BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under section 11(4) read with 11B of the Securities and Exchange Board of India Act, 1992 in respect of Shri Shashi Bhushan, Proprietor of M/s. Bhushan Aggarwal & Co. In the matter of Ritesh Properties and Industries Limited.

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1. Ritesh Properties and Industries Limited (hereinafter referred to as "the Company" / "Ritesh Properties") was originally incorporated as Ritesh Industries Limited in 1987 and subsequently changed to its present name on February 28, 2007. The registered office of the Company is located at 11/5B, 1st floor, Pusa Road, New Delhi – 110005. The shares of the Company are listed on the Bombay Stock Exchange Limited (hereinafter referred to as 'BSE').

2. Securities and Exchange Board of India (hereinafter referred to as 'SEBI) conducted investigations into the dealings of the scrip of the Company for the period July 14, 2006 to May 20, 2008 (hereinafter referred to as the 'relevant period'). Investigation revealed that:

   (i) Immediately before the relevant period, i.e., on July 13, 2006 the shares of the Company was trading at a price of around ₹ 3.52 and that day's trading volume was 5,440 shares. Further, just after the investigation period i.e. on May 21, 2008, the closing price of the scrip was at ₹ 123.50 and the trading volume for the day was 71,702 shares. It was observed that the price and trading volume of the company's shares had substantially increased from July 13, 2006 to May 21, 2008.

   (ii) Huge revenue was recognized by the Company from the real estate projects announced and sold by the Company during the relevant period. It was observed that the real estate projects announced and sold by the Company during the relevant period have actually not been constructed. The Company on November 25, 2009, announced the restatement of its financial statements through BSE, writing back all real estate sales and profits for the financial years 2006-07 and 2007-08. The revenue reported as per initial and as per revised financial statements is as under:-

S. No	Financial Year	Revenue reported (Rs. in lakhs)									
		Income from Operations						Other Income		Total	
		Real Estate		Other Business		Total					
		Initial	Revised	Initial	Revised	Initial	Revised	Initial	Revised	Initial	Revised
1	2006-07	1050	-	71.12	221.12	1121.12	221.12	39.13	39.13	1160.25	260.25
2	2007-08	8524	-	184.68	184.68	8708.68	184.68	46.68*	46.68*	8755.36	231.36

(iii) The above said restatement/revision of financial results by the Company was observed to be a culmination of a scheme of fraud that was orchestrated by the Company and its promoters/ directors during the relevant period by manipulation of the financial statements of the Company in addition to the misleading disclosures, price manipulation in the scrip, and irregular preferential allotment to associate entities at manipulated lower prices.

(iv) Many of the details mentioned in the financial statements included in the Annual Report for the said years did not reflect the true and fair view of the Company's accounts.

(v) M/s. Bhushan Aggarwal & Co. was the auditor of the Company (hereinafter referred to as 'the Auditor'). Shri Bhushan Shashi was the proprietor of the Auditor. The Auditor had certified the financial statements of the Company included in its Annual Report for the financial year 2006-07 and 2007-08 and had carried out the limited review with respect to the ten quarters each ending between September 2006 to December 2008. By certifying the false and overstated results over the years as true and fair, the Auditor has misled the investors and created artificial demand in the shares of the Company.

3. SEBI appointed an independent Chartered Accountant to conduct special examination of the books of accounts of the Company and other relevant records for the ten quarters from September 2006 to December 2008 and for the examination of the revenue figures reported by the Company from the real estate sales and to determine its impact on the financial statements. The Report of the Chartered Accountant was submitted to SEBI on November 16, 2010. It was observed from the analysis of the Report that the Auditor had fraudulently certified the Annual Report, which it did not believe to be true and had fraudulently caused the Annual Reports of the relevant period to be published with untrue information, in spite of presence of unusual features in the accounts of the Company. The specific instances of such misstatements are listed in the following paragraphs.

Fraudulent misrepresentation regarding the Pooling of land and Collaboration agreement with M/s. Ansal Township and Projects Limited.

4. The Company was allotted 40 acres of undeveloped land in Focal Point Phase VIII, Ludhiana by Director of Industries, Punjab, Chandigarh vide allotment dated April 22, 1994. The Company vide application dated January 18, 1995 to Director of Industries, Punjab, Chandigarh, requested for division of the aforesaid allotted land amongst the group / related entities. The Director of Industries, Punjab, Chandigarh approved the proposal for division vide its letter dated January 31, 1995. Accordingly title deeds were executed by Director of Industries, Punjab, Chandigarh,

on behalf of the Governor of Punjab in favour of certain entities. The details of the division of said land as per the title deeds are as given below:-

Sl. No.	Name of the Entity	Area of land (in acres)	Date of Execution of document	Registered as Document No.
1)	RPIL	7	23/01/1998	22646
2)	-do-	4	11/12/1996	20322
Sub Total		11		
3)	Oxford processors (proprietor RIPL)	2	23/01/1998	22647
4)	Ritesh Spinning Mills Ltd. (RSML)	5	23/01/1998	22644
5)	-do-	5	23/01/1998	22641
6)	-do-	5	23/01/1998	22642
Sub Total		15		
7)	Ritesh Impex Private Ltd. (RIPL)	7	23/01/1998	22645
8)	H.B. Fibers Ltd.	5	23/01/1998	22643
TOTAL		40		

5. The cost of acquiring the land had been borne by the respective entities namely the Company, Oxford Processors, Ritesh Spinning Mills Ltd., Ritesh Impex Private Ltd. and H.B. Fibers Ltd. The Company obtained approval for Special Package of incentives under Mega Projects vide letter/Memo dated April 12, 2006 from Director of Industries & Commerce, Punjab for proposal for setting up an Integrated Industrial Park on the said land with an investment of ₹400 Crores.

6. Subsequently, an agreement dated September 10, 2009 was executed with the Punjab Government. As per the agreement, 60% of land was to be utilized for industrial purpose and 40% for residential purposes. The Company had to develop the industrial pocket first and the housing pocket later. Before developing the residential pocket, the Company had not only to first develop industrial plots but also was to dispose off at-least 50 % of the industrial plots to industrial units which had to be set up in the industrial pocket and the entire project had to come up with proposed investment level in stipulated period. However, even before entering into the said agreement with Government of Punjab, the company had entered into a Collaboration Agreement with M/s. Ansal Township and Projects Limited (hereinafter referred

to as 'Ansal'), on July 14, 2006 for developing the project comprising of 'Information Technology Park' and 'Residential Group Housing Project' or any other form as per the drawn business plan.

