolution passed authorizing Karun Jain to operate Banco account	17th March, 2009
44.	Email to Banco informing withdrawing authority of Rajinder Negi and authorizing Karun Jain to take charge of operation of Bank Account	18th March, 2009
45.	List of GDR till date	Taken from SEBI order dated 16th June, 2016
46.	List of GDR issued Companies in which order passed / in which BANCO Efisa / Clifford / Hythe is involved	List Attached
47.	Date wise Details of Funds received by company and their utilization	From 2008-09
48.	Email exchanged with Banco after knowing about	From 13th March, 2009

	Account charge Agreement / Loan Agreement	to 22nd June, 2009
49.	Fraud by Negi and Banco as clearly seen in Account Charge Agreement – Incorrect Seal of Company	30th October, 2007
50.	MCA / Other site proof showing Rajinder Negi is director in Global Absolute Research Pvt. Ltd.	-
51.	Email received from BANCO for bank account opening – Format of Board resolution	12th October, 2007
52.	Email / Letter by company informing about request made to Bank of New York Mellon for not selling the GDR	3rd August, 2015
53.	Annual Report of Company regarding disclosure of GDR issue.	2008-09 Pg. no. 11
54.	Forensic Auditor Report by M.K Aggarwal and Co. – showing GDR is genuine	28th March, 2018
55.	Email from co. on current status of civil suit filed in Portuguese Court	14th May, 2019

Documents submitted along with written submission dated June 24, 2019	
56.	Letter dated 4th December,2007 from Managing Director- Meenaz P. Mehta of Hythe Securities Ltd
57.	A copy of the letter dated 5th June, 2015 submitted by company to SEBI
58.	A copy of the minutes of the Board Meeitng dated 30.01.2007 and the Extra Ordinary General Meeting dated 27.02.07 and Minutes of the meeting dated 19.10.2007
59.	Copy of the Agreement dated 29th June 2007 and Minutes of the Meeting of the Board Of Directors of the Company held on 30th June 2007
60.	A certified copy of the board resolution dated19th October 2007
61.	Copy of email from Mr. Rajinder Singh Negi
62.	Copy of the extracts of the Minutes of the meeting of the Board of Directors of the Company held on 19th October 2007 along with email received by the Company advising the company to pass the attached resolutions
63.	Copy of the extracts of the minutes of the meeting held on 31.10.2007
64.	Copy of the letters dated 28.06.2008; 01.08.2008; 31.07.2008; 18.10.2008; and emails dated 22.12.2008; 23.12.2008; 06/01/2009 & 08/01/2009
65.	Copy of balance confirmation statement from auditor of Banco Efisa
66.	Copy of letter dated 18.03.2009
67.	Copy of relevant Page of Agreement where fake rubber stamp is impressed
68.	Copy of Sanction letter dated 05.06.2006 and letter dated 26.09.2008 from Allahabad Bank

69.	Copy of current status of the case in Portuguese Court
70.	Copy of the Deposit Agreement entered between the Company and bank of New York and letters exchanged with The Depostory Bank And the Stock Exchange and SEBI
71.	Copy of board resolution dated 17th March, 2009
72.	Copy of email dated 18th March, 2009 intimating Banco Efisa about appointment of Mr. Karun Jain in place of Mr. Negi
73.	Copy of forensic auditor's report dated 28.03.2018
74.	Copy of letter dated 2nd June 2018 addressed to National Stock Exchange by the Forensic Auditors
75.	Copy if the invoices dated 15.12.2011, 2.07.2012 and Certificate of the Chartered Accountant dated 14.07.2012
76.	Copy of the annual reports of the Company for the FY 2007-08 and 2008-09

11. The authorized representative also requested for ten days' time for filing submission in writing, which was allowed. The written submission dated June 24, 2019, made on behalf of these Noticee Nos. 1, 3 and 7, was received on July 01, 2019. In view of the submissions made by Noticee No. 1, in its reply, written submissions and during the course of hearing, regarding civil and criminal proceedings initiated by it and claimed to be pending, before passing the present order in the matter, Noticee No. 1 was called upon vide letter dated January 30, 2020 to inform about the status of these proceedings. In response to said letter, the Company vide its letter dated February 14, 2020 has *inter alia* stated that the civil suit in the matter is still pending and the updated status of the same shall be informed to the Company by its legal advisors in three weeks. The Company has *inter alia* requested either passing favorable order discharging company and all directors or postpone passing of order until completion of pending case at Lisbon or mention in the order that any adverse remarks or an adverse order cannot be used by any court of law in deciding the matter; whether in India or overseas. Vide letter dated February 17, 2020 attached with email dated February 20, 2020, received from Noticee No. 3 (in the capacity of MD of the Company), the Company has made its further submissions in the matter.

12. On May 15, 2019, the Noticee nos. 5 and 6 did not turn up for attending the hearing and

instead, vide their respective letters/ email, requested for adjournment and also for inspection of documents. As such, a last opportunity of hearing for these noticees was scheduled on 7th June, 2019 and these noticees were allowed to avail inspection of documents and file their reply, before the scheduled date of hearing. On June 07, 2019, submissions on behalf of Noticee Nos. 5 & 6 were made by their advocates. The advocates also requested for ten days' time for filing written submission, which was allowed. However, no written submissions were received from the Noticee Nos. 5 and 6 even after passing of considerable time from the date of personal hearing granted to them. Accordingly, SEBI vide letter dated January 30, 2020 called upon these Noticees to file their written submissions within 10 days of the receipt of the letter. In response to the same, Noticee No. 6 vide his letter dated February 10, 2020 while expressing his regret for non-filing of written submissions, requested for not to proceed in the matter without considering his written submissions. Noticee No. 6 has filed his written submissions dated February 19, 2020 on February 20, 2020. Noticee No. 5 vide his letter dated February 17, 2020, *inter alia,* requested for two weeks' time to file reply, accordingly, Noticee No. 5 was granted time till March 05, 2020 to make his written submissions. Noticee No. 5 has filed his written submissions on March 05, 2020.

13. I note that in some of the earlier letters received from MPS, it was mentioned that the letters were sent on behalf of Noticee Nos. 1, 3, 5, 6 and 7 whereas, in reply dated May 10, 2018 received on the letter head of MPS, nothing is mentioned as to on whose behalf (other than MPS) the reply was filed. However, during the hearing held on May 15, 2019, the common authorized representative appeared for and on behalf of Noticee Nos. 1, 3 and 7. In the written submission dated June 24, 2019, it is specifically mentioned that the same is made on behalf of Noticee Nos. 1, 3 and 7.

14. The submissions made by Noticee nos.1, 3 and 7 vide their aforesaid replies, written submissions and those made during the course of hearing, are summarized as hereunder:

a. The Company is engaged in the business of producing modern and innovative applications and solutions based on information technology for diverse industries such as telecommunications, financial services, pharmaceutical industry, distribution, etc.

The Company is presently listed on the BSE and NSE.

b. While making allegations, SEBI has relied upon the execution of the alleged 'Account Charge Agreement' which is incorrect since the Company had neither entered into any agreement with Banco nor had authorized any entity/ official/ Director to enter into the same on behalf of the Company. The Company has initiated both criminal and civil proceedings against Banco and erstwhile Directors Mr. Rajinder Singh and Mr. Sanjeev Bhavnani disputing the validity and enforceability of the alleged 'Account Charge Agreement'.

c. In order to explore profitable avenues and looking into the requirements for the long term financial resources, the Company in its Board Meeting dated October 30, 2007 decided to issue and allot GDR up to US $10 million. The Company further convened an EGM on February 27, 2007 wherein approval for the said GDR issue was received. An in principal approval was also obtained from NSE and BSE on July 23, 2007.

d. Mr. Rajinder Singh Negi had requested the Company to appoint him as a Director suggesting that his appointment would simplify the process of the GDR issue. The Company, with an earnest intent of seeking to expedite the development of the GDR issue, agreed to the same. As such, in the Board meeting dated October 19, 2007, in order to expedite the process of the said GDR issue, Mr. Rajinder Singh was appointed as an Additional Director of the Company.

e. On the recommendation of Mr. Rajinder Singh Negi, Director of the Company and Mr. Sanjiv Bhavnani, Managing Director of the Company, the Board of Directors of the Company, in its meeting held on October 19, 2007 passed resolution for opening of Bank Account with Banco Efisa. The Board never anticipated that Mr. Rajinder Singh Negi and Mr. Sanjiv Bhavnani in connivance with the Officials of Banco would create a charge over the deposits of the Company.

f. The GDR issue was done through the Lead manager, M/s. Hythe Securities Ltd. and M/s. Global Absolute Research Limited being the Global Coordinator. Both the

organizations were introduced to the Company by Mr. Rajinder Singh Negi who was running his Advisory Firm from India and was also associated with Hythe Securities Ltd.

g. The Company came out with the Offering Circular on December 04, 2007 where in all necessary details pertaining to the GDR Issue were disclosed to the investors in order to enable them to make an informed decision. The Lead Manager to the GDR issue intimated the Company on December 04, 2007 about receipt of confirmation regarding subscription to 4,654,762 GDRs representing 9,309,524 equity shares, along with the list of initial subscribers. Accordingly, the Company had intimated both NSE and BSE of the successful closing of its GDR offering of USD 10,000,000 on the Singapore Stock Exchange and the allotment of the GDRs by the Company.

h. The Company's intention behind the GDR issue was genuine since the very inception and the Company intended to use the GDR proceeds in terms of the Offering Circular dated 4th December 2007. In fulfilment of its objective, once the GDR issue was closed, the Company repatriated an amount of USD 950,000 on January 07, 2008 and utilized the said amount in India for the benefit of the Company. The Company again repatriated USD 100,000 and utilized the said amount in India for the benefit of the Company on January 20, 2009 which was utilized for the benefit of the company.

