

**Before the  
Member and Core Settlement Guarantee Fund Committee (MCSGFC)  
Of  
NSE Clearing Ltd. (NCL)  
Exchange Plaza, Bandra Kurla Complex, Bandra East, Mumbai – 400051  
Held on July 22, 2020**

**In the matter of Clearing Member**

**Edelweiss Custodial Services Ltd.  
with respect to Indianivesh Shares & Securities Pvt. Ltd.**

**Members Present:**

Mrs. Bhagyam Ramani, Chairperson (Present through VC from Boston, USA)  
Mr. Harun R Khan, Committee Member (Present through VC from Bhubaneswar)  
Mr. N. K Maini, Committee Member (Present through VC from New Delhi)  
Mr. Vikram Kothari (MD), Committee Member (Present through VC from Mumbai)

**Also Present:**

Mr. Dhawal Shah	Head-Compliance
Ms. Jinal Shah	Chief Manager
Ms. Divya Potdar	Manager
Mr Chirag Nagda	Company Secretary

**BACKGROUND**

1. **M/s Edelweiss Custodial Services Limited.** (hereinafter referred to as “**Noticee**”) is a registered Professional Clearing Member of NSE Clearing Ltd. (NCL).
2. NSE Clearing Ltd (HO) received a letter dated March 30, 2020 (which was also marked to NSE), from Indianivesh Shares and Securities Private Limited (herein after referred to as Indianivesh) in respect of the Noticee stating, inter alia, as under:

“there has been mark to market losses which has been funded by M/s Edelweiss Custodial Services Limited and M/s Edelweiss Custodial Services Limited was covered under STL which was available for credit balances of clients.”

3. NSE Clearing Ltd. (hereinafter referred to as “NCL”) conducted Limited Purpose Inspection (LPI) of the Noticee with respect to Indianivesh Shares and Securities Private Ltd. in April 2020 in Futures & Options and Currency Derivative segment for the period from April 01, 2019 to March 31, 2020.
4. Show Cause Notice (SCN) dated June 04, 2020 was issued to the Noticee for violations observed during the inspection.
5. The Noticee was granted an opportunity of Personal Hearing before the Committee in its meeting held on June 16, 2020 and was represented by the following officials.

Sr No	Name of the Representative	Designation
1	Mr. Prashant Mody	Head Legal and Compliance
2	Ms. Kashmira Mathew	Senior Executive Vice President
3	Mr. Atul Bapna	Senior Vice President
4	Ms. Sania Surve	Senior Vice President
5	Mr. Vishal Ved	Associate Director

6. The Noticee also has given written submissions in response to SCN on June 11, 2020.

**7. Details of violations, Noticee’s submissions and Committee’s observations:**

**7.1 Failure to collect Mark to Market (MTM) Loss in cash**

**7.1.1 Violation Details**

Noticee has failed to collect MTM loss in cash from Indianivesh on 4 days amounting to Rs.133.26 Crs.

**7.1.2 Noticee’s oral and written submissions to the Show Cause Notice of NCL**

The Noticee stated that the ledger of Indianivesh includes MTM debit as well as other periodic charges levied by the Noticee viz. demat charges, clearing charges and trade exposure/interest on margin, shortfall charges etc. Hence, the actual MTM loss amount should be reworked after excluding all such charges/ considering all other entries of ledger.

The Noticee also stated that for the dates cited in SCN of NCL, it was adequately covered by collaterals available with it, after adjusting all margin requirements.

The Noticee also represented that, NSE circular ref. No. NSE/INSP/38154 dated June 27, 2018, clarifies that MTM loss can be collected in non-cash form. The Noticee has, therefore, collected the MTM loss by way of cash equivalent collateral including BG/FD etc. from Indianivesh.

## **7.2 Violation of its own Risk Management Policy and general principles of risk management.**

### **7.2.1 Violation Details**

Out of 232 days, on 131 days ledger balance of Indianivesh (comprising debits and credits pertaining to MTM losses and profits, charges and penalties levied by the Noticee to Indianivesh) had negative (debit) ledger balance. On 56 days, the outstanding balance was more than Rs 1 crore during the period April 2019 to March 2020.

The trading member, Indianivesh, incurred MTM losses almost on all days from March 12, 2020 to March 31, 2020 resulting in increase in ledger balance from Rs.38.84 Crs (negative) on March 12, 2020 to Rs.95.68 Crs (negative) on March 31, 2020. The ledger balance continued to remain negative inspite of the Noticee liquidating securities and recovery of some portion of MTM losses in cash from Indianivesh.

The Noticee accordingly did not take adequate steps to square off the positions of Indianivesh until March 31, 2020 and hence did not follow its own risk management policy in terms of restricting exposure to Indianivesh.

### **7.2.2 Noticee's oral and written submission to Show cause Notice of NCL**

The Noticee stated that during the period between March 12, 2020 to March 31, 2020, it did not allow Indianivesh to undertake additional or new position and was vigilant to ensure that all necessary risk mitigant measures were undertaken by it.

The Noticee also submitted a revised working and stated the following: -

- a) there is net MTM debit balance of Indianivesh on 52 days
- b) out of the 52 days, on 44 days, Noticee was fully covered through the net collaterals available.
- c) of the remaining 8 days, for 3 days there was delay in collection of MTM Loss with respect to obligation of Indianivesh by 1 day, which occurred in the month of Sept 19, Nov 19 and Dec 19 each and balance 5 days pertained to March 2020, wherein Indianivesh was already identified to be in stress since it had failed to meet its obligations and adequate measures were taken for risk mitigation.

The Noticee stated that as per NSE circular ref no NSE/INSP/38154 dated June 27, 2018, it is clarified that MTM loss can be collected in non-cash form and the Noticee has collected the MTM loss by way of cash equivalent collateral including BG/FD etc. from Indianivesh. The Noticee liquidated Indianivesh's

collateral worth Rs. 118.20 Crs during the period March 12, 2020 to March 31, 2020 on the basis of instructions received from Indianivesh.

The Noticee stated that it had multiple interactions with Indianivesh for recovery of the outstanding debits which was in addition to the normal course of follow up with a trading member like reminder calls, sending mailers highlighting outstanding ledger balance etc.

After having multiple interactions and follow ups with Indianivesh, the Noticee received funds aggregating to Rs. 33 Crs from Indianivesh during the period March 12, 2020 to March 31, 2020. The outstanding positions of Indianivesh were reduced from Rs 1,013.16 Crs as on March 12, 2020 to Rs 74.22 Crs as on March 31, 2020. There was a considerable reduction in the total margin requirement from Rs. 211.27 Crs as on March 12, 2020 to Rs. 0.61 Cr on March 31, 2020. Noticee also initiated stringent actions against Indianivesh and kept Indianivesh in Risk Reduction Mode (RRM) mode from March 12, 2020 onwards.

In order to recover the mounting debit balance in the ledger of Indianivesh, the Noticee invoked the Fixed Deposits of Indianivesh, which were kept as collateral with it to meet the margin obligation i.e. SPAN + MTM losses. The Noticee also stated that an amount of Rs.100.75 Crs of FDR was invoked by it. However the bank failed to credit the FDR to the Noticee's account which the Noticee has challenged before the Court and this is sub-judice now.

### **7.3 MCSGFC's observations and findings with respect to the Noticee's Response on violations**

The Committee noted the oral and written submissions made by the Noticee in response to the SCN. The Committee further noted that as per NCL circular dated NSE/CMPT/5385 dated August 27, 2004, MTM loss has to be collected in cash. Further, the Committee took a note of the NSE circular dated June 27, 2018 which states that MTM loss can be collected in non cash form also. The Committee noted that the circular dated June 27, 2018 regarding collection of MTM loss in cash as well as other collaterals was addressed to Trading Members vis a vis their end clients and not applicable to the Clearing Members.

The Committee observed that the two violations observed during the inspection should be reviewed together. The Committee also observed that while Noticee as a Professional Clearing Member had met its obligations to the Clearing Corporation, the responsibility of paying the MTM Loss to the Noticee is that of the Trading Member. The Committee observed that the objective of the circular dated August 27, 2004 is that the Clearing Member does not allow the trading member to not pay MTM losses regularly, eventually making it a funding activity. The Committee observed that whether the activity has been carried out as a funding activity or not has to be seen in conjunction with the risk management policy adopted and implemented by the Clearing Member and whether the Clearing Member has taken adequate risk management steps during the course of its business.

The Committee observed that in the present case, there have been instances where there have been delayed receipt of funds by the Noticee. The Committee observed that the Noticee, on identifying no receipt of MTM Losses on repeated basis, has taken numerous steps in terms of risk management like putting the member in Risk Reduction Mode, liquidating securities received as collaterals, requiring the trading member to reduce open positions and invoking Fixed Deposit Receipts(which the Bank did not credit to Noticee's account, and issue is now sub judice) for recovering the losses. The Committee, therefore, concluded that the Noticee is apparently not funding MTM losses for it to be considered as a commercial activity.

Considering that the Noticee has taken reasonable steps as per its Risk Management Policy, the Committee decided not to levy penalty on the Noticee. However, the Committee desired that a strict warning be issued to the Noticee for not insisting on collection of MTM Losses in Cash.

## **Decision**

In view of the above and in the light of the observations made, the MCSGFC has decided to issue a strict warning to the Noticee for not following the guidelines issued by NCL with respect to MTM loss collection.

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<b>Harun R Khan</b>	<b>Bhagyam Ramani</b>	<b>N K Maini</b>	<b>Vikram Kothari</b>
<b>(Committee Member)</b>	<b>(Chairperson)</b>	<b>(Committee Member)</b>	<b>(Committee Member)</b>

**Date: July 22, 2020**

***\* Based on email confirmation, in view of COVID -19 pandemic***