7. As per the Collaboration Agreement, the Company alone was the owner of land measuring approximately 42 acres and vide clause 6 of the said Agreement, the project was to be developed by Ansal (the Developer) at its own cost. Clause 10 of the said Agreement provided for *'interest free refundable security deposit of ₹2 Crores'* to be given by the Developer to the Company (the Owner). Clause 11 of the said Agreement provided for sharing of the revenue between the Owner and the Developer at 22.5% and 77.5%, respectively. Clause 12 of the said Agreement provided that Developer shall exclusively be entitled to sell the entire built up area including the share of the Owner at a mutually decided broadband of pricing in writing. However, the Company, in contravention of the Clause 12 of the Collaboration Agreement entered into various agreements of sale with the prospective buyers. In the last quarter of the financial year 2006-07, the Company had sold the proposed built up area to M/s Estate Investments Solution for ₹ 4000 lakh and have accounted 22.5% share amounting to ₹ 900 lakh as real estate revenue. However, no amount had been received towards sale of real estate.

8. It was noted that the Auditor had fraudulently omitted to disclose :-
   (i) The afore-mentioned five entities owned the land and had pooled their land for development of the project and no written agreement amongst the said entities for pooling of the land, sharing of the revenues, income and expenses had been made.
   (ii) The cost of acquiring the land had been borne by the respective entities, whereas the expenses of approvals, sanctions, etc. for development, consequent to collaboration with Ansal was being borne by the Company and was not being shared with the associated entities.
   (iii) That the Company had recognized the entire 22.5% of the sale consideration, which was the undivided share of all the five entities, owning the land. Thus, the Company had wrongly recognized the share of other four entities as its real estate revenue, and to that extent the revenue reported by the Company was overstated and the same was certified by the Auditor as authentic.
   (iv) That the total enhanced land compensation claimed by the Government including interest had not been paid, but only part payment had been made. The fact that the same were disputed and appeals were pending against the arbitration award in favor of the Company was also omitted. Neither the liability of the outstanding amount payable has been provided in the accounts nor included in the Contingent Liabilities.
   (v) The security deposit received had been credited to the account of Ansal API, and not to the account of 'Ansal Township & Projects Ltd.' Further the said amount was transferred from

the Company's account to the credit of 'M/s. Estate Investment Solutions', one of the buyers of built up space, with whom Agreements to Sell were made.

9. Further, by allowing the expenses of approval, sanctions, showing against the Company alone while the same should have been shared by the other four entities, the Auditor had misrepresented the expense figures. The cost of land had been inflated and consequently, the cost of land taken to expense proportionate to sale was also incorrectly stated, and finally the profit on sale of land had also been affected to that extent.

10. For the quarter ending on March 31, 2007 the Company published ₹ 937.2 lakh of revenue, profit of ₹ 733.56 lakh and EPS of ₹ 10.87.

Fraudulent recognition of revenue

11. As per Accounting Standard-9, the conditions specified in Para 10 and 11 thereof, should be satisfied for recognition of revenue. The said Paragraphs state as under:

" 10. Revenue from sales or services transactions should be recognised when the requirements as to performance set out in paragraphs 11and 12 are satisfied, provided that at the time of performance it is not unreasonable to expect ultimate collection. If at the time of raising of any claim it is unreasonable to expect ultimate collection, revenue recognition should be postponed.

11. In a transaction involving the sale of goods, performance should be regarded as being achieved when the following conditions have been fulfilled;
(i) The seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller
retains no effective control of the goods transferred to a degree usually associated with ownership; and
(ii) No significant uncertainty exists regarding the amount of the consideration that will be derived from the sale of the goods.

12. In a transaction involving the rendering of services, performance should be measured either under the completed service contract method or under the proportionate completion method, whichever relates the revenue to the work accomplished. Such performance should be regarded as being achieved when no significant uncertainty exits regarding the amount of consideration that will be derived from rendering the service.".

12. Further, the "Guidance Note on Recognition of Revenue by Real Estate Developers" issued by the Institute of Chartered Accountants of India, which elaborates on the revenue recognition methods to be followed by real estate companies details the following:

Para 3–

"the point of time at which all significant risks and rewards of ownership can be considered as transferred, is required to be determined on the basis of the terms and conditions of the agreement for sale. In case of real estate sales, the events, such as, transfer of legal title to the buyer or giving possession of real estate to the buyer under an agreement for sale, usually, provide an evidence to the effect that all significant risks and rewards of ownership have been transferred to the buyer."

"This agreement for sale is also considered to have the effect of transferring all significant risks and rewards of ownership to the buyer provided the agreement is legally enforceable and subject to the satisfaction of all the following conditions which signify transferring of significant risks and rewards even though the legal title is not transferred or the possession of the real estate is not given to the buyer:
(a) The significant risks related to the real estate have been transferred to the buyer; in case of real estate sales, price risk is generally considered to be one of the most significant risks.
(b) The buyer has a legal right to sell or transfer his interest in the property, without any condition or subject to only such conditions which do not materially affect his right to benefits in the property.

Para 5 –

"in case it is unreasonable to expect ultimate collection, the revenue recognition is postponed to the extent of uncertainty involved."

Para 6 –

"Revenue in case of real estate sales should be recognised when all the following conditions are satisfied:
(i) The seller has transferred to the buyer all significant risks and rewards of ownership and the seller retains no effective control of the real estate to a degree usually associated with ownership;
(ii) no significant uncertainty exists regarding the amount of the consideration that will be derived from the real estate sales; and
(iii) it is not unreasonable to expect ultimate collection."

Para 7 –

"In case of real estate sales, all significant risks and rewards of ownership are normally considered to be transferred when legal title passes to the buyer (e.g., at the time of the registration, with the relevant authorities, of the real estate in the name of the buyer) or when the seller enters into an agreement for sale and gives possession of the real estate to the buyer under the agreement."

Para 11 –

"For determining whether it is not unreasonable to expect ultimate collection, a seller should consider the evidence of the buyer's commitment to make the complete payment. Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time all significant risks and rewards of

ownership are transferred to the buyer, revenue recognition is postponed to the extent of uncertainty involved. For example, when the aggregate of the payments received, including the buyer's initial down payment, or continuing payments by the buyer, provide insufficient evidence of the buyer's commitment to make the complete payment, revenue is recognised only to the extent of realisation of the consideration provided other conditions for recognition of revenue are satisfied."

13. Despite having clear guidelines on how to recognize the revenue from real estate business, it was observed that the Company adopted questionable methods to recognize the revenues. It had recognized the revenue from real estate business in connection with a Collaboration Agreement entered by the Company with the Developer for a project to develop and construct on the land, when;
    - No payment schedules were attached to the agreement to sell and no payments were received from any of the parties.
    - Exclusive rights for sale were with the Developer.
    - Land was owned by 5 group entities who had pooled the land for development of project, however, there was no MOU/agreement amongst the said 5 entities for pooling of the land, sharing of revenues, income and expenses.
    - No building plans were submitted for sanctions and there was no construction activity at the site.
    - There was no expenditure towards real estate business.
    - All the agreements of sales were terminated subsequently on single date (i.e. on March 03, 2009).

14. It was, therefore, observed that there was no transfer of significant risks and rewards of ownership to the purchasers, since the agreements were still terminable and have finally been terminated and there was absolute uncertainty of receiving the sale consideration since no installment schedule was annexed in the sale agreements. Moreover, the agreement has been entered by the Company who had no legal title to transfer. Thus, there was no sale, which could be recognized as revenue and the Company had not followed the afore-mentioned applicable accounting standards for recognizing revenue from real estate business. It was alleged that as a statutory auditor of the Company, the Auditor failed to notice that the Company had not followed the accounting standards for recognizing revenue. The Auditor had certified the overstated revenue and profits recognized by the Company in violation of the applicable Accounting Standards for recognizing revenue from real estate business. The summary of actual revenue, profit/loss and EPS (as calculated by SEBI appointed auditors) in respect of the quarters under review is as under :-

				EPS (Rs.)			
		Rs. in Lacs		Basic		Diluted	
Sl. No.	Quarter ending	Revenue	Profit / (Loss)	Before extra-ordinary item	After extra-ordinary item	Before extra-ordinary item	After extra-ordinary item
1	30/09/2006	19.52	(50.76)	(0.75)	(0.75)	(0.75)	(0.75)
2	31/12/2006	11.05	(59.46)	(0.79)	(0.79)	(0.79)	(0.79)
3	31/03/2007	187.23	55.03	0.82	0.82	0.82	0.82
4	30/06/2007	69.89	(68.09)	(0.74)	(0.74)	(0.74)	(0.74)
5	30/09/2007	4.31	(83.84)	(0.91)	(0.91)	(0.91)	(0.91)
6	31/12/2007	103.99	(75.63)	(0.82)	(0.82)	(0.82)	(0.82)
7	31/03/2008	51.83	(186.54)	(1.90)	(1.68)	(1.90)	(1.68)
8	30/06/2008	30.23	(101.51)	(0.88)	(0.88)	(0.78)	(0.78)
9	30/09/2008	18.61	(63.47)	(0.55)	(0.49)	(0.55)	(0.49)
10	31/12/2008	22.68	(84.47)	(7.27)	(6.52)	(7.27)	(6.52)

The comparison of revenue, profit/loss and EPS (Basic) reported by the Company vs. the actual as calculated by SEBI appointed auditors is given as follows:-

Sl. No.	Quarter ending	Revenue		Profit / (Loss)		EPS(Basic) before extra-ordinary item	
		(Rs. in Lacs)		(Rs. in Lacs)		(Rs.)	
		As reported by RPIL	Actuals (as calculated by us)	As reported by RPIL	Actuals (as calculated by us)	As reported by RPIL	Actuals (as calculated by us)
1	30/09/2006	19.52	19.52	(50.76)	(50.76)	Not Reported	(0.75)
2	31/12/2006	161.05	11.05	81.49	(59.46)	1.21	(0.79)
3	31/03/2007	937.23	187.23	733.56	55.03	10.87	0.82
4	30/06/2007	2019.89	69.89	370.66	(68.09)	4.02	(0.74)
5	30/09/2007	1904.31	4.31	343.66	(83.84)	3.73	(0.91)
6	31/12/2007	2803.99	103.99	475.32	(75.63)	5.13	(0.82)
7	31/03/2008	2025.83	51.83	75.48	(186.54)	0.77	(1.90)
8	30/06/2008	3327.23	30.23	418.73	(101.51)	3.61	(0.88)
9	30/09/2008	18.61	18.61	(63.47)	(63.47)	(0.55)	(0.55)
10	31/12/2008	424.68	22.68	3.37	(84.47)	0.29	(7.27)

15. In spite of the presence of unusual features in the accounts which *prima facie* gave reason to believe that the revenue recognized by the Company was not in order, the Auditor had willfully/fraudulently failed to take note of the same while certifying the accounts of the Company. The aforementioned commissions and omission by the Auditor *prima facie* indicated

the intention to benefit the Company in disseminating the false financial position and to defraud the investors by not giving the true and fair picture of the Company's financial position.

Fraudulent omission to disclose the change in the methodology of Recognition of Revenue:-

16. The Auditor had further certified that the Company had recognized the revenue of ₹ 900.00 lakh from real estate, being 22.5% of the sale consideration of ₹ 4000.00 lakh, during the year 2006-07, in the last quarter March 31, 2007, considering the Company's share as per the collaboration agreement with the Developer. In subsequent periods the Auditor had failed to disclose that the Company had changed the methodology of income recognition since the entire sale consideration i.e. ₹ 8534.00 lakh in 2007-08 and ₹3699 lakh in 2008-09 (up to December 31, 2008) was recognized as revenue.

17. The Auditor had also certified the expense under 'material consumed', 77.5% of the sale consideration, i.e., share of the Developers. Eventually, it increased the turnover and the expense amount. Therefore, it was observed that the Auditor had fraudulently omitted to disclose the change in methodology of recognition of revenue from real estate as followed in 2006-07, to a new methodology as followed in 2007-08 and 2008-09. The Auditor had reported neither this change nor its impact in the accounts for the financial year 2007-08 knowing that the Company's change in methodology of income recognition would show substantial increase in the turnover and expense amount as compared to previous period which would act as a device to lure gullible investors.

Fraudulent inclusion of Land as Fixed Assets:

18. The said land in the annual financial statement for the year 2006-07, continued to appear as Fixed Assets and not as Stock in trade, although Revenue from Sale of Real Estate (Sale of Built-up Area) had been accounted in the books at ₹900.00 lakh. Although land was being sold and revenue recognized as if the land was stock in trade, still the land continued to be treated as fixed assets, until quarter ending on March 31, 2008. Therefore, the stock-in-trade was shown fraudulently as Fixed Assets, and the accounts to this extent did not give a true and fair view of the state of affairs of the Company. It is also a violation of the Accounting Standards-AS-2 (Valuation of Inventories) and AS-10 (Accounting for Fixed Assets). It is alleged that the Auditor had fraudulently omitted to take note of the same and had fraudulently certified the value of Fixed Assets when they had already become stock-in-trade.

Fraudulent Omission regarding Unsecured loan taken and repaid from related companies and directors:

19. Unsecured loans taken from and repaid to related companies and directors have not been disclosed in the Related Party Disclosure as per Accounting Standard (AS) – 18. Even the interest paid on such loans had not been disclosed as per AS-18. Thus, there had been violation of AS-18. In the financial Year 2006-07, the unsecured loans during the year from the Company are as follows -

Name of the concern	Whether Related	Opening Balance	Amounts Taken	Amounts Repaid/Adjustments	Closing Balance	Rate of Interest
		(₹)				
Pentagon Finance Ltd.	Related	3523787 (Dr.)	6023000	9012	2490201	Interest Free
Ritesh Spinning Mills Ltd.	Related	33015278	126399272 (including interest of ₹ 788996 net of TDS)	31006272	128408278	12 %

20. The aforesaid loans had been received without any written agreement. The Company had paid interest to Ritesh Spinning Mills Ltd. of ₹ 1017272, TDS was deducted at ₹ 228276/-. The interest paid has not been disclosed in the Related Party Disclosure.

21. In financial Year 2006-07, the unsecured loans during the year from directors, as per Tax Audit Report, are as follows:-

Name of the concern	Whether Related	Opening Balance	Amounts Taken	Amounts Repaid	Closing Balance	Rate of Interest	Comments
		(₹)					
Shri Pran Arora	Yes	Nil	10971600	10971600	Nil	Interest Free	During the year various transactions of loans receives & repaid (cheques)
Shri Rajeev Arora	Yes	Nil	4424000	4424000	Nil	Interest Free	Amount of Loan taken ₹4000000(27.12.2006) Repaid in two installments. Further amount paid, later cheques received.

22. No interest had been charged on the debit balances of directors. In the year 2007-08, an amount of ₹ 82000/- payable to Shri Sanjeev Arora, Managing Director of the Company as on March 31, 2008, had been reduced from the loans and advances in the asset side of the Balance Sheet, and thus the loan from directors as well as loans and advances were understated by the said amount. The account of Shri Sanjeev Arora, Managing Director, was in debit from April 30, 2007 to May 22, 2007. The maximum balance due was ₹ 4420925/-. It was again in debit from August 17, 2007 to March 18, 2008 and the maximum debit balance during this period was ₹1518000/-. Further, the account of Shri Pran Arora, Chairman and Promoter of the Company, remained in debit from April 07, 2007 to May 08, 2007 and the maximum debit balance during the period was ₹147380/-. It was again in debit from December 31, 2007 to January 29, 2008 and the amount of debit was ₹ 50000/-. The aforesaid the interest free loans to the directors had not been disclosed as "Related Party Transactions" as required under AS-18.

23. Therefore, it was observed that knowing very well that what was being certified was not true and fair report of the Company, the Auditor had certified its Annual Reports, suppressing Related Party Transactions and showing inflated and false financial position of the Company only to defraud the general investors.

24. Further, as per Paragraph 7 of the Annexure to the Audit Report for the Financial Years 2006-07 and 2007-08, the Auditor had stated that the Company had an adequate Internal Audit System commensurate with its size and the nature of business. However, the Company had not provided any report of Internal Audit of any period to the SEBI appointed auditors during examination and had claimed that the report was not available with it. Therefore, it is alleged that the Auditor had wrongly stated that the Company had an adequate Internal Audit System commensurate with its size and the nature of its business.

Other discrepancies in the Accounting Policies adopted by the Company which were fraudulently certified by the Auditor.

25. Several other discrepancies were pointed out, that are listed as under:
    a) The Company had not converted liability and assets in foreign currency at the year/quarter end as required under Accounting Standard-11 dealing with the "Effects of Changes in Foreign Currency Rates" and to that extent the assets and liabilities were incorrectly stated, as well as the Profit and Loss account was also affected by the amount of consequent difference in exchange(rate).

    b) The Accounting Standard -15 "Employees Benefits" provides for actuarial valuation for benefits of Gratuity and Leave encashment. However, it was observed that there

was no accounting policy on leave encashment and the Company was not accounting for any leave due to the employees at the year end and quarterly results.

c) There was no declared policy for identification of Bad and Doubtful Debtors.

d) The Company had recognized the interest on loans and advances on receipt basis and no disclosure of the same has been given in the annual accounts.

Details of the Quarterly Results audited by the Auditor and Published by the Company as per Requirements of Clause 41 of the Listing Agreement and the Revenue Reported in the Quarters Audited.

26. Compliance status of clause 41 of the Listing Agreement was noted as under:

Serial No.	**Quarter**	**Date of signing**	**Date of Publication**	**Revenue Reported (Rs. in lakh)**	**Name of the newspaper**
1	March 2007	27.06.2007	29.06.2007	937.23	Business Standard, Chandigarh
2.	March 2008	30.06.2008	02.07.2008	2025.83	The Economic Times, Chandigarh
3.	June 2008	31.08.2008	02.09.2008	3327.23	The Economic Times, Chandigarh
4.	September 2008	29.11.2008	01.12.2008	18.61	Business Standard, Chandigarh

27. The above acts and omission *prima facie* gave reason for believing that the accounts of the Company were not true and fair and have been made with an intention to benefit the Company and its promoters/directors in their alleged manipulation of price in the scrip of the Company and the alleged manipulation of disclosures so that it may be relied upon by the investors. It was

noted that knowing fully that the Company had not followed the correct accounting procedures and practices, and had violated the applicable accounting standards and had committed other improprieties in accounting to publish inflated figures in the revenue recognized from real estate, the Auditor had falsely certified misleading Annual Accounts of the Company, containing distorted information, which the Auditor did not believe to be true and knowing that the same would be published, the Auditor had caused the Company to publish untrue Annual Reports, thereby employing the false Annual Reports as a device to defraud the investors while they deal in the securities of the Company.

28. In view of the above, SEBI issued two show cause notices (SCNs) both dated November 19, 2012, on the same set of facts and circumstances to the Auditors , *viz*- M/s. Bhushan Aggarwal & Co and its Proprietor - Shri Bhushan Shashi alleging *inter alia* the violation of the provisions of regulations 3(b), (c), (d), 4(1), 4(2) (e), (k) and (r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 read with section 12A(a), (b), (c) of Securities and Exchange Board of India Act, 1992 by them. The response to the SCNs was filed vide letter dated January 21, 2013. The opportunities of hearing pursuant to the SCNs were granted on June 19, 2013 and October 15, 2013. The hearing in the matter was concluded on May 15, 2015, wherein the authorized representative of the Auditor, along with proprietor, Shri Bhushan Shashi (Shri Shashi Bhushan as per records submitted by the Auditor) appeared and made submissions. Thereafter, on May 28, 2015, a consolidated Written Submission was filed. The submissions made by the Noticees are, *inter alia* as under:

(i) The land admeasuring 40 acres was allotted by the Government of Punjab to Ritesh Industries in 1994. The money was paid to the Government of Punjab by Ritesh Industries Limited and the allotment letter dated April 22, 1994 was issued in the name of Ritesh Industries. Subsequently, for carrying on the different projects, the said land was segregated in favour of group companies of Ritesh Industries vide letter dated January 31, 1995 issued by the Government of Punjab.

(ii) Thereafter, the four of related entities entered into a collaboration agreement dated May 31, 2006, wherein Ritesh Industries was made a Lead Party for effectuating joint and collective development of their land as a Mega Project. As per the collaboration agreement the parties had agreed that Ritesh Industries shall keep the sale price with it and net profit would be shared amongst them on completion of the project. As no income had accrued from sale and sale proceeds were not intended to be shared with other parties of the collaboration agreement before completion of the project, the entire amount of the receipt was recognised in the books of the Company on accrual basis.

(iii) Since, no payment was to be made by the Company to other related entities at that stage and there was no such liability which was to be reflected in the books /financial statements, hence, there was no overstatement or fraudulent representation to any party whatsoever. Further, the Collaboration Agreement stipulated that the said associated entities would not contribute any fund for the development of the proposed project and all the expenses of whatsoever nature will be incurred by the Company.

(iv) The fact of pending litigation with respect to the enhanced compensation for the land, being demanded by the Government of Punjab was disclosed in the Annual Report of 2006-2007. Further, if any payment has to be made by the Company, the same shall be accounted for on cash basis. That amounts to adequate disclosure and no further information was required to be disclosed.

(v) Ansal Township and Projects Ltd., who had paid the security deposit was merged with Ansal API, vide order dated 31.08.2006 passed by Hon'ble High Court of Delhi. Hence, the security deposit was credited in the account of Ansal API. While transferring the said amount from one account to another (on account of merger of Ansal Township and Projects Ltd. with Ansal API), the accounts department of the Company mistook the receipt as sale consideration from Estate Investment Solutions, one of the buyers of built up space from the Company with whom agreement to sell was entered into, an apparent error that led to offsetting the money received with another receivable account. The said error was subsequently regularized. Such an error could not be attributed to a fraudulent act on the part of the Auditor.

(vi) The Guidance Note issued by the Institute of the Chartered Accountants of India ("ICAI") pertains to a real estate developer, and as per the Collaboration Agreement, the Company is not the Developer but the owner of the land. Hence, the Company has not violated any law or overstated its turnover by recognizing the revenue on an accrual basis in its books of accounts, even in the absence of actual receipt of sale proceeds.

(vii)There had been ambiguities about the accounting method, as neither the principles of Accounting Standard-7 nor Accounting Standard-9 issued by ICAI squarely cover the matter. There was a transfer of risks and rewards under the agreement to sell as the parties had agreed for transfer of the property under the said agreement. The agreement to sell may have the effect of transferring all significant risks and rewards of ownership to the buyer even though legal title is not transferred or the possession is not given to the buyer. The observation that there was no transfer of significant risks and rewards to the purchasers cannot be accepted as it is a matter of professional judgment in the circumstances of the case.

(viii) Although there was a change in the methodology of accounting for the financial years 2007-2008 and 2008-2009, whereby the entire revenue was accounted for as income of the Company and 77.5% of the same (which was the share of the Developer) was shown as expenses, it was done pursuant to an expert opinion in this matter. The change in the method of presentation did not affect the true and fair view of the state of affairs of the business or the profit and loss accounts of the Company.

(ix) In a case where land is used for development of property by a developer, the ultimate transfer of title happens only at the end of the development and, therefore, there are divergent practices in the real estate industry about the treatment of land in the accounts. There are opinions that the land needs to be reflected as 'stock in trade'. There are also opinions that land being capital asset shall remain in fixed assets or as investment property. Because of absence of clarity, the Company decided to treat it as fixed assets in 2006-07. Further, it is wrong to allege that the land was not recognized as stock-in-trade till the quarter ending 31.03.2008. In fact, the land was transferred as "stock-in-trade" in the Financial Year 2007-08. The said fact has also been disclosed in Annexure "E" of the Annual Report for the said FY 2007-08.

(x) Despite the decision taken by the Company to revise the financial statements for the financial years 2006-2007 and 2007-2008 in view of the termination of the agreement to sell on March 3, 2009, the Auditor followed the view of the ICAI which stated that no such revision was allowed and the Auditor was bound to qualify the Auditor Report. Therefore, the Auditor gave qualification in the revised Annual Reports. Further, the Company had made a corporate announcement on 21.10.2009 stating that its Board of Directors at its meeting held on September 30, 2009, had adopted the revised financial statements for the financial years 2006-07 and 2007-08 pursuant to General Circular No. 17/75/2002-CL.V issued by Government of India, Ministry of Finance and Company Affairs, Department of Company Affairs dated January 13, 2003.

(xi) The Company had shown the transactions which affect its profit and loss and amounts due and payable from related parties. Any shareholder or investor would be interested in knowing the outstanding amounts (i.e. recoverable amounts / payable amounts) at the year end. Further, any disclosure by the Auditor will be necessary only if there is any departure from the standard and in the instant case, there had not been any departure from accounting policies and interests of the shareholders / investors is not affected in any manner as all necessary disclosures affecting the profit / loss of the annual account were duly reflected.

(xii) As regards the observation for debit balances in the accounts of Shri Sanjeev Arora and Shri Pran Arora, the same remained for a couple of months only and the accounts were regularized subsequently. That being the intent of law, the Auditor was not required to adversely report on such temporary advances that were already repaid as of Balance Sheet date. The interest in respect of the related party transaction was disclosed in the financial statements. However, it was mere unintended clerical omission of amount in the annual reports.

(xiii) There was an internal system for internal audit, which in the opinion of the Auditor was sufficient in accordance with the Company's business. The Auditor had been privy to those reports. Although they were not voluminous, they did not carry any adverse view on internal controls. This was the basis of the opinion of the Auditor.

(xiv) In respect of foreign exchange, it has been submitted that during 2006-2007, the dealings in the foreign exchange if looked at against the total income booked by the Company during the respective financial year, is not material and amounts to 0.08%. Therefore, the same was not qualified in the audit report. During the year, the total transactions in foreign exchange were US $47,418. If the same is re-stated as per exchange rate prevalent on March 31, 2007, the net effect of the same was ₹ 58,000 (approx.) which is 0.01% of the net profit of the Company in that financial year.

(xv) It was submitted that the Company does not accumulate benefits above one year, thus there is no vesting of leaves up to the retirement of the employee. At the end of the year, the leaves not taken by the employee are lapsed and are not even entitled to get compensation. Thus it wasn't necessary for the Company to value the employee benefits. AS -15 is not applicable and there is no liability since there is no provision for encashment of leave and no carry-forward of the leave beyond a financial year. Hence, the allegation is misconceived.

(xvi) The Company had not identified any debtor for bad debts. All the debts are recoverable and receivable. The company had justified the policy adopted for recognition of the bad debts. The Company had provided the Auditor with a statement of debtors with comments about recoverability based on which, the Auditor had concurred with the Company's views.

29. I have carefully considered the SCNs issued, their oral and written submissions made in the present proceedings. In this case, it is noted that two SCNs were issued to M/s. Bhushan Aggarwal & Co and its Proprietor - Shri Bhushan Shashi, independently and separately on same set of facts as mentioned hereinabove alleging violations of same provisions of the SEBI Act and PFUTP Regulations by the proprietary concern and its proprietor independently and separately. In this regard, it is relevant to mention that proprietary concern has no independent

legal identity from its proprietor and notice to the concern is also meant for the proprietor. It is further noted that the SCN to the proprietor of M/s. Bhushan Aggarwal & Co. has been issued under the name "Shri Bhushan Shashi'. However, from the records submitted by him in these proceedings, it is noted that his name is "Shri Shashi Bhushan". I, therefore, for the purposes of this order, treat both SCNs as one and same against Shri Shashi Bhushan, Proprietor of M/s. Bhushan Aggarwal & Co. (hereinafter referred to as 'the Noticee'/' the Auditor'). In the instant proceedings, the hearing concluded on May 15, 2015 and order was reserved. The Noticee filed written submissions in the matter on May 28, 2015 It is relevant to mention that separate proceedings were initiated against the Noticee and Ritesh Properties and its directors. Since, facts and circumstances of the instant proceedings were also part of basis of charges and allegations against Ritesh Properties and its directors, it was deemed appropriate to decide both proceedings after hearing all concerned parties in both the proceedings. Now that the proceedings against Ritesh Properties and its directors have been concluded vide order dated January 13, 2016, I proceed to decide this case by this order. I am of the view that the Noticee has been afforded reasonable opportunity of hearing and filing of replies. He has availed them and has made oral as well as oral and written submissions/replies as such no prejudice will be caused if these proceedings are disposed of taking into account the SCNs, replies /submissions of the Noticees at this stage. In this regard , I rely upon the judgments of Hon'ble Supreme Court in *Ram Bali vs State of Uttar Pradesh* (2004) 10 SCC 589 and *Telstar Travels (P) Ltd. v. Enforcement Directorate,* (2013) 9 SCC 549.

30. Before dealing with the allegations against the Noticee herein, I deem it necessary to refer to relevant provisions of the SEBI Act and PFUTP Regulations charged in the SCNs. These provisions are reproduced hereunder:-

SEBI Act

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

12A. *No person shall directly or indirectly –*

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a 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 there under;*"

Regulation 3: <u>Prohibition of certain dealings in securities</u>

No person shall directly or indirectly-

(a) .....;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

Regulation 4: <u>Prohibition of manipulative, fraudulent and unfair trade practices</u>

(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:

(e) any act or omission amounting to manipulation of the price of a security;

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

(r) planting false or misleading news which may induce sale or purchase of securities."

31. I note the Noticee has submitted a copy of the allotment letter dated April 22, 1994 issued in the name of Ritesh Industries indicating that land admeasuring 40 acres was allotted by the Government of Punjab to Ritesh Industries in 1994. Further, the Noticee has also submitted a copy of letter dated January 31, 1995 issued by the Government of Punjab indicating that the said land admeasuring 40 acres was segregated in favour of group companies of Ritesh Industries. However, I am of the view that from these evidences it cannot be established that the money / consideration for the said land was paid to the Government of Punjab only by Ritesh Industries Limited, as been contended by the Noticee, I therefore, reject the contention of the Noticee in this regard and find that the cost of acquiring the said land was borne by the respective entities namely Ritesh Properties, Oxford Processors, Ritesh Spinning Mills Ltd., Ritesh Impex Private Ltd. and H. B. Fibers Ltd.

32. It has been alleged that the Company had recognized the entire 22.5% of the sale consideration, which was the undivided share of all the five entities, owning the land. Thus, the Company had wrongly recognized the share of other four entities as its real estate revenue, and to that extent the revenue reported by the Company was overstated and the same was certified by the Auditor as authentic. Replying to this allegation the Noticee has submitted that the four of related entities entered into a Collaboration Agreement dated May 31, 2006, wherein Ritesh Properties was made a Lead Party for effectuating joint and collective development of their land as a Mega Project. As per the collaboration agreement the parties had agreed that Ritesh Properties was to keep the sale price with it and net profit was to be shared amongst them on completion of the project. As no income had accrued from sale and sale proceeds were not intended to be shared with other parties of the collaboration agreement before completion of the project, the entire amount of the receipt was recognised in the books of the Company on accrual basis. It is matter of record that the four land owning entities entered into a Collaboration Agreement dated May 31, 2006, wherein Ritesh Properties was a Lead Party for effectuating joint and collective development of the entire land. In terms of the said Agreement said four entities were not to contribute any fund for the development of the proposed project and they had agreed to give irrevocable power to Ritesh Properties to sell their respective shares of the developed area and to keep the sale proceeds with it and thus, the sale price was not to be distributed amongst the 4 entities. However, the profit, if any could be shared amongst the said entities on completion of the project. In view of these arrangements , I am of the view that no portion of the income accrued at the time of agreement to sell was intended to be shared with the said four entities. In view of the same, I find merit in the submission of the Noticee in this regard.

33. It has been also alleged that the total enhanced land compensation claimed by the Government including interest had not been paid, but only part payment had been made. The fact that the same were disputed and appeals were pending against the arbitration award in favor of the Company was also omitted. Neither the liability of the outstanding amount payable was provided in the accounts nor included in the Contingent Liabilities. Replying to this allegation the Noticee has submitted that the fact of pending litigation with respect to the enhanced compensation for the land, being demanded by the Government of Punjab was disclosed in the Annual Report of 2006-2007. Further, if any payment has to be made by the Company, the same shall be accounted for on cash basis. I note that it is admitted fact that the Company had not indicated in its disclosure in Annual Report, the exact amount of contingent liabilities. I am of the view that such disclosure is not adequate. Further, I am of the view that when the Company was following accrual method of accounting for all the receipts, for contingent liability it cannot adopt cash basis of accounting. Therefore, the Noticee has aided the Company in permitting misleading information to be presented in its financial reports.

34. It has been also alleged that the security deposit received by the Developer had been credited to the account of Ansal API, and not to the account of 'Ansal Township & Projects Ltd.' Further the said amount was transferred from the Company's account to the credit of 'M/s. Estate Investment Solutions', one of the buyers of built up space, with whom Agreements to Sell were made. Replying the same, the Noticee has submitted that Ansal Township and Projects Ltd., who had paid the security deposit was merged with Ansal API, vide order dated August 31, 2006 passed by Hon'ble High Court of Delhi. Hence, the security deposit was credited in the account of Ansal API. While transferring the said amount from one account to another (on account of merger of Ansal Township and Projects Ltd. with Ansal API), the accounts department of the Company mistook the receipt as sale consideration from Estate Investment Solutions, one of the buyers of built up space from the Company with whom agreement to sell was entered into, an apparent error that led to offsetting the money received with another receivable account. I note that the Noticee has admitted that the security deposit received from the Developer was credited to Estate Investment Solutions, and therefore, was in the knowledge of the discrepancy. I find that the Noticee was obligated to ensure true and fair disclosure in this regard in the financial statements, which he failed to observe.

35. The Noticee has further submitted that the Guidance Note issued by the ICAI pertains to a real estate developer, and the Company is not the Developer but the owner of the land, hence, the Company has not violated any law or overstated its turnover by recognizing the revenue on an accrual basis in its books of accounts, even in the absence of actual receipt of sale proceeds. I note that the objective of GN(A) 23 Guidance Note on Accounting for Real Estate Transactions reads as under:

> *Objective 1.1 The objective of this Guidance Note is to recommend the accounting treatment by enterprises dealing in 'Real Estate' as* ***sellers or developers****. …*

36. It is clear from the plain reading from the objective, that the said Guidance Note is applicable on sellers as well. In the present matter, it is an admitted fact that as per the Collaboration Agreement, Ansal was the developer and had all the right to sell the flats, however, it is also an admitted fact that the Company has entered into various agreements of sale with the prospective buyers. I therefore, find that the Guidance Note on Accounting for Real Estate Transactions was applicable to the Company.

37. It has also been alleged that despite having clear guidelines on how to recognize the revenue from real estate business, in connection with a Collaboration Agreement entered by the Company with the Developer for a project to develop and construct on the land, the Company adopted questionable methods to recognize the revenues. The Noticee has contended that there had been

ambiguities about the accounting method, as neither the principles of Accounting Standard-7 nor Accounting Standard-9 issued by the ICAI squarely cover the present matter. It is relevant to mention that these Accounting Standards are generally understood and applied as they are. Further, no clarification has been issued by the Institute of Chartered Accountants of India on interpretation and applicability of these Accounting Standards so as to suggest any ambiguity therein as contended by the Noticee. I, therefore, reject the contentions of the Noticee in this regard.

38. It has been alleged that no payment schedules were attached to the agreement to sell and no payments were received from any of the parties, still the Company accounted the consideration value of the sale on accrual basis. The Noticee replied that there was a transfer of risks and rewards under the agreement to sell as the parties had agreed for transfer of the property under the said agreement. It was further submitted by the Noticee that the agreement to sell may have the effect of transferring all significant risks and rewards of ownership to the buyer even though legal title is not transferred or the possession is not given to the buyer. It is relevent to mention here that there is a difference between 'Sale' and 'Agreement to Sell'. It will not be appropriate to say that significant risks and rewards are transferred in case of 'Agreement to Sell' as in the present case. I am of the view that 'Agreement to Sell' is just an agreement to transfer absolute right in the property as per the terms and conditions enumerated in the agreement and 'Agreement to Sell' *per se* does not transfer any right in the property. Further, in the present case, there is no evidence on record to suggest that any party had performed its promise as per the 'Agreement to Sell'. I note that AS 4.2 and 4.3 of Guidance Note on Accounting for Real Estate Transactions reads as under:

> *4.2 The completion of the revenue recognition process is usually identified when the following conditions are satisfied:*
> *(a) The seller has transferred to the buyer all significant risks and rewards of ownership and the seller retains no effective control of the real estate to a degree usually associated with ownership;*
> *(b) The seller has effectively handed over possession of the real estate unit to the buyer forming part of the transaction;*
> *(c) No significant uncertainty exists regarding the amount of consideration that will be derived from the real estate sales; and*
> *(d) It is not unreasonable to expect ultimate collection of revenue from buyers.*
>
> *4.3 Where transfer of legal title is a condition precedent to the buyer taking on the significant risks and rewards of ownership and accepting significant completion of the seller's obligation, revenue should not be recognised till such time legal title is validly transferred to the buyer.*

39. From the above it is clear that in case of agreement to sell, where sale proceeds has not been paid by the buyers, as in present case, the agreed sale consideration amount cannot be recognised and the payment cannot be said to have accrued. I am of the view that by adopting such accounting measures, the Company managed to overstate the revenue and profit and by certifying the same the Noticee aided and abetted the Company in disseminating the false financial position and to defraud the investors by not giving the true and fair picture of the Company's financial position.

40. It has been alleged that the Auditor had certified that the Company had recognized the revenue of ₹900.00 lakh from real estate, in the last quarter March 31, 2007. In subsequent periods the Auditor had failed to disclose that the Company had changed the methodology of income recognition since the entire sale consideration i.e. ₹ 8534.00 lakh in 2007-08 and ₹ 3699 lakh in 2008-09 (up to December 31, 2008) was recognized as revenue. The Auditor had also certified the expense under *'material consumed'*, 77.5% of the sale consideration, i.e., share of the Developers. Eventually, it increased the turnover and the expense amount. In reply to the allegation the Noticee has submitted that although there was a change in the methodology of accounting for the financial years 2007-2008 and 2008-2009, whereby the entire revenue was accounted for as income of the Company and 77.5% of the same (which was the share of the Developer) was shown as expenses, it was done pursuant to an expert opinion in this matter. It was further submitted that the change in the method of presentation did not affect the true and fair view of the state of affairs of the business or the profit and loss accounts of the Company. I note that the Noticee has accepted the facts forming the basis of the allegation. I am of the view that such practice realizing all the receipt of sale of real estate as income and accounting the share of developer as expense, violates the very basic principle of accounting. I have no doubt that such practice adopted by the Company and certification by the Auditor and non-reporting of subsequent change in methodology of recognition of revenue was under a device to inflate the turnover of the Company.

41. Further, the claim that it was done pursuant to an expert opinion and that the same did not affect the true and fair view of the state of affairs of the business or the profit and loss accounts of the Company, is immaterial and without any bearing upon the allegation. The submission that the Company had represented land as a fixed asset instead of *'stock in trade'*, during the financial year 2006-2007 due to ambiguity about the standards is without merit as the same was admittedly shown in '*stock in trade'* in the next financial year.

42. The submission of the Noticee that AS – 18 does not specifically state that all transactions that were held between the related parties shall be disclosed, is without merit. In this regard, it is relevant to mention that the objective of AS – 18 is: *"to establish requirements for disclosure of (a)*

related party relationships; and (b) transactions between a reporting enterprise and its related parties." The first Paragraph of the Scope of AS – 18 states that :

> *"This Standard should be applied in reporting related party relationships and transactions between a reporting enterprise and its related parties. The requirements of this Standard apply to the financial statements of each reporting enterprise as also to consolidated financial statements presented by a holding company."*

43. The submission that the investors would be interested only in the outstanding amounts at the end of the year is also without any merit as the text of AS – 18 does not provide for any such exceptions. I, therefore, do not agree with the submission of the Noticee. I find that the Noticee was required to report the advances made from the accounts of Mr. Sanjeev Arora, Managing Director and Mr. Pran Arora, Chairman, even though the said advances were regularized by the date of the preparation of the Balance Sheets, as there is no exception made out with regard to the same. I find that the Noticee has failed to fulfill his bounden duty in this regard.

44. The Noticee has further submitted that it was privy to certain reports about the internal system for Audit of the Company and that they did not contain any adverse view on the internal system. The Noticee has not produced any evidence in this regard. It is relevant to mention that independent chartered accountant appointed by SEBI has also not reported existence of any such reports . I, therefore, do not find the submissions of Noticee satisfactory. The submission that during 2006-2007, the dealings in the foreign exchange were negligible and therefore, the same was not required to be qualified in the audit report is without merit as the Accounting Standard - 11 does not provide any exception or discretion as claimed by the Noticee.

45. In this case, as discussed hereinabove, it has been established that correct accounting procedures and practices had not been followed in preparation of financial statements of the Company and the Noticee had falsely certified misleading Annual Accounts of the Company, containing distorted information, which he did not believe to be true but certified knowing that the same when published would be relied upon by the investors to be true and fair and such certification was intended for the benefit the Company and its promoters/directors in their alleged manipulation of price in the scrip of the Company. I, therefore , find that by the aforesaid acts and omissions the Noticee aided and abetted the Company in disseminating the false financial position and to defraud the investors by not giving the true and fair picture of the Company's financial position and, thus, its acts and omissions amount to aiding and abetting in the fraudulent, unfair and manipulative acts in connection with dealing in the shares of Ritesh Properties and are covered within the definition of *"fraud"* and "*fraudulent"* under regulation 2(1)(c) of the PFUTP Regulations which reads as follows:-

Definition of 'fraud" – Regulation 2(1)(c).

(c)"fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent;

(7) deceptive behaviour by a person depriving another of informed consent or full participation;

(8) a false statement made without reasonable ground for believing it to be true;

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly;."

46. Being fraudulent, unfair and manipulative the above acts and omissions attract the prohibitions contained in regulation 3 and 4 of the PFUTP Regulations read with sections 12A of the SEBI Act. The following rulings of the Hon'ble SAT in matter of *V. Natarajan vs. SEBI (Order dated June 29, 2011 in Appeal no. 104 of 2011)* would also be relevant in the context of this case:-

> *"… we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market), Regulations, 2003 were violated. These regulations, among others, prohibit any person from employing any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on an exchange. They also prohibit persons from engaging in any act, practice, and course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities that are listed on stock exchanges."*

47. In the facts and circumstances as discussed hereinabove, I find that material available on record are sufficient to establish contravention of regulation 4(2) (k) of the PFUTP Regulations. However, contraventions of the provisions of section 12A (a), (b) and (c) of SEBI Act, 1992 read with regulations 3(b), (c) and (d), 4(1) and 4(2)(e) and (r) of the PFUTP Regulations as alleged in the respective SCNs by Shri Shashi Bhushan, Proprietor of M/s. Bhushan Aggarwal & Co. have been established on the basis of preponderance of probability.

48. I am of the view that disclosure of true and fair information is crucial for inventor protection and to maintain and restore their confidence in the securities market. The false and misleading disclosures in financial statements as found in this case are not only detrimental to the interests of investors but also endanger integrity of the securities markets. This is also a fit case where SEBI needs to send a stern message to professionals who associate themselves with securities market so as to prevent them from indulging in such acts of omissions and commissions as found in this case.

49. Considering the above, I, in order to protect the interest of investors and integrity of the securities market, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11 and 11B thereof, and regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 hereby prohibit Shri Shashi Bhushan, Proprietor of M/s. Bhushan Aggarwal & Co. from, directly or indirectly, issuing any certificate required under securities laws namely Securities Board of India Act, 1992, the Securities Contract (Regulations) Act, 1956, the Depositories Act, 1996, Rules, Regulations, Guidelines made thereunder, the Listing Agreement and the applicable provision of the Companies Act, 2013, the Rules, Regulations, Guidelines made thereunder which are administered by SEBI, with respect to listed companies and the intermediaries registered with SEBI for a period of one year.

50. This order shall come into force with immediate effect.

51. All the listed companies and intermediaries registered with SEBI are hereby advised to ensure compliance of the above directions in their dealings.

Sd/-

Date : February 17th, 2016 **RAJEEV KUMAR AGARWAL**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA