SECURITIES AND EXCHANGE BOARD OF INDIA

CLARIFICATION TO THE CONFIRMATORY ORDER DATED AUGUST 26, 2016 BEARING REFERENCE NUMBER WTM/RKA/ISD/116/2016 IN THE MATTER OF MISHKA FINANCE AND TRADING LIMITED IN VIEW OF THE MISCELLANEOUS APPLICATION FILED BY MR. NITINKUMAR DINDAYAL DIDWANIA

1. Securities and Exchange Board of India ("SEBI"), vide an *ad interim ex-parte* order dated April 17, 2015 (hereinafter referred to as "*interim order*") in the matter of Mishka Finance and Trading Ltd, had restrained 129 entities, including Mr. Nitinkumar Dindayal Didwania from accessing the securities market and further prohibited them from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever, till further directions.

2. The directions issued by SEBI vide the *interim order qua* Mr. Didwania (amongst others) were confirmed vide order dated August 26, 2016 (hereinafter referred to as "*the confirmatory order*") subject to certain relaxations as mentioned therein.

3. Subsequent to the *confirmatory order*, Mr. Didwania vide letter dated August 31, 2016 (titled as a Miscellaneous Application), *inter alia*, submitted the following:

   "1. This Miscellaneous Application is being filed before your Honor with a request to consider the grounds and prayers which have not been dealt with in the common Confirmatory order dated August 26, 2016.

   2. Your Honor had given an opportunity of personal hearing on July 27, 2016 wherein written as well as oral submissions were placed before your Honor. I had made specific submissions by my letter dated August 23, 2016.

   3. All my submissions have been reproduced in para 12 (page 49 to 56) of the confirmatory order dated August 26, 2016, but have not been specifically dealt with. I submit that the confirmatory order has a huge impact on my business, more specifically on the listed entity Veritas (India) Limited of which I am the promoter and Director.

   4. You are requested to kindly deal with each and every ground and prayer in my submissions made therein and more specifically reproduced hereunder:

   i) ……

   to

   xiv) …….

   xv) The Applicant also sought the ratio of the partial relief ommunication dated January 20, 2016 as to

   - *What is the purpose of keeping any amount in escrow?*

- *What is going to be the application of the amount in the escrow account?*
- *What is the market abuse that SEBI seeks to prevent or remedy by keeping the amount in escrow account?*
- *How does keeping any amount in escrow account help prevent or remedy the apprehended market abuse, if any.*

xvi) *The Applicant is the Chairman and promoter of Veritas India Limited which is a listed company and holds about 25% interest in this Company. Due to the SEBI Orders serious operational difficulties are being faced by the Company which in turn is adversely affecting the interest of investors and other shareholders in the company. The company has had plans for expansion into the business of manufacturing of PVC and storage tank terminal facility chemical and petrochemical products. The expansion will come at an approximate cost of $250 million but due to the Ex-parte Order investors and banks have held back their wallets awaiting for the outcome of these proceedings. SEBI has given no justification for an order that affects fund raising capabilities of the listed company which adversely affects the shareholders and is prejudicial to the interest of shareholders. The order punishes not only me but also the Company Veritas (India) Limited and its shareholders. I have received representations in this regard from shareholders of Veritas India Limited stating that they are adversely affected by your Honors ex-parte order.*

xvii) ……

to

xlii) ……

5. *Further, the Applicant had specifically prayed for the following by letter dated August 23, 2016, which have also not been dealt with by your Honor:-*

a) ….

b) ….

c) *Allow the Applicant to transfer the shares of listed company (Veritas) where the Applicant is the promoter within promoter group interse as and when required.*

d) *Allow the Applicant to increase or decrease / pledge his shareholding in listed company (Veritas) where the Applicant is a promoter for QIP/fresh issue/right issue by such listed companies etc, and for raising resources for the listed company (Veritas).*

e) *Allow the Applicant to subscribe fresh shares /purchase shares of listed company (Veritas) where the Applicant is a promoter in open market as and when required.*

6. *It is submitted that, in this regard, SEBI had also sought clarification by their email dated August 24, 2016 as to the name of the company where the Applicant is a promoter and Director and the same was replied by the Applicant on the very same day.*

However, the common confirmatory order dated August 26, 2016 does not deal with the above prayers but has granted relaxations / reliefs. As per para 85 (a) of the order the Applicant is allowed ***to sell the securities lying in his demat account and deposit the sale proceeds in an***

interest bearing escrow account with a nationalized bank *and 85 (b) allows the Applicant to* ***utilize the sale proceeds*** *lying in the escrow account "upto 25% of the value of the portfolio or the amount in excess of the profit made / loss incurred or value of shares purchased to give exit,* ***whichever is higher****, for business purpose and / or for meeting any other exigencies or address liquidity problems etc."*

The Applicant states that as per para 16, Table V of the ex-parte ad-interim order dated April 17, 2015 the alleged profit made by the Applicant is approximately Rs. 3.85 crores. The current value of Veritas (India) Limited shares held by me itself is approx. 109.00 Crores.

The Applicant had already submitted before your Honor that for the purpose of expansion of business of the listed company (Veritas), the Applicant may need to pledge his shares of the listed company (Veritas) where he is the promoter and Chairman and is ***NOT*** *looking to sell his stake in the listed entity (Veritas).*

Your Honor has allowed the sale of securities which is in excess of the alleged profit booked for business purposes and other exigencies. I submit that there is no reason when the sale of securities in demat account is allowed for exigencies why pledge of securities for the benefit of listed company (Veritas) where the Applicant is a promoter should not be allowed.

It is also submitted that, without prejudice to the right to appeal against the common confirmatory order, till SEBI order is modified by your Honor or the Appellate Tribunal, the Applicant undertakes to maintain a minimum unencumbered balance of securities worth Rs. 3.85 Crores (alleged amount of profit booked) in demat account or in the escrow account and not sell or pledge such securities of this value.

The Applicant submits that, your Honor has given similar relief in the matter of Brij Bhushan Singhal and Neeraj Singhal vide order no. WTM/RKA/ISD/97/2016 dated August 19, 2016 wherein the noticees were granted the permission to pledge their shares of a company in which they were the promoter. The operative part of the order states, " I allow Mr Brij Bhushan Singhal and Mr Neeraj Singhal ***for credit of invoked shares*** *of Bhushan steel Ltd from L and T Fincorp Ltd, L and T Finance Ltd and Family Credit Limited, as the case may be,* ***in their de-mat account*** *and thereafter,* ***further pledge these shares with consortium of banks/lenders****." In this order SEBI had not even insisted that the amount of alleged profit / loss should be retained in escrow / demat account.*

Therefore, I request your Honor to grant the prayers set out in para 5(c), (d) and (e) above at your earliest."

4. In this regard, it is pertinent to note that vide the *confirmatory order* dated August 26, 2016, I had confirmed the directions issued vide the *interim order* subject to the relaxations that have been specifically mentioned therein. The said relaxations have been given to the entities against whom the *confirmatory order* has been passed (including Mr. Didwania) after a holistic consideration of the facts and circumstances of the matter, the replies /submissions of the

entities and the prayers made by them vide various communications in that regard as noted in the *confirmatory order*. I note that the representation / application dated August 31, 2016 by Mr. Didwania has been received by SEBI after passing of the *confirmatory order* dated August 26, 2016. I also note that at this stage, there is no quasi-judicial proceeding pending before me in the matter of Mishka Finance and Trading Ltd. *qua* Mr. Didwania. However, for the purpose of administration and implementation of the directions issued vide the *confirmatory order*, in view of the doubts that have arisen out of the application filed by Mr. Didwania, it is hereby clarified that:

i) The *confirmatory order* does not place any restriction as regards to whom the securities can be sold by the entities. The only condition in that regard is that the proceeds of any sale have to be kept in an interest bearing escrow account with a nationalized bank and the utilization of the sale proceeds has to be in accordance with paragraph 84 read with paragraph 85 of the *confirmatory order*. Thus, an entity is free to sell the securities lying in its demat account(s) (as on the date of the *interim order*) to any entity including a promoter or non-promoter.

ii) An entity can pledge the securities lying in its demat account(s) subject to the condition that the stipulation in paragraph 85(b)(ii) of the *confirmatory order* is adhered at all times.

iii) In terms of paragraph 84 (e) of the *confirmatory order*, the entities can avail the benefits of corporate actions. Thus, if an entity is a shareholder of a listed company, it can infuse funds in the company by subscribing to securities in any kind of issuance of securities by the company permitted by law including a further public offer, rights issue, preferential issue, qualified institutional placement and bonus issue.

iv) A debarred entity can also buy shares in the companies and in the manner specified in paragraph 84(a) of the *confirmatory order* irrespective of the fact whether he/she/it is already a shareholder in the said companies or not.

5. The representation/Miscellaneous Application made by Mr. Didwania vide letter dated August 31, 2016 is disposed off accordingly.

Sd/-

DATE: September 26th, 2016
PLACE: MUMBAI

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA