

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.EAD-5/SVKM/AO/08/2017-18]

**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA
ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING
INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER)
RULES, 1995**

In respect of

Everonn Education Ltd.

(PAN: AAACE8362L)

BRIEF FACTS

1. Securities and Exchange Board of India (**'SEBI'**) observed that in the scrip of Everonn Education Ltd. (**"EEL/Noticee"**), the shareholding of one of the promoter entity namely The Concord Residential Schools (Kerala) Private Limited (**Concord**) crossed 5% of the share capital of EEL in May 2014. The shares of EEL are listed at Bombay Stock Exchange Limited (BSE) and National Stock Exchange of India Limited (NSE).

2. On being asked by SEBI vide email dated March 26, 2015 to confirm compliance with respect to disclosures under Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **"PIT Regulations, 1992"**), Noticee vide email dated March 26, 2015 sent the information regarding disclosures made by the Concord, inter alia, under Regulation 13(4A) of PIT Regulations, 1992. The noticee was required to make requisite disclosure to all the exchanges where the shares of the noticee are listed within two working days of the receipt of information in this regard from Concord as stipulated under Regulations 13(6) of PIT Regulations, 1992. However, no disclosure as stipulated under afore-mentioned Regulation was made by the noticee. It was, therefore, alleged that the noticee has failed to

disclose to all the exchanges where the shares of the noticee are listed within two working days of the receipt of intimation under Regulation 13(4A) of PIT Regulations, 1992 and thereby violated Regulation 13(6) of PIT Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI vide order dated August 10, 2016 appointed undersigned as the Adjudicating Officer under Section 15I of Securities and Exchange Board of India (**SEBI**) Act, 1992 to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992 for the aforesaid alleged violations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD-5/ADJ/SVKM/AA/OW/27857/1/2016 dated October 05, 2016 (hereinafter referred to as '**SCN**') was issued to the Noticee under Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Adjudication Rules**') to show cause as to why an inquiry should not be initiated and penalty be not imposed under section Section 15A(b) of SEBI Act, 1992 for the aforesaid allegations as detailed in the said SCN.
5. The said SCN was received by the Official Liquidator, High Court of Madras. Further, I note that BSE and NSE vide orders dated October 26, 2016 suspended the trading in the shares of EEL pursuant to the order dated August 29, 2016 of the Hon'ble High Court of Madras whereby the Official Liquidator, High Court of Madras was appointed as the Provisional Liquidator of the Noticee.
6. Since no reply was received from the Noticee, the matter is proceeded with the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the documents available on record. The issues that arise for consideration in the present case are :
- a) Whether Noticee violated Regulation 13(6) of PIT Regulations, 1992?
 - b) Does the violation, if any, on the part of Noticee attract any penalty under Section 15A(b) of SEBI Act, 1992?
 - c) If yes, what should be the quantum of penalty?
8. While looking for the present status of the Noticee, I find that in the website of Ministry of Company Affairs, the status of the Noticee is mentioned as 'Under Liquidation' and vide order dated August 29, 2016 passed by the Hon'ble Madras High Court in Company Petition no. 375 of 2014 and 1135-1136 of 2014, the official liquidator was appointed and the liquidator was directed to take charge of the assets of the Noticee.
9. I am of the view that before proceeding in the matter on its merit, it would be in the fitness of the thing to first decide the preliminary issue as to whether the adjudication proceedings initiated by SEBI against the Noticee can continue.
10. In order to examine the maintainability of the present adjudication proceedings against Noticee, it will be appropriate to refer to Section 446 of the Companies Act, 1956, (corresponding to Section 279 of Companies Act, 2013) which reads as under:-
- "Section 446 of Companies Act, 1956**
- When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Tribunal and subject to such terms as the Tribunal may impose."*

11. According to Black's Law Dictionary, Sixth Edition, the term 'Legal Proceedings' includes "all proceedings authorized or sanctioned by law, and brought or instituted in a court or legal tribunal, for the acquiring of a right or the enforcement of remedy." Further, the term 'Proceedings' means, "any action, hearing, investigation, inquest or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given."
12. In the "Guide to the Companies Act" by A Ramaiya, (17th Edition Reprint 2010, page 4929 & 4930), it is stated that the object of winding up of a company by the court is to facilitate the protection and realization of its assets with a view to ensure an equitable distribution thereof among those entitled and to prevent the administration from being embarrassed by a general scramble among creditors and others. Consequently, once the court has taken the assets of a company under its control or has passed an order for its being wound up, it will not be proper to allow proceedings to be started or continued against the company. "Section 446 is wide in its terms and is not restricted to any category of suits or any class of plaintiffs. It is wide enough to cover all suits and other legal proceedings who-ever may be plaintiff." {**Murgan Oil Industries (P.) Ltd. Re, (1970) 40 Com. Cases 77, 82 (Mad)** }.
13. While examining the issue of maintainability of the legal proceedings initiated after the date of order of winding up/ appointment of official liquidator, the Hon'ble High Court of Bombay, in the case of **Deutsche Bank v. S.P. Kala {(1990) 67 Com. Cases}** held as under:-
- "Section 446 of the Companies Act provides that, when a winding up order is made or the official liquidator is appointed as provisional liquidator, no suit or legal proceedings should be commenced or if pending on the date of the winding-up order, shall be proceeded with, against the company, except with the leave of the court and subject*

to such terms as may be imposed. Sub-section (2) further lays down that the court which is winding-up the company shall, notwithstanding anything contained in any other law in force, have jurisdiction to entertain or dispose of, inter alia, any suit or proceeding by or against the company, whether such suit or proceeding has been instituted or is instituted. A careful examination of these provisions of law makes it clear that once a winding-up order is made or the official liquidator is appointed as provisional liquidator, no proceedings can continue or be instituted against the company without the permission of the court. It is further clear that jurisdiction to entertain or dispose of any suit or proceeding by or against the company is vested in the company court without any kind of restriction..... The expression "any suit or proceeding by or against the company" is wide enough to bring within its sweep any kind of suits."

14. In the light of the above, I am of the considered view that the present adjudication proceedings against Noticee which is under liquidation cannot be continued without the leave of the Court as it falls under the term "other legal proceedings" used in Section 446 of Companies Act, 1956. Further, I note that there is no material on record to suggest that leave of the Court has been taken.

ORDER

15. In view of my findings noted in the preceding paragraphs, I am of the view that the adjudication proceedings initiated against the Noticee vide SCN dated October 05, 2016 cannot be proceeded with. The matter is, accordingly, disposed of.
16. In terms of rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date: April 24, 2017
Place: Mumbai

S. V. Krishnamohan
Chief General Manager &
Adjudicating Officer