i. During June, 2008 to July, 2008, the Company addressed several correspondences to Banco. The Company sent its first correspondence to Banco on 28th June, 2008 and again on 1st August, 2008 requested for the bank account statements of the account maintained by the Company with the bank, to which no reply was received. Again on July 31, 2008, the Company wrote to the Banco intimating them of change in authorized signatory to Mr. Peeyush Aggarwal independently and Mr. Rajinder Singh and Mr. Sanjiv Bhavnani jointly, yet Banco failed to acknowledge/ reply to the same. The Company, further, intimated Banco about the change in registered address and also the appointment of Mr. Karun Jain as the authorized signatory vide correspondence dated 18th October, 2008 but Banco again failed to acknowledge.

j. On March 13, 2009, the Company received a balance confirmation document from Banco vide Banco's letter dated January 19, 2009 which was required to be signed by the Company for auditing purposes. Though the amount mentioned in the document was correct, however, it contained a note regarding the alleged 'Account Charge Agreement '. This was the first ever instance when the fact regarding the existence of the alleged agreement came to the knowledge of the Company. The relevant excerpt of the note from the letter is reproduced herein below:

> *"Note: The deposit account mentioned (6341085.25.7) is associated with the account charge agreement signed on October 30th, 2007".*

k. As there was no such 'Account Charge Agreement' dated October 30, 2007 in the knowledge of the Company, we denied the said note and expressed our shock and concern to the Banco's letter dated January 19, 2009. However, even after the Company denied the existence of the 'Account Charge Agreement', Banco, failed to take note of the same and sent a warning/ caution notice to the Company vide its letter dated March 16, 2009. The relevant excerpt from the letter is reproduced herein below:

"We are writing to inform that, on 09th march, 2009, and following default by Clifford of its payment obligations under the Loan Agreement, the Bank demanded repayment of all amounts owing from Clifford. In the absence of such payment, and in accordance with the provisions of the Account Charge.

Agreement the Bank will exercise its rights and apply the Company's deposit (balance of USD 8,798,450.00) towards repayment of Clifford's loan)".

l. The Company vide letter dated March 18, 2009, informed all the Directors of Banco, Portuguese Embassy in India and Indian embassy in Lisbon that the Company denied the execution of any such 'Account Charge Agreement' dated October 30, 2007 which created a charge on the deposits of the Company. The Company made repeated requests to Banco to provide them copies of the alleged 'Account Charge Agreement', certified copies of the account opening form and other related documents, bank

account statements, loan agreement between Banco and Clifford etc.

m. The Banco, however, refused to accept the Company's contentions w.r.t. the alleged 'Account Charge Agreement' and repeatedly insisted and reiterated that the Company had indeed entered into the alleged 'Account Charge Agreement' and hence, the deposit account of the Company maintained with the Banco was liable to be charged as a collateral security for all obligations of Clifford. It also failed to provide any document sought by the Company.

n. Ultimately, on being aggrieved and failing to receive any co-operation, the Company filed a criminal Complaint with Department for Investigation and Penal Action of Lisbon (hereinafter referred to as "DIAP") on September 21, 2009 against Banco, Rajinder Singh Negi, Hythe Securities, Global Absolute Research and Clifford Capital Partner and others.

o. Further, considering that the criminal complaint would only lead to the personal conviction of the executives of Banco, the Company further filed a civil case bearing no.2446/12/2 TVLSB before the District Civil Courts of Lisbon against Banco seeking a refund of the Company's funds on which Banco had fraudulently created a charge.

p. The Company is undergoing litigation with Banco and the above mentioned parties and the matter is sub-judice before the courts of Lisbon, Portugal regarding the authenticity of the alleged 'Account Charge Agreement ' pretended to have been executed by the erstwhile directors Mr. Rajinder Singh Negi in connivance with Mr. Sanjeev Bhavnani and Banco and Clifford. In the civil suit pending before the district civil court of Lisbon, arguments have been made by both the parties and the Court has ordered for the production of evidence.

q. The bona fide and genuine intent of the Company in keeping its investors informed with respect to the said GDR issue is evident from the measures undertaken by the Company to make all necessary disclosures in its the 19th Annual Report for the Financial year 2007-08.

r. Mr. Rajinder Singh in connivance with Banco, fraudulently mis-utilised the authority given to him and entered into the alleged Agreement with the Banco. The Company was never intimated regarding the execution of the same. Even if there is a reference in the above resolutions that the funds of the Company can be utilized as security in connection with loans, it is manifest that such loans would have to be carried out in the interest of the Company and explicitly approved by them.

s. The format of board resolution was provided by Mr. Rajinder 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. 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.

t. The Company had appointed Mr. Rajinder Singh as an additional director on his request only with the objective of expediting the process of GDR issue and, accordingly, the authority was conferred upon him to open an account at Banco in Lisbon and receive in this account, in the name of the Company, the proposed GDR issue of the USD 10 million.

u. The alleged Account Charge Agreement was executed on 30th October 2007, the date on which the Company had not even opened a bank account with the Banco (opened on 7th November 2007). As such, an account which was not even opened cannot be charged hence, the Account Charge Agreement in itself is null and void. This also shows that there is a conspiracy existed between Banco Efisa and Mr. Rajinder Negi.

v. The allegation that Clifford was the sole subscriber of the GDR is highly erroneous and misconceived. The list of initial subscribers dated 04.12.2007 was provided to the Company by the Global Co-ordinator and Lead Manager. The name of Clifford as an initial subscriber does not appear in the same and it appears that GDR's were on a later date transferred to Clifford.

w. As per the concept of *res sub judice* where an issue is pending in a Court of law for adjudication between the same parties, any other court is barred from trying that issue so long as the first suit goes on. As such, considering that civil and criminal proceedings are already pending in Lisbon, Portugal, the institution of adjudication proceedings herein would only lead to frivolous litigation and wastage of resources. It would be in the interest of justice that a stay be imposed on the proceedings herein until the civil and criminal proceedings in Lisbon attain finality.

x. In respect of request for inspection of documents, the Noticees have submitted that SEBI did not provide the original /certified true copy of all the documents and also failed to provide complete documents. SEBI has been relying upon certain documents/ agreements which are neither original nor certified and, therefore, these documents cannot be relied upon even as secondary evidence.

y. Their case is different from other companies issuing GDR as they got trapped in the manipulative game of those entities. In almost all the orders passed by SEBI, in GDR matter, none of the Company has approached any Court of Law much less so aggressively or took any action against the fraudulent act of Banco. Our Company has put enough time, money and efforts to unearth the truth at Portugal Court the fraud played on Company came in its knowledge.

z. In respect of the major three allegations made by SEBI, MPS submitted that

(i) Providing wrong list of Initial subscribers of GDR - We have submitted the list as received and confirmed by Lead manager, M/s Hythe Securities Ltd. believing it to be true.

(ii) Not disclosing about account charge agreement - We have never entered any such agreement hence no question of not disclosing arise. Account charge, agreement mentioned in SCN is fake.

(iii) Issued GDR free of cost to Clifford - We have issued the GDR for consideration, already described in reply and can also be confirmed by Forensic Audit Report submitted by Auditor appointed by NSE at the instance of SEBI.

aa. In view of their submissions, the Noticees have prayed to release the Company and its directors from all the allegations mentioned in SCN and to pass favorable order in the matter. If SEBI passes adverse order at this time it will affect our matter / decision in Portuguese court in Lisbon and effectively, no foreign exchange would be repatriated to India.

15. As mentioned above, Noticee Nos. 5 and 6 appeared for hearing on June 07, 2019 when both of them were represented by Advocate and authorized representatives Mr. Prakash Shah, Advocate along with Mr. Prakash Choradia and Mr. Ashwin Patre. During the course of hearing, the authorized representative submitted that Noticee Nos. 5 and 6 were practicing Chartered Accountants and were Non-Executive Independent Director and they are not covered under the definition of 'officer in default', as defined under Section 5 of the Companies Act, 1956 and also that they had no knowledge about the execution of 'account charge agreement' by or on behalf of the Company and that the seal of the Company as shown on the said agreement, was not of the Company and it is total fraud played on the Company. Noticee No. 5 and 6 did not file any reply prior to hearing in the matter.

16. Noticee No. 5, in his letter dated February 17, 2020, *inter alia,* submitted as under:

i) I was associated with the Company as non-executive independent director from June 08, 2004 to November 14, 2013;

ii) Being non-executive independent director of the Company, I was not involved in any activity or process as carried out by the Company for raising the funds and filing of the required documents with the stock exchanges or any other authorities, since such activities were beyond my scope of role and responsibility;

iii) I have performed all my duties in exercise of all due skill, care and diligence and that whatever findings are made in the enclosures to SCN are beyond my knowledge, involvement and control.

17. Noticee No. 5 and 6 have made similar contentions in their respective written submissions dated March 5, 2020 and dated February 19, 2020, respectively wherein *inter alia* following contentions have been made:

(i) Noticees were non-executive independent directors of the Company. Noticee No. 5 was director during the period from June 08, 2004 to Novemebr 14, 2013. Noticee No. 6 was director during the period from February 20, 2004 to May 29, 2014. Investigation period in the matter is from November 01, 2007 to December 31, 2007 and SCN has been issued on January 31, 2018. Therefore, SCN issued for transaction executed 11 years ago and after 4 years of resignation of Noticees, needs to be quashed on this ground itself. In this regard, Noticees have placed reliance on judgment of Hon'ble Supreme Court in case of ***Bhavesh Pabari Vs. SEBI***.

(ii) Noticees have relied on the order of the Hon'ble SAT in the matter of ***Adi Cooper & Anr. Vs. SEBI (Appeal No. 124 of 2019 dated November 05, 2019)*** for the true interpretation of the resolution dated October 19, 2007 passed by the Company.

(iii) Noticees have referred to Section 27(1) of the SEBI Act, 1992, to contend that no person should be held liable for punishment under the Act, if he proves that the offence was committed without his knowledge or he had exercised all due diligence and that from the facts of the present case, in the Board meeting, authorization was given only with respect to the opening of bank account for the proposed GDR and no authorization was given only with respect to Rajinder Singh for execution of any account charge agreement.

(iv) Noticees have submitted that they were Non-Executive Independent Directors at the relevant time and had no role in the day to day business activities of MPS. Noticees have also referred MCA master circular no. 1/2011 dated July 29, 2011 to contend as to when an independent director can be held liable. Noticees have also asserted that as per Section 149(12) of Companies Act, 2013, the Non-Executive Director and Independent Director cannot be held liable unless he had knowledge

of commission of wrong doing by Company or he did not act diligently. Further, that the violation, if any, has taken place without his knowledge and he had carried out proper due diligence. Noticee No. 5 has also referred to Regulation 25(5) of the SEBI (LODR) Regulations, 2015 to contend that since he had no knowledge about the account charge agreement, therefore, charges against him should be dropped.

(v) Noticees has also contended that as non-executive independent directors their role was limited to examining those proposals put before the board of directors of the Company in its agenda and express his views based on the information provided by the Company in such meetings.

(vi) Noticee have relied on the order of the Hon'ble SAT in the matter of ***Pritha Bag Vs. SEBI (Appeal No. 291 of 2017 dated February 14, 2019)*** to submit that they are not "officer who is in default".

(vii) Noticees have relied on and quoted extracts from various orders passed by the Hon'nle SAT in the matter of ***R.K. Global, Narendra Ganatra, Sterlite Industries (India) Ltd., Parsoli Corporation and Royal Twinkle Star Club Private Ltd.,*** and the orders passed by SEBI in the matter of Adani Exports Limited, Cals Refineries Limited, CAT Technologies Limited, ABL Biotechnologies Limited and Rana Sugars Limited. Further, the Noticees have also relied upon orders passed by the Hon'ble Supreme Court in the matter of SEBI vs. Kishore R. Ajmera, Ram Sharan Yadav vs. Thakur Muneshwar Nath Singh and Gorkha Security Services vs. Govt. of NCT. & Ors.

(viii) Further, the Noticee No. 6 has submitted that at the relevant time Mr. Peeyush Agarwal (Noticee no. 3) was Chairman, Mr. Sanjiv Bhavnani (Noticee no. 4) was Managing Director & CEO and Mr. Karun Jain (Noticee no. 7) was Executive Director & Company Secretary.

(ix) Noticees have also made certain submissions like no authority given to Noticee No. 8 to enter into account charge agreement, acting on the advice of professionals involved with the GDR issues, seal used on the account charge agreement was not

that of the Company, etc., on the lines similar to the submissions made by the Company.

18. The SCN issued to Noticee No. 8 through speed post was returned undelivered and, therefore, the same was served upon him by making affixture at the last known address, as available on record. However, the Noticee No. 8 has neither filed any reply to the SCN nor appeared for availing the opportunity of hearing.

CONSIDERATION OF ISSUES AND FINDINGS:

19. I have considered the SCN dated January 31, 2018 along with its annexures, Supplementary SCN dated June 18, 2018 and the aforementioned replies and written submissions filed by the Noticees and the submissions made before me during the course of hearing. The question to be determined in the present proceedings is whether the Noticees have violated the provisions of SEBI Act, 1992 and PFUTP Regulations, 2003, as alleged in the SCNs.

20. Before dealing with the issues, it would be appropriate to refer to the relevant provisions of law which are alleged to have been violated by the Noticees and relevant extract thereof is reproduced hereunder:

Relevant extract of provisions of SEBI Act, 1992

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

Section 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 recognised 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 recognised 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 recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(d) ……..”

Relevant extract of provisions of PFUTP Regulations, 2003:

Regulation 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.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(a)…….

(b)…….

…

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(g)…

(h)…

……

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

(l)…..

(m)…..

……..

(r) Planting false or misleading news which may induce sale or purchase of securities;

……..”

21. I note that Noticee No.1 in its written submission dated June 24, 2019 has claimed that SEBI did not provide complete documents as sought by the Company through its various letters, nor provided inspection of original /certified true copy of all the documents and that only photocopies of selected documents were shown which have not been relied upon. It

is further stated that SEBI has also not produced any evidence and covering letter reflecting that those documents were received from *bonafide* sources. In this respect, I note that copies of all documents which were relied upon by SEBI in making allegations in the SCN have been provided to the Noticee No. 1 along with the SCN dated January 31, 2018, as detailed in para 1 above. However, Noticee No. 1 has requested for various other documents and my observations on such various other documents sought by the Noticee No. 1 is as under:

Sr. No.	**Documents sought by the Noticees**	**Whether request for documents is tenable or not**
1.	All investigation reports of the Stock Exchanges with Annexures	No report of the Stock Exchanges has been relied or referred to in the SCN. Hence, the request made by the Noticee for inspection of these documents is untenable.
2.	All investigation reports of SEBI with Annexures including that of Surveillance Department, Investigation Department, etc.	The relevant findings of the investigation have been brought out in the SCN and the copies of documents relied upon in the SCN have also been provided to the Noticees. Hence, the request made by the Noticee for inspection of the investigation report is untenable.
3.	Any communication in this regard with the Company.	The request appears to be vague as it does not specify any date or particulars communication or document. Further, I find the request for original/certified copy of its own letters is untenable. The relevant letters of the Company (Noticee no.1) relied upon in the SCN have been provided as Annexure to the SCN. Hence, the request made by the Noticee for inspection of these documents is untenable.
4.	Any communication with any of the government bodies such as income tax department, MCA etc.	Firstly, no such communication with any government body has been relied or referred to in the SCN. Secondly, Noticee No. 1 has not specified the particular communication(s) copies of which is required. Noticee No. 1 has made an omnibus request without specifying the particular communication required. Such request are fishing and rowing inquiries which need not be entertained in the quasi-judicial proceedings.
5.	Any communication in this regard with any agencies, regulator within India or outside India.	The request is vague without reference to a specific or particular document. However, copies of the documents received from the foreign regulators as relied upon in the SCN has already been provided as Annexure to the SCN

		and the inspection thereof has also been provided to Notice No. 1. The original documents are not available with SEBI but only the copies as provided by the overseas foreign regulator. Hence, the request made by the Noticee for inspection of the original/certified copies of these documents is untenable.
6.	If SEBI has relied on recorded statement given by anyone in this regard, please provide cross examination.	No recorded statement has been relied or referred to in the SCN. Hence, the request made by the Noticee for this document is random and irrelevant and hence, untenable.

Therefore, the contention of the Noticee No. 1 that SEBI has not provided complete documents is not tenable.

22. Regarding, inspection of original/certified copy of the Annexures, sought by the Noticee No. 1, my observations are as under:

Annexure No.	**Document for which contention for inspection of Original/Certified is made**	**Observations**
1.	MPS letter dated June 05, 2015 to SEBI i.e. the reply given by the Company during examination of the matter	The letter pertains to the Noticee no. 1 itself. A copy of the same has already been provided to the Noticee along with the SCN. Hence, the request made by the Noticee for inspection of original/certified copy of document is untenable.
2.	lCICI Bank Ltd. e-mail dated October 19, 2015 whereby ICICI Bank Ltd. has provided the details of GDRs converted into equity shares	It pertains to an email for which only a printed copy can be provided and a copy of the same has been provided to the Noticee along with the SCN. Hence, the request made by the Noticee for inspection of original/certified copy of document is untenable.
2A.	Corporate Announcements made by MPS with regard to issuance of GDRs to BSE which reflected that the GDR issue was successful and subscribed by the foreign investors	The document pertains to the Noticee itself. A copy of the same has been provided to the Noticee along with the SCN. Original is not available with SEBI. Hence, the request made by the Noticee for inspection of original/certified copy of document is

		untenable.
3.	Credit agreement dated October 29, 2007 entered into between Clifford and Banco whereby Clifford obtained loan from Banco for subscribing the GDRs of the Company	The Credit Agreement was signed and executed by Clifford with Banco which is situated outside India. A copy of the document as received by SEBI from overseas market regulator has been provided to the Noticees. Originals are not available with SEBI. Hence, the request made by the Noticee for original document is untenable.
4.	Drawdown notice for an amount of US $10,000,000	The document pertains to the Noticee itself and the original is not available with SEBI. Copy of the same as received from the overseas market regulator was provided along with the SCN. Hence, the request made by the Noticee for inspection of original/certified copy of document is untenable.
5.	Copy of the resolution dated October 16, 2007 passed by the Clifford whereby its sole director approved the contents of Credit Agreement for availing loan of USD 10 million from Banco.	The document pertains to the Noticee itself. A copy of the same has been provided to the Noticee along with the SCN. Original is not available with SEBI. Hence, the request made by the Noticee for inspection of original/certified copy of document is untenable.
6.	Copy of Board resolution dated October 19, 2007 passed in the Board meeting of MPS wherein it was resolved to open bank account with Banco for the purpose of GDR issue and also authorized Banco to use the GDR proceeds in connection with any loan	The document pertains to the Noticee itself. A copy of the same has been provided to the Noticee along with the SCN. Original is not available with SEBI. Hence, the request made by the Noticee for inspection of original/certified copy of document is untenable.
7.	Bank account statement and other related documents	The bank account statement pertains to the Noticee no. 1 itself, which is an account opened with Banco situated outside India. A copy of the Bank account statement was also provided with the SCN. The original is not available with SEBI.

		Hence, the request made by the Noticee for inspection of original/certified copy of document is untenable.

Moreover, from the documents submitted by the Company pertaining to civil suit instituted by the Company before Court in Lisbon, Portugal, it is noted that the Company has filed most of the aforesaid documents as annexures to the pleadings in the said suit, i.e. much before the initiation of investigation in the matter by SEBI. The copies furnished by SEBI as annexure to SCNs and the copies filed in the suit, are same. Therefore, request for inspection of original/ certified copy is untenable.

23. From the records placed before me, I note that request for inspection of documents was also made on behalf of Noticee Nos. 5 and 6 which was afforded to them on February 04, 2019 when an authorized representative of Noticee No. 5 appeared and conducted the inspection of documents. As per minutes of the said inspection of documents dated February 04, 2019, the authorized representative sought for copies of the corporate announcements with regard to GDRs made to BSE and the Account charge agreement dated October 30, 2007, which were provided to the Noticee by SEBI**.** Further, it was intimated to the authorized representative of Noticee no. 5 that the documents which were relied upon by SEBI in in the SCNs were already provided to the Noticees along with the SCN dated January 31, 2018. Further, I note that the same documents stated in the Table in the aforesaid para 21 above, were also sought by the Noticee no. 5 and the same is also disposed of in the manner as detailed in the said Table in the aforesaid para. I note that no objection or further documents were sought by the Noticee no. 5 during the inspection afforded to him on February 04, 2019.

24. I note that the Noticee No. 1 has filed detailed replies to the SCNs. Further, I note that the proceedings initiated under Section 11(4) and 11B of the SEBI Act, 1992 are in the nature of quasi-judicial proceedings, as held by the Hon'ble Supreme Court in ***NSDL Vs. SEBI (2017) 5 SCC 517*****.** As such the provisions of Indian Evidence Act, 1872 are not strictly applicable to these proceedings. Further, 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. I, further, 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 SCNs were already provided to the Noticees in response thereto Noticees have filed detailed replies, I find that no prejudice has been caused to any of the Noticees in defending their interest and contesting the allegation made against them in the SCNs. Further, I find that Noticees have been making roving request for inspection of documents without specifying the documents of which inspection is required. Thus, the contention made by the Noticee No. 1 that SEBI has not provided complete documents is not tenable.

25. The SCN dated January 31, 2018 has alleged that on December 04, 2007 MPS issued 4.65 million GDRs (amounting to USD 09.99 million) which was subscribed by only one entity i.e. Noticee No. 2 and the subscription amount was paid by the subscriber (Noticee No. 2) by taking a loan of USD 10 million from Banco through credit agreement dated October 29, 2007 (**Annexure 3 to SCN**) entered into between Banco and Noticee No. 2 and draw down notice (**Annexure 4 to SCN**). The said loan availed by Noticee No. 2 was secured by pledging the GDR proceeds lying in the bank account of Noticee No. 1 with Banco, by virtue of account charge agrrement dated October 30, 2007 signed by the Noticee No. 1 with Banco. I note that the Company has not denied issuance of 4.65 million GDRs (amounting to USD 09.99 million) on December 04, 2007 which were listed on Singapore Stock Exchange. However, the Company has denied that it had executed 'Account Charge Agreement' dated October 30, 2007 with Banco. The Company has submitted that the GDR issue was made with *bona fide* intention to use the proceeds in the interest of the Company as per the offering circular. It has contended that after coming into the knowledge about execution of said 'Account Charge Agreement' with Banco and that GDR proceeds are pledged with Banco to secure the loan obtained by Clifford, the Company took up the matter with the concerned officials of Banco and also filed criminal case for prosecuting such persons/ entities who had committed fraud with the Company and also filed civil suit for recovery of un-received GDR proceeds. The details of proceedings claimed to have been initiated by the Company are as under:

a. Criminal Complaint filed by the Company with the Department for Investigation and

Penal Action of Lisbon (hereinafter referred to as "DIAP") on September 21, 2009 against Banco, Rajinder Singh Negi (Noticee No. 8 who executed the said 'account charge agreement'), Hythe Securities (Lead Manager), Global Absolute Research and Clifford (GDR subscriber) and others.

b. Civil Suit bearing no. 2446/12/2 TVLSB filed by the Company in the year 2012 before the District Civil Courts of Lisbon against Banco seeking a refund of balance of GDR proceeds.

26. I note that the SCN states that board of directors of the Company, in its meeting held on January 30, 2007 decided to issue FCCB/GDR/ADR on preferential basis to Foreign Institutional Investors/Financial Institutions/Bodies Corporate upto USD 10 million. SCN further states that on February 27, 2007, the Company informed BSE that its shareholders at the Extra Ordinary General meeting of the Company held on February 27, 2007 have approved issue/allotment of Foreign Currency Convertible Bond/American Depository Bond/Global Depository Bond convertible into equity shares/Preference shares at the option of the Company and/or at the option of holder of the security upto USD 10 million to be subscribed by Foreign Institutional Investors/Financial Institutions/Corporate Bodies, Mutual Funds, Banks etc. at such price as the board in its absolute discretion thinks fit.

27. I note that SCN alleges that the Board of MPS (Noticee No. 1) had passed a resolution in its meeting on October 19, 2007 for opening of a bank account with Banco, and also authorizing Banco to use the GDR proceeds as security against loan, if any. 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."

28. I note that the MPS (Noticee No. 1) vide aforesaid Board resolution dated October 19, 2007 had approved for opening of an account with the Banco for the purpose of receiving of GDR proceeds, authorized Mr. Rajinder Singh (Noticee No. 8) to sign, execute any application or agreement with the Bank (i.e. Banco) and also authorized the Bank (i.e. Banco) to use the funds so deposited in that bank account (i.e. GDR proceeds) in connection with loan, if any. SCN further alleges that the board meeting dated October 19, 2007 of the Company was attended by Noticee No. 3, 4, 5, 6 and 7.

29. It is further alleged in the SCN that Noticee No. 2 entered into credit agreement dated October 29, 2007 with Banco for subscription of GDRs of the Company according to which Noticee No. 2 was to be provided with a loan only for subscription of GDRs of the Company. Further, Noticee No. 2 had also given a drawdown notice forming part of the credit agreement which was irrevocable and required to avail the loan facility. As per para 2 of the said credit agreement, the Bank (i.e. Banco) agreed to make available to the borrower a Dollar term loan facility in the maximum principal amount of upto USD 10 million. Further, the purpose of the borrowings is mentioned in para 3 of the said credit agreement which states that the borrower shall use the proceeds of the advance for subscribing the GDR to the value of USD 10 million issued by Visesh (former name of 'MPS'). The relevant extract of the said credit agreement dated October 29, 2007, is as under:

"2 Facility

Subject to the terms of this Agreement, the Bank agrees to make available to the Borrower a Dollar term loan facility in the maximum principal amount of upto $10,000,000.

3 Purpose

3.1 Purpose

The Borrower shall use the proceeds of the Advance to subscribe for global depository receipts to the value of up to $10,000,000 issued by Visesh on the terms of the Listing Particulars to be delivered to the Luxembourg Stock Exchange."

30. As mentioned in the SCN dated January 31, 2018, the Company had entered into an 'Account Charge Agreement' dated October 30, 2007 with the Banco. The relevant extracts of the said 'Account Charge Agreement' dated October 30, 2007 are reproduced as under:

"

1. ***Loan agreement****: Loan agreement means the Loan agreement signed between Clifford Capital (as borrower) and the Bank dated on or around the date of this Agreement by which the bank agreed to lend to Clifford Capital the maximum amount of upto US $10,000,000.*

2. ***Account Charge Agreement:***

   Subject to the terms of this agreement, Visesh deposited in its designated account with bank (hereinafter the Account) an amount not exceeding US $10,000,000 as security for all the obligations of Clifford Capital under the Loan Agreement (hereinafter the Secured Obligations) and with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the Account as well as the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such assignment and charge shall be a continuing security for the due and punctual payment and discharge of the secured obligations.

   Upon payment of all or part of the amounts due under the Loan Agreement, Visesh may withdraw from the Account the equivalent amount.

   Upon payment and final discharge in full of all the secured obligations, this Agreement and the rights and obligations of the Parties shall automatically cease and terminate and the Bank shall, at the request of Visesh, release the deposit made in the Account.

   Visesh covenants with the Bank that it will on demand pay and discharge the secured obligations when due to the bank.

   At any time after the bank shall have demanded payment of all or any of the Secured Obligations the Bank

may without further notice apply all or any part of the Deposit against the Secured Obligations in such order as the bank in it's discretion determine.

Visesh hereby irrevocably appoints by way of security the Bank as the attorney of Visesh with full power in the name and on behalf of Visesh to sign, seal and deliver any deed, assurance, instrument or act in order to perfect this charge and at any time after an event of default by Visesh to sign, seal and deliver any deed assurance, instrument or act which may be required for the purpose of exercising fully and effectively all or any of the powers hereby conferred to the Bank to take all necessary action whether in the nature of legal proceedings or otherwise to recover any moneys which may be held in the Account and to give valid receipts for payment of such moneys and also for the purpose of enforcement and of the security hereby created.

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

It is further mentioned that each notice or other communication to be given under this agreement shall be given in writing in English and unless otherwise provided, shall be made by letter or Fax to :

Visesh

5, Scindia House, 1st Floor, Connaught Place, New Delhi-110001"

31. I note that the opening para of the aforesaid 'Account Charge Agreement' dated October 30, 2007 refers to the loan agreement executed by Noticee No. 2 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 Noticee No. 2) as security for all the obligations of Noticee No. 2 under the Loan Agreement (i.e. Credit Agreement dated October 29, 2007) entered into between Noticee No. 2 and the Banco whereby Noticee No. 2 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 aforesaid '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. The 'Account Charge Agreement' was also registered with the Companies House (UK's Registrar of Companies) with the following descriptions:

*"All obligations of Clifford Capital Partners A.G.S.A. (a company incorporated in the British Virgin Islands with number 400452) under a loan agreement with the Bank dated 29 October 2007 with the Bank (**the secured Obligations)**.*

*As a continuing security for the due and punctual payment and discharge of the Secured Obligations the company with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of, the Bank all the rights, title and interest in and to its designated account with the Bank (**the Account),** all moneys standing to the credit of the Account from time to time and all interest payable thereon (together the **Deposit**).*

The Company covenants not to purport to withdraw the Deposit or any part thereof or sell, assign, mortgage, charge or otherwise encumber, dispose of or deal with or grant or permit third party rights to arise over or against all or any part of the Deposit or attempt or agree so to do."

32. From the above, I note that Noticee No. 2 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 Noticee No. 2 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 Noticee No. 2 and Banco), MPS (Noticee No. 1) 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 Noticee No. 2 and the Banco. The said 'Account Charge Agreement' entered into between the Company and the Banco specifically mention the loan obtained by Noticee No. 2 from Banco and provide security to the same to Banco. The terms of the registration of the 'Account Charge Agreement' with Companies House, also refers to provide security to all obligations of Noticee No. 2 under the credit agreement dated October 29, 2007 with the Banco. Thus, the Company had pledged the GDR proceeds with the Banco, under said 'Account Charge Agreement' dated October 30, 2007, to secure the rights of Banco as lender against the loan given to Noticee No. 2 for subscribing the GDR issue of the Company.

33. I also note from the above that the 'Account Charge Agreement' dated October 30, 2007 (entered into between MPS and Banco) and credit agreement dated October 29, 2007

(signed between Clifford and Banco) were executed as a part of the arrangement which enabled Noticee No. 2 to avail a loan of US $10 million from Banco to subscribe the GDR issue of the Company. On perusal of the bank account statement of the Company with Banco (Annexure 7 to SCN), it is observed that the entire GDR proceeds were received by the Company on December 04, 2007 in its overseas bank account bearing A/c. no. 6341085.15.001 held with Banco from only one entity i.e. Noticee No. 2 (Clifford).

34. Regarding the number of initial subscribers as mentioned in the SCN, the Company has contended that its GDR issue was not initially subscribed by only one entity as has been claimed to be informed to the Company by the Lead Manager to the GDR issue. It is claimed by the Company that GDR issue was subscribed by the four entities which did not include Clifford. In this regard, as already noted the bank account statement of the bank account of the Company held with Banco bearing A/c. no. 6341085.15.001 shows that the entire GDR proceeds were received by the Company from one entity only. The Company has claimed that GDRs were initially subscribed by the four entities and were later transferred to Clifford. However, no proof of payment of subscription money for subscribing to GDRs by alleged four entities or proof of any allotment of GDRs made in their favour has been produced by the Company. Further, neither any proof of transfer of GDRs by these alleged four subscribers in favour of Clifford nor any proof of any consideration received by so called four entities from Clifford for the alleged transfer nor any proof of change of beneficial ownership of GDRs from the overseas depositories, has been produced by the Company in support of its claim. From the arrangement, as referred to in paras 32 and 33 above, it becomes clear that only one entity (i.e. Clifford) subscribed to the issue of GDR of the Company by taking loan from the Banco and the said loan taken by Clifford was secured by the Company by pledging the GDR proceeds. Therefore, the contention of the Company that GDRs were subscribed by four entities and not one, is not tenable as the subscription money was received only from one entity. Had this arrangement/mechanism, as discussed in paras 32-33, 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 (Noticee No. 2) 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 Noticee No. 2 from the Banco.

35. The Company has contended that the draft of Board resolution which was passed by the board of the Company on October 19, 2007 was provided by Mr. Rajinder Singh (Noticee No. 8) claiming it to be 'specific format' of resolution for Banco and that there was no scope of making alterations in the same. It is also contended that in the proforma resolution, no authority was given to Mr. Rajinder Singh (Noticee No. 8) to create any charge on the GDR proceeds of the Company. In this regard, it is noted through the Board resolution dated October 19, 2007 of MPS, Noticee No. 8 was authorized by the Company to open and operate the account of the Company with Banco and was also authorized to sign/execute various documents/agreements/undertakings, if and when so required. It is noted that the said resolution the Company also resolved 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.* I do not find any merit in such a contention that the Company acted on specific draft of resolution provided to it and, even if it is to be believed, the Company and its Directors should have raised questions/objection on the draft resolution. I note from the minutes of the Board Meeting dated October 19, 2007 that none of the directors have raised any question/objection on the proforma Board resolution, as claimed by the Company now. In any case, a company has to be held responsible for all resolutions passed by the board of directors of the Company. A company can not wriggle out of its obligations with the respect to resolutions passed by it, by retracting from the resolutions passed in its board meetings.

36. The Company has also referred to various provisions of Companies Act, 1956 like Sections 77(2), 372(A)(2) and 291, to contend that the in view of requirements of these provisions the Company could not have given guarantee to the loan undertaken by Noticee No. 2, the Company could not have provided such guarantee in the absence of specific resolution of the board of directors or the Company could not have given such guarantee unless it has interest in the same. The Company has also relied on Section 47(6)(3)(b) of the Foreign Exchange Management Act, 1999, to contend that the Company could have provided such guarantee only after obtaining prior approval of RBI which is absent in the present case. In this regard, I note that the provisions cited by the Company do contain

certain restriction/conditions regarding providing of guarantee to a loan by a company. All these provisions may also get attracted in the present case as the Company provided guarantee for the loan taken for subscribing to its GDRs. However, existence of such prohibitions restrictions in the provisions cited by the Company, does not give any immunity to the Company, if certain acts/omissions have been undertaken by the Company. The facts of the present case show that despite the restrictions/conditions contained in these provision, the Company had provided guarantee to the loan taken by the Noticee No. 2 from Banco, by pledging the proceeds of its GDR issue and the said loan amount was used by the Noticee No. 2 to subscribe to the GDRs of the Company. Therefore, the contentions raised by the Company on the basis of these legal provisions to seek immunity from any action that may be taken in the present proceedings, are untenable.

37. The Company has also relied on the findings of the forensic audit report given by the forensic auditors appointed by National Stock Exchange of India Ltd., to assert that the issue of GDR was in compliance with applicable laws, as recorded in the said forensic report. I find that the scope of the said forensic audit was not with respect to the violation of PFUTP Regulations, 2003, as alleged in the SCNs issued to the Company. Scope of the forensic audit and the present proceedings is different. The scope of the present proceedings is to determine the violations of PFUTP Regulations, 2003, as alleged in the SCN. No allegation in the SCNs with respect to violation of PFUTP Regulations, 2003 is the subject matter of the forensic audit or its report relied on by the Noticee No. 1. It is further noted from the said forensic audit report that the account charge agreement October 30, 2007, credit agreement dated October 29, 2007 and statement of bank account of the Company with Banco, were not part of the documents examined in the said forensic audit. Thus, such findings have no bearing on the present proceedings and the contention of the Company based on the said forensic audit report, is untenable.

38. Further, the Company has submitted that since coming to its knowledge about execution of said 'Account Charge Agreement' dated October 30, 2007 on March 13, 2009, it has taken up the matter with the concerned officials of Banco and others and that it has also initiated criminal proceedings to prosecute the alleged wrongdoers and also filed civil suit

for recovery of un-received GDR proceeds. In this connection, with regard to Civil Suit filed before the District Civil Courts of Lisbon against Banco seeking a refund of balance of GDR proceeds, the Company, based on communication received from its Advocate on March 12, 2018, has submitted that the arguments have been made by both of the parties and the Court has ordered for the production of evidence. Similarly, in the Criminal Complaint filed before DIAP against Banco, Rajinder Singh Negi (Noticee No. 8 who executed the said 'account charge agreement'), Hythe Securities (Lead Manager), Global Absolute Research and Clifford (GDR subscriber) and others, Mr. Peeyush Agrawal (Noticee No. 3) has made statement before the Office of Criminal Investigation in Process No. 4561/09 on May 17, 2010. The Company vide its letter dated February 14, 2020 has stated that the civil suit in the matter is still pending and the Company has also requested either passing favorable order discharging company and all directors or postpone passing of order until completion of pending case at Lisbon or mention in the order that any adverse remarks or an adverse order can not be used by any court of law in deciding the matter; whether in India or overseas. Further, vide its letter dated February 17, 2020 sent vide email dated February 20, 2020 received from Noticee No. 3 (in the capacity of MD of the Company), the Company by referring to order dated February 14, 2020 passed by SEBI in the matter of Visu International Ltd., has contended that in its case all those grounds exist which were absent in the case of Visu International Ltd. because of which adverse order dated February 14, 2020 has been passed against Visu International Ltd. The Company has also informed that the case before Court in Lisbon, Portugal is still pending at the stage of examination of witnesses.

39. In this regard, I find that GDR issue was made by the Company in the year 2007 and the complaint and the suit have been filed by the Company in the years 2009 and 2012, respectively, however, no tangible result has ensued even after 8/11 years of initiation of these Civil/Criminal proceedings, respectively. I note that as per European Commission for the Efficiency of Justice (CEPEJ) data relied on in an OECD case study on "Towards People – Centered and Innovative Justice in Portugal" the average time take in disposal of the case in the Courts of Portugal was 289 days in 2016. The Noticees have submitted that they had initiated criminal and civil proceedings in the years 2009 and 2012, respectively. However, these proceedings are still informed by the Noticees, to be pending

for 8/11 years when the average time taken for disposal of the cases by Courts in Portugal is 289 days. Long time being taken in the conclusion of the proceedings initiated by the Company, in contrast to the time taken generally by the Portugal Courts, raises doubts about the genuineness of the intention of the Company in seriously pursuing those proceedings for taking to logical conclusion. Be that as it may be, I find that as on date there is no final determination by the Courts in Portugal regarding the role of the Company in signing these agreements. The Company vide its letter dated February 17, 2020 has *inter alia* stated that the civil suit in the matter is still pending. In any case, these agreements have been acted upon by the parties including the Company and stand concluded by performance thereof by the respective parties. The validity of these agreements cannot be questioned in these proceedings. The said 'Account Charge Agreement' dated October 30, 2007 was signed by Mr. Rajinder Singh (Noticee No. 8), Director of MPS who was authorized by MPS vide Board resolution dated October 04, 2007 (**Annexure 6 to SCN**) wherein MPS had approved and passed a resolution for opening of a bank account with Banco for the purpose of receiving the proceeds of GDR issue and also authorized the Banco to use the funds as security in connection with the loans if any as well as to enter into any Escrow agreement or similar arrangements. I also find that the entire GDR proceeds were received by MPS on December 04, 2007 in its bank account bearing A/c. no. 6341085.15.001 held with Banco, thus there was performance of contract. I further note that the disclosure made by MPS to the BSE vide its corporate announcement dated December 05, 2007 did not mention about execution of 'Account Charge Agreement' dated October 30, 2007 by MPS securing the loan availed by the Clifford for subscribing of its GDR issue or that the GDR issue was subscribed by only one entity. Instead, MPS in its corporate announcement dated December 205 2007 stated that, "*The Company has successfully closed its maiden Global Depository Receipts (GDR) offering of US$ 10,000,000 on the Singapore Stock Exchange (SGX) on December 04, 2007. Consequently, the Board of Directors 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 US$ 2.418 per GDR."*. This announcement conveys that there was considerable demand for its GDR in the overseas market and the same were successfully subscribed. Thus, the investors in India were made to believe that the issuer company i.e. MPS has acquired a good reputation in terms of investment potential and, therefore,

foreign investors have successfully subscribed the GDR issue. Such misleading statements had the potential to induce the investors in India to trade in the shares of the Company. In fact there was only one subscriber i.e. Clifford which had subscribed to the GDR issue of MPS by obtaining loan from the Banco and that loan was further secured by the MPS itself by pledging the GDR proceeds. The Company has submitted that it had received intimation regarding receipt of confirmation to the subscription of GDR issue and the initial list of subscribers from its Lead Manager. However, on perusal of the bank account statement of MPS with Banco **(Annexure 7 to SCN)**, I note that the entire GDR proceeds were received by MPS on December 04, 2007 in its bank account bearing A/c. no. 6341085.15.001 held with Banco from only one entity. As such, the submissions made by the Company is not tenable and I find that the corporate announcement made by the Company on BSE, was wrongful.

40. The observations made in this order with respect to proceedings initiated by the Company before Courts in Lisbon, Portugal are made in the context of violation of provisions of securities laws as alleged in the SCNs and as requested by the Company in its letter dated February 14, 2020, the observations made herein may not be relied upon in the proceedings initiated by the Company in the Courts at Lisbon, Portugal, as deemed appropriate by such Courts.

41. The Company, by referring to an order dated February 14, 2020 passed by SEBI in the matter of Visu International Ltd., has sought to canvass that filing of FIR and initiation of civil proceedings by the company entitles it for exoneration in the present proceedings. In this regard, I note that order passed by the SEBI in Visu International matter while dealing with the plea of the concerned company involved therein, to the effect that it was not aware of the account charge agreement and that its authorized representative was not authorized into account charge agreement, observed that the company therein had not taken any action against the Bank or its authorized representative. The said order nowhere states as a proposition of law or fact that presence of such actions by the company involved therein would have *ipso facto* absolved the concerned company from the violations of the securities laws. In this regard, I also note that Hon'ble SAT in ***Transgene Bioteck Ltd. Vs. SEBI (Appeal No. 599 of 2019 dated February 11, 2020)*** while dealing with similar

plea of filing of FIR, in a similar case, observed as under:

> *"…….5. Before this Tribunal the only contention raised by the appellant was that they have not committed any fraud nor defrauded any investor and in fact the appellants were victims of fraud and forgery committed by one Mr. Nirmal Kotecha and his associates. It was contended that the promoters/ or directors of the company never received the GDR proceeds nor misappropriated it. Such contention was repelled by the WTM in the impugned order and cannot be accepted by us as we find that the appellants have not denied the fact that the company had made two GDR issues nor has denied the fact that the proceeds of the two GDR issues were transferred to various entities as brought out in the show cause notice. The only defense is that such transfer was made on the advice of Mr. Nirmal Kotecha on whose advice the company floated a subsidiary in Hong Kong and entered into agreement with Asia First Technologies Ltd. (AFTL) and SyMetric Sciences Inc. (symetric) for purchase of technology and thus the diversion of the GDR proceeds was done at the behest of Mr. Nirmal Kotecha cannot believed. The contention that the first information report has been lodged against Mr. Nirmal Kotecha cannot be a ground to mitigate the direct involvement of the appellant in the fraudulent scheme and diversion of the proceeds through two other entities……."*

42. As discussed above, the corporate announcements made by the MPS was false and misleading and the material and price sensitive information were also suppressed viz. (i). execution of account charge agreement dated October 30, 2007 by MPS in favor of Banco pledging the GDR proceeds for providing security to the loan taken by Clifford, (ii) execution of loan agreement dated October 29, 2007 by Clifford for obtaining loan from the Banco for subscribing the GDR issue of MPS, (iii) Clifford was the only subscriber of 4.65 million GDR issued by MPS. I find that all these events were price sensitive information and could have impacted the scrip price of MPS. I, thus, find that the corporate announcements made by MPS on December 05, 2007 regarding allotment of GDR issues might have mislead the investors and/ or created a false impression in the minds of the investors that the GDR issue was fully subscribed whereas the MPS itself had facilitated subscription of its GDR issue wherein the subscriber (Clifford) obtained loan from the Banco for subscribing the GDR issue of MPS, and MPS secured that loan by pledging the GDR proceeds with the Banco and, in this connection, MPS did not receive GDR proceeds to the extent of USD 08.90 from Banco.

43. From the above, I note that the act of MPS has resulted in 'fraud' as defined under the PFUTP Regulations, 2003. In this respect, it would be appropriate to refer to the Order of the Hon'ble Securities Appellate Tribunal ("Hon'ble SAT") dated October 25, 2016 *in*

Appeal No. 126 of 2013 (Pan Asia Advisors Limited vs. SEBI) wherein, while interpreting the expression of 'fraud' under the PFUTP Regulations, 2003, it was observed that:

> *"From the aforesaid definition (of 'fraud') it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud, irrespective of the fact any investor has actually become a victim of such fraud or not. In other words, under the PFUTP Regulations, SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though no investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud."*

44. Further, Hon'ble SAT in ***Jindal Cortex Ltd. Vs. SEBI (Appeal No. 376 of 2019 decided on February 05, 2020)*** observed as under:

> *"9…… Such judgements include* ***PAN Asia Advisors Limited and Anr. vs. SEBI (Appeal No. 126 of 2013 decided on 25.10.2016) and Cals Refineries Limited vs. SEBI (Appeal No. 04 of 2014 decided on 12.10.2017)****. The modus operandi adopted in all such cases have been similar i.e. the subscriber to the GDR issue (Vintage here) taking a loan from a foreign bank/ investment bank (EURAM Bank here) enabled by a Pledge Agreement signed between the issuer company (JCL here) and the loaner bank. This arrangement itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the company itself which enables the subscription to the GDR……..."*

45. Similarly, in the matter of ***Kanaiyalal Baldevbhai Patel v. SEBI (2017) 15 SCC 1****,* the Hon'ble Supreme Court has observed as under:

> *"if Regulation 2(c) of the 2003 Regulations was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities".*

46. In view of the above, I note that the arrangement of MPS, in allotting GDR issue to only

one entity i.e. Clifford which subscribed the GDR issue of MPS by obtaining loan from Banco and the same was again secured by the MPS by pledging its GDR proceeds, seen along with the misleading corporate announcements made by MPS on December 05, 2007, lead to conclusion that the same were done in a fraudulent manner which had the potential to mislead or induce the investors to sale or purchase of its scrip. The Noticee No. 1 has, therefore, violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003.

47. I note that the said 'Account Charge Agreement' dated October 30, 2007 was signed by Mr. Rajinder Singh (Noticee No. 8), Director of MPS who was authorized vide Board resolution dated October 04, 2007 (**Annexure 6 to SCN**) wherein MPS had approved for opening of a bank account with Banco for the purpose of receiving the proceeds of GDR issue and had also authorized the Banco to use the funds as security in connection with the loans if any as well as to enter into any Escrow agreement or similar arrangements. As per minutes of the Board meeting of MPS held on October 19, 2007, Mr. Peeyush Agrawal (Noticee No. 3), Mr. Sanjiv Bhavnani (Noticee No. 4), Mr. S. N. Sharma (Noticee No. 5), Mr. Adesh Jain (Noticee No. 6), Mr. Karun Jain (Noticee No. 7) and Mr. Rajinder Singh (Noticee No. 8), the directors of the Company, had attended the Board meeting.

48. Noticee No. 4 vide its reply dated February 21, 2018 as well as during the course of hearing held on January 25, 2019 submitted that he had joined MPS in the year 2002 when his company M/s Infotecnics India Ltd. was acquired by M/s Visesh Infotecnics Ltd. (former name of 'MPS') and that after resigning from MPS on July 24, 2008, he is fighting in Court for clearing his name from the records of the Company and also to recover his dues from MPS. In respect of issuance of GDRs, the Noticee No. 4 has submitted that he is from technical background not having much knowledge about other activities of the Company and that he has also no idea about the GDR subscriber i.e. Clifford. I note that Noticee No. 4 was associated with the Company during the relevant time period when GDR issue was made by the Company. Further, on perusal of the minutes of Board meeting dated October 19, 2007, I note that the Noticee No. 4 was acting as Managing Director and CEO of the Company and, therefore, it cannot be accepted that being from technical background, the Noticee No. 4 was not aware about other activities of the Company. Moreover, he has

attended the Board meeting dated October 19, 2007 wherein the Company resolved to open bank account in Banco and also authorized it to use the funds so deposited in that bank account as security in connection with loan. Therefore, the contention of the Noticee No. 4 is untenable.

49. The Noticee Nos. 5 and 6 submitted that they were practicing Chartered Accountants and were Non-Executive Independent Director and that they are not covered under the definition of 'officer in default', as defined under Section 5 of the Companies Act, 1956. It was also submitted that they had no knowledge about the execution of said 'Account Charge Agreement' dated October 30, 2007 by the Company with the Banco and that the seal of the Company as shown on the said agreement, was not of the Company and it is total fraud played on the Company. Noticees have further submitted that as a Non-Executive Independent Director, they were not involved in the day to day affairs of the company and that during the board meeting, authorization was given only with respect to opening a bank account for the proposed GDR and no authorization was given to Mr. Rajinder Singh (Noticee no. 8) for execution of any account charge agreement. In this regard, I note that the Board of directors plays a key role in balancing the interests of managements and shareholders and the independent directors are expected to, *inter alia*, ensure fairness and transparency in dealings of the Company. Where an act or omission occurs through board processes, then such non-executive directors can be held liable for such acts/omissions of company, if such directors had participated in the relevant board meetings and did not act diligently. In the present case, I note that Noticee No. 5 and 6 had attended the board meeting dated October 19, 2007 of the Company wherein resolution was passed for opening a bank account with Banco and authorizing Banco to use the GDR proceeds as security against loan, if any. Thus, Noticee No. 5 and 6 were aware of authorization for pledge as the board resolution dated October 19, 2007 clearly mentioned 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,…"* and did not raise any objection and thus failed to act diligently. Accordingly, Noticee No. 5 and 6 are liable for the violations alleged in the SCN. I, further, note that the provisions of Companies Act, 1956 do not draw any distinction between director and independent director, in respect of their liability for the fraud committed by the Company, provided the same has been done

with their knowledge and consent, whether express or implied. In view of these facts, I find that the ingredients of Section 149(12) of the Companies Act, 2013 and Regulation 25(5) of the SEBI (LODR) Regulations, 2015, though not applicable in the present case, are also fulfilled. There are judicial pronouncements on the liability of directors including ***K.K Ahuja vs. V.K Vora (2009) 10 SCC 48; National Small Industries vs. Harmeet Singh Paintal (2010) 3 SCC 330 and S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Anr (2005) 8 SCC 89*** in general upholding the position that the liability of any director in a company is restricted to actions of omission or commission committed by the company which had taken place with the knowledge and consent, whether explicit or implied, of such director.

50. Noticee No. 5 and 6 have relied upon Section 27 of the SEBI Act, 1992 to contend that no person should be held liable under the Act, if he proves that the offence was committed without his knowledge or he had exercised all due diligence. It has been contended that since in the board meeting dated October 19, 2007 authorisation was given only for opening of bank account and not for any account charge agreement, therefore they had no knowledge and they had carried out proper due diligence. Therefore, in view of Section 27 of the SEBI Act, 1992 they are not liable. As discussed in previous para, the board resolution dated October 19, 2007 clearly mentioned 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,…"* which shows the Noticees had knowledge. Further, Noticee did not raise any query/objection on offering funds deposited in the bank account as security for loan and thus, failed to act diligently. Therefore, the requirements of Section 27 are satisfied in the present case. Further, liability of board of directors of a company for the acts of Company flows from the provisions of the Companies Act, 1956. Section 27 of the SEBI Act, 1992 makes any person including directors liable for the acts of company, if such person is involved in the day to affairs of the company. It does not exempt the directors from the general liability under the Companies Act, if the act alleged has been committed at the level of board of directors. Therefore, contention of the Noticees based on Section 27 is untenable.

51. Noticee No. 5 and 6 have also contended that in the board meeting dated as per heading of the agenda item no. 3 of the minutes of the board meeting, only "Opening of Bank Account with Lisbon Bank" was approved. It is further contended that the authorization

was given to the Bank to use the proceeds deposited with it as security for a loan if any taken by the Company and not by any other third party. In this regard, I note that interpretation canvassed by the Noticees to the board resolution dated October 19, 2007 to the effect that "loans taken, if any" implies that it was in respect of loan taken by the company only and not the third party, is not the only possible interpretation. The other possible interpretation is that it can be for loan taken by a third party also. Hon'ble SAT in in ***Adi Cooper's case (Infra),*** while dealing with the interpretation of a similar board resolution, observed that *the resolution could also mean that the proceeds would be utilized by the bank as security in connection with a loan taken by the company itself.* Thus, as per Hon'ble SAT also, the interpretation canvassed by the Noticees is a possible interpretation and it is not the only interpretation. In any case, whether it was for the loan taken by the Company or for the loan taken by the third party, it was expected from Noticee No. 5 and 6, being independent director of the company, to raise queries/objections viz: whether any such loan has already been taken or is being taken and for what purposes, which have not been raised by the Noticee No. 5 and 6. Thus, the contention raised by the Noticee No. 5 and 6 in this regard is not tenable.

52. Noticee No. 5 and 6 have also relied upon MCA Circular dated July 29, 2011, which provides that no director shall be held liable for any violation by the company or by any other officer of the company, if the violation occurred without his or her knowledge and without his/her consent/connivance or when he/she has acted diligently to contend that the Noticees are not liable for the violations alleged in the SCNs. I note that the directions contained in the said circular are applicable for launch of prosecution by RoC or Regional Directors for offences under the provisions of Companies Act, 1956. The said circular has no relevance to the facts and circumstances of the present case, since, the present proceedings are civil proceedings for determining violation of the provisions of securities laws, as alleged in the SCNs. However, even on the parameters laid down in the said circular i.e. absence of knowledge attributable through board processes and absence of consent/connivance/failure to act diligently, the Noticees are liable because they attended the board meeting dated October 19, 2007 and did not raise any objection/question to the resolution so as to show that they acted diligently.

53. I note that in its written submissions, Noticee no. 5 and 6 have also referred and quoted extracts from various orders passed by the Hon'ble Supreme Court, Hon'ble SAT and SEBI. These orders of Hon'ble Supreme Court and Hon'ble SAT have been dealt hereunder:

i) Judgment of Hon'ble Supreme Court in ***Adjudicating Officer, SEBI Vs. Bhavesh Pabari and Others 2019 (3) SCALE 447*** have been relied on to contend that if there is no limitation prescribed for taking action it must be exercised within a reasonable time. In the present case, I note that 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 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 made before the year 2009 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. Such information included inter alia the details of (a) issuer companies, (b) custodian of securities, (c) overseas depository, (d) overseas banks, (e) subscribers of GDR issue, (f) lead manager, (g) various transactions, etc. This information was not readily forthcoming. Therefore, SEBI had to approach the foreign regulators for assistance in procuring information from the concerned entities situated outside India. 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 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. Visesh Infotechnics Ltd. (Noticee No. 1) was one such scrip where such *modus operandi* was also observed and the

investigation was completed in March, 2017. I note that after completion of the investigation, the SCN was issued to the Noticees on January 31, 2018. In the above circumstances, the investigation has been conducted and proceedings have been initiated in reasonable time and thus are in accordance with the aforesaid judgment of Hon'ble Supreme Court.

ii) ***Adi Cooper & Anr. Vs. SEBI (order dated November 05, 2011 in SAT Appeal No. 124 of 2019)*** have been relied upon by the Noticees to contend that the resolution dated October 19, 2007 passed by the Company can not be inferred to mean that it was passed to authorize Banco to utilize the GDR proceeds as security in connection with a loan given to Clifford. In this regard, I note that Noticees have quoted certain paras of the said order passed by the Hon'ble SAT without properly appreciating the complete facts and circumstances under which the said order came to be passed. In Adi Cooper's case, Hon'ble SAT found that the Appellant therein had only attended the board meeting dated January 30, 2008 wherein the resolution was passed by the concerned company to open an account with the EURAM bank for the purpose of deposit of the GDR proceeds. The Appellant therein had ceased to be a director of the company at the time when the actual taking of loan by the subscriber and pledging of GDR proceeds for such loan, took place. Thus, having regard to such facts and circumstances of the case, Hon'ble SAT observed that appellant therein cannot be said to be actively involved in the manipulation of the market through the fraudulent scheme. Moreover, as already discussed in para 51 above, regarding the interpretation of the similar resolution, Hon'ble SAT observed that the expression "loan, if any" in the resolution, is open to interpretation. Subsequently, Hon'ble SAT has upheld the orders passed by SEBI in Transgene Bioteck and Jindal Cortex matters involving similar resolutions and proceeded with the similar interpretation on which the present SCN is premised. In the present case, the Noticee No. 5 and 6 were the non-executive independent directors of the Company from June 08, 2004 to Novemebr 14, 2013 and February 20, 2004 to May 29, 2014, respectively. They were the directors of the company not only at the time of passing of resolution dated October 19, 2007 authorizing opening of bank account with Banco and pledging the GDR proceeds with Banco for the loans taken, if any, but also at the time of taking of loan by the Clifford from Banco and also at the time of making of wrong disclosures by the Company to the

stock exchanges regarding subscription of GDRs. Thus, ratio sought to be derived by the Noticees from the aforesaid order passed by Hon'ble SAT is not correct.

iii) ***Pritha Bag Vs. SEBI (order dated February 14, 2019 in SAT Appeal No. 291 of 2017)*** have been cited by the Noticees to contend that only the person who is "officer in default" is liable for the acts of company. In this regard, it is noted that "officer in default" is responsible for only those acts of company regarding which liability has been fastened on "officer in default" by the provisions of the Companies Act, 1956/2013. Thus, in the case of Pritha Bag, Hon'ble SAT held that liability under Section 73 under the Companies Act, 1956 is not on all the directors of company but is only on those directors of company who are "officer in default". In the present case, liability of the Noticees has to be determined in the context of violation of the provisions of the securities laws as alleged in the SCN. In such case, the concept of "officer in default" has no application and therefore, the reliance placed by the Noticees on the order passed by Hon'ble SAT in Pritha Bag case is misplaced.

iv) Judgment of Hon'ble Supreme Court in ***SEBI vs. Kishore R. Ajmera (2016) 6 SCC 36*** and; ***Ram Sharan Yadav Vs. Thakur Muneshwar Nath Singh AIR 1985 SC 24*** and other orders of Hon'ble SAT in ***R. K. Global Vs. SEBI*** (Order dated September 16 in Appeal No. 158/2008), ***Narender Ganatra Vs. SEBI*** (Order dated July 29, 2011 in Appeal No. 47/2011), ***Sterlite Industries(India) Ltd. Vs. SEBI*** (2001) 34 SCL 485 (SAT) and ***Parsoli Corporation Vs. SEBI*** (Order dated August 12, 2011 in Appeal No. 146/2011) to contend that "intent" is pre-requisite to examine violation of Regulation 3 and 4 of the PFUTP Regulations and that fraud is a serious charge and hence, must be supported by higher degree of proof. Regarding the requirement of "intent" for the purpose of charge of "fraud", I note that Kishore Ajmera case, as cited and quoted by the Noticee No. 6 does not lay down any such requirement. Regarding the higher degree of proof, as observed in the orders relied on by Noticee No. 5 and 6, reference may be made to the Judgment of the Hon'ble Supreme Court in ***SEBI Vs. Kanaiyalal Baldevbhai Patel (2017) 15 SCC 1***, wherein it was observed, "…….*the definition of fraud which is an inclusive definition and therefore has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of*

inducing another person to deal in securities. Certainly the definition expands beyond what can be normally understood to be a fraudulent act or a conduct amounting to fraud……..'' In the Kanaiyalal matter, Hon'ble Supreme Court further observed, *"…….the difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required……."* In the present case, in the board meeting dated October 19, 2007 of the Company attended by the Noticee No. 5 and 6 also, the opening of account with Banco was approved alongwith authorization to pledge the GDR proceeds to be deposited in it to secure the loans taken, if any. The said account charge was not disclosed to the investors and a wrong disclosure was made to the stock exchanges regarding successful subscription of GDRs by the four subscriber whereas in fact there was only one. This arrangement had the potential to "induce" or to mislead the investors to trade in the securities of the Company. I note that the evidence available on record in the form of board resolutions, account charge agreement, loan agreement, disclosure made to the stock exchanges by the Company, bank statements of the company, etc. shows higher degree of probability, of bringing out of such inducement or misleading investors to deal or abstain from dealing in the securities of the company and consequential fraud committed, in the present matter. Therefore, I find that evidence available on record and inferences drawn from such evidence show higher degree of probabilities and is in accordance with observations made by the Hon'ble Supreme Court and Hon'ble SAT, in the cases, relied on by the Noticees.

v) Noticee No. 5 and 6 have also relied on the judgment of the Hon'ble Supreme Court in ***Gorkha Security Services Vs. Govt. of NCT of Delhi & Ors. (2014) 9 SCC 105*** firstly, to contend that it would be incumbent for a show cause notice to contain the facts of the case in a precise manner. Noticees based on the said judgment, have also

contended that SCNs must disclose particular penalty/action which is proposed to be taken. I find that the case is factually distinguishable from the present case and not applicable to the present proceedings. This is for the reasons that in Gorkha Security case, the matter pertained to blacklisting of a contractor by a government agency, which resulted in depriving the contractor from entering into any public contracts with government, thereby violating the fundamental rights of equality of opportunity in the matter of public contract of such person. Further, in Gorkha Security case, the contractor was blacklisted for breaching the terms of the contract. On the other hand, the present SCN has been issued for breach of provisions of law. In Gorkha Security case, blacklisting was imposed by way of penalty, whereas in the instant proceedings, the purpose of issuing directions, if found necessary, would be preventive and remedial in nature. In Gorkha Security Case, blacklisting of the contractor was provided in the governing contract itself as a penalty to be imposed in case of breach of terms of contract, whereas, in the present matter provisions of law under which directions are contemplated to be issued, confer discretion to SEBI to take such measure as it thinks fit in the interest of investors and securities market. Keeping in view the above points that clearly distinguishes the facts and circumstances of Gorkha Security case from the facts of the present proceedings, reliance placed by the Noticees on Gorkha Security case to contend that SCNs must disclose particular penalty/action which is proposed to be taken, is misplaced. Apart from the observations regarding applicability of the Gorkha Security case, I note that Noticees have only relied on the said judgment to contend that it would be incumbent for a show cause notice to contain the facts of the case in a precise manner without specifically pointing out as to in what respect SCN issued in the present matter is lacking. However, I note that the SCN in the present case, clearly brings out the charges levelled against the Noticees as well as the Sections of the SEBI Act under which directions are proposed to be issued.

54. In light of the above, I note that the Noticee Nos. 3 to 8 had attended the Board meeting dated October 04, 2007 wherein the Company resolved to open bank account in Banco and also authorized it to use the funds so deposited in that bank account as security in connection with loan. Further, none of these Noticee Nos. 3 to 8 has produced any material or record reflecting objections raised by them on the proposal that Banco will use the

amounts deposited in its bank account as security to loan which ultimately facilitated Clifford to obtain loan from Banco for subscribing the GDR issue of the Company. In respect of allegation against the Noticee No. 8 who had signed the 'account charge agreement' dated October 30, 2007 on behalf of MPS, I note that he was not only having the knowledge but also played an active role and by execution of said 'Account Charge Agreement' dated October 30, 2007, actually facilitated the subscription of GDR issue of MPS and also authorized the Banco to use the GDR proceeds of MPS as security to the loan obtained by Clifford.

55. In respect of liability of the directors for the fraud committed by a Company, the Hon'ble Supreme Court, in the matter of ***N Narayanan v. Adjudicating Officer, SEBI (2013) 12 SCC 152*** has observed a sunder:

"33. 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. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed *and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."*

56. In view of the above, I find that the Noticee No. 3 to 8 who participated in the Board meeting of MPS on October 19, 2007 wherein approvals were made to, among other, authorizing the Banco to use the GDR proceeds as security in connection with the loan and the same was acted upon by MPS (Noticee No. 1) in which the Noticee No. 8 had signed and executed the account charge agreement dated October 30, 2007 on behalf of MPS (Noticee No.1). Thus, the Noticees No. 3 to 8 were part of the arrangement which resulted in facilitating the subscription of GDR issue of MPS wherein subscriber (Clifford) obtained loan from Banco for subscribing the GDR issue of MPS and, MPS pledged the GDR proceeds with the Banco securing the loan taken by Clifford. Further, the corporate announcement made by MPS was also false and misleading to the extent that its GDR issue was successfully allotted whereas the same was subscribed by only one entity i.e. Clifford by obtaining loan from the Banco which was again secured by the MPS (Noticee

No.1) by pledging the GDR proceeds. Thus, the directors of MPS (Noticee No. 1) namely; Mr. Peeyush Agrawal (Noticee No. 3), Mr. Sanjiv Bhavnani (Noticee No. 4), Mr. S. N. Sharma (Noticee No. 5), Mr. Adesh Jain (Noticee No. 6), Mr. Karun Jain (Noticee No. 7) and Mr. Rajinder Singh (Noticee No. 8) have violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003.

57. With regard to allegation made in the SCN against Noticee No. 2, the Noticee No. 2 has claimed that it was never in contact with the MPS and that it was not party to the alleged scheme. I note that the credit agreement dated October 29, 2007 executed between Noticee No. 2 and Banco specifically mention that the borrower shall use loan amount, to subscriber the GDRs of the Company, to the value of USD 10 million. I note that Clause 4 of the credit agreement included some conditions precedent provided at its Schedule 1, which were essentially required to be fulfilled before disbursement of any loan amount by the bank (Banco). One of the condition precedent was that Banco should have received and Noticee No. 2 should have been notified of the receipt of the certified copies of Board minutes and resolutions of the Company approving and authorizing the execution, delivery and performance of security obligations under the credit agreement. It shows that Noticee No. 2 was aware that the loan being taken by it was being secured by the Company. I further note that the Banco vide its letter dated March 16, 2009 has specifically mentioned that Clifford has defaulted in repayment of loan for USD 8.79 million and therefore, Banco will appropriate the same amount from the deposit of MPS. Thus, I find that Noticee No. 2 had the knowledge of the fact that the MPS (issuer of GDR) itself was to act as a security provider for the loan being taken by Noticee No. 2 for subscribing the GDR issue of MPS. I, therefore, find that the Clifford (Noticee No. 2) acquired the GDRs of MPS to the extent of USD 8.79 million, for free and at the cost of investors of MPS and the loan of Clifford to that extent has been appropriated by Banco from the deposits of the GDR proceeds of MPS with Banco. Thus, the claim of Noticee No. 2 that it was not a party to the scheme is untenable and not acceptable. Therefore, I find that the Noticee No. 2 has violated provisions of sections 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4 (1) of SEBI (PFUTP) Regulations, 2003.

DIRECTIONS:

58. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, hereby direct that:

a. Noticee No. 1 shall continue to pursue the measures to bring back the outstanding amount of $ 8.90 million into its bank account in India. It is clarified that Noticee No. 3, Noticee No. 7 and all other present directors of Noticee No. 1 shall ensure the compliance of this direction by Noticee No. 1 and furnish a Certificate from a peer reviewed Chartered Accountant of ICAI along with necessary documentary evidences to SEBI, certifying the compliance of this direction.

b. Noticee No. 1 is restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities, directly or indirectly, in any manner whatsoever or being associated with the securities market in any manner, whatsoever, till compliance with directions contained in para 58(a) above and thereafter, for an additional period of two years from the date of bringing back the money.

c. Clifford Capital Partners A.G.S.A (Noticee No. 2), Mr. Peeyush Agrawal (Noticee No. 3), Mr. Sanjiv Bhavnani (Noticee No. 4), Mr. S. N. Sharma (Noticee No. 5), Mr. Adesh Jain (Noticee No. 6), Mr. Karun Jain (Noticee No. 7) and Mr. Rajinder Singh (Noticee No. 8) are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 5 years from the date of this order. During the period of restraint, the existing holding of securities including units of mutual fundsof these Noticees shall also remain frozen.

59. This Order shall come into force with immediate effect.

60. A copy of this Order shall be forwarded to the Noticees, recognized stock exchanges, depositories and Registrars and Transfer Agents (RTA) of mutual funds for information

and necessary action.

61. A copy of this order may also be sent to the RBI, Enforcement Directorate and Ministry of Corporate Affairs for information and necessary action, if any.

62. This Order shall come into force with immediate effect.

Sd/-

Place: Mumbai

ANANTA BARUA

Date: March 06, 2020

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA