ADJUDICATION ORDER NO. EAD-8/JS/SP/69/2018

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 Scandent Holding Mauritius Ltd. - PAN No: AALCS1549L in the matter of Xchanging Solutions Ltd (formerly known as Cambridge Solutions Ltd.)

BACKGROUND

1. An offer document (letter of offer) was filed by M/s. Xchanging (Mauritius) (Acquirer) along with Xchanging Ple (Person Acting in Concert) with Securities and Exchange Board of India ('**SEBI'**) to acquire certain shares of Xchanging Solutions Ltd.(formerly known as Cambridge Solutions Ltd.) (**'The Company/Xchanging'**). The public announcement for the same was made on October 06, 2008 and the shares of the Company were listed on Bombay Stock Exchange Ltd. (**"BSE'),** The National Stock Exchange of India Ltd. (**'NSE'),** Ahmedabad Stock Exchange Ltd. (**'ASE'**) and Madras Stock Exchange Ld. (**'MSE'**).

2. On perusal of the letter of offer, SEBI observed that M/s Scandent Holding Mauritius Ltd., promoter of the Company (**'Scandent/Noticee'**) had failed to comply with provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (**'Takeover Regulations')** for the shares acquired on December 28, 2005 and June 29, 2006.

3. Based on the aforesaid information, Adjudication proceedings under Chapter VI-A of Securities and Exchange Board of India Act, 1992 ('**SEBI Act'**) were initiated against the Noticee inter alia under Section 15A(b) of SEBI Act, to inquire into and adjudicate the alleged violation of the provision of Takeover Regulations. Subsequently it came to notice that there were alleged violations of the SEBI (Prohibition of Insider Trading) Regulations 1992 (**'PIT Regulations'**) also that were later on included in these proceedings.

Appointment of Adjudicating Officer

4. An Adjudicating Officer was appointed vide order dated June 27, 2013 under Section 19 read with section 15-I of the Securities and Exchange Board of India Act, 1992 (**'SEBI Act, 1992'**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 (**'Adjudication Rules'**), to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992, as applicable.

5. The Consent application dated January 31, 2014 filed by the Noticee was withdrawn in June 2015 and subsequently, the adjudication proceedings against Scandent were

continued thereafter, after including the alleged violations of PIT Regulations.

6. Consequent to transfers of Adjudicating Officers, the proceedings are now being continued further against Scandent in terms of order dated October 04, 2017.

SHOW CAUSE NOTICE, REPLY AND HEARING

7. A Show Cause Notice ('SCN') was issued on December 03, 2013 to Scandent calling upon the Noticee to show cause as to why an inquiry should not be held against it, under Rule 4 of the Adjudication Rules and penalty be not imposed for the alleged violation of the Takeover Regulations under Section 15A(b) of the SEBI Act, for the alleged violations, details of which are as follows:

Name of the Promoters/ Major Shareholders	**Non-compliance of Takeover Regulations**	**No. of shares acquired**	**Change in % in shareholding**	**Date of Acquisition**	**Due date of Compliance**	**Date of Compliance**	**Delay (No. of days)**
Scandent Holding Mauritius Ltd	7(1A)	10,25,227	3.4%	28.12.2005	December 30, 2005	October 14, 2008	1020
Scandent Holding Mauritius Ltd	7(1)	5,24,70,000	50.01%	29.06.2006 (acquisition pursuant to merger)	July 01, 2006	October 14, 2008	837

8. Scandent, vide email dated December 20, 2013, has requested time till end of January 2014 to file reply to the SCN. The request of Scandent was acceded and accordingly vide letter dated December 23, 2013, Scandent was granted time till January 15, 2014 to file reply and an opportunity of personal hearing on February 03, 2014 was also granted.

9. Scandent, vide email dated January 22, 2014, has requested further time till February 15, 2014 to file reply to SCN and also to reschedule the personal hearing after the filing of reply to the SCN. Further, vide email dated January 24, 2014, AZB Partner, the representative of Scandent, has informed that the reply to the SCN will be filed by February 15, 2014. As requested, vide letter dated January 28, 2014, the hearing was rescheduled to February 25, 2014.

10. Scandent, vide letter dated February 14, 2014, has filed reply to the SCN, has inter-alia submitted that:

For December 28, 2005 transaction

a. *On December 28, 2005, Xchanging (Target Company) made a preferential allotment of 10,25,227 equity shares to Scandent Group Ltd. (subsequently merged with Scandent*

Mauritius Ltd. to form the surviving entity, Scandent Holding Mauritius ltd.) On December 28, 2005, Target Company made a filing with NSE regarding allotment of the shares to Scandent Group Ltd.

b. *Prior to the preferential allotment of shares, Scandent Group Ltd. held 41.78% of the paid up equity share capital of the Target Company and post allotment of the 10,25,227 shares, the shareholding of Scandent Group increased to 43.76%. While the gross acquisition of shares which were allotted was 3.40% the net change in shareholding of Scandent Group Ltd. was only 1.98% viz less than 2% of the paid up share capital.*
c. *Since the net acquisition of equity shares of Scandent Group ltd. was less than 2%, in other words, the difference between the post allotment and pre allotment voting rights was merely 1.98%, the disclosure requirement under Regulation 7(1A) of the Takeover Regulations shall not apply.*
d. *Without prejudice to the above, Scandent made a filing under Regulation 7(1A) of the Takeover Regulations on October 14, 2008.*
e. *Further, pursuant to the quarterly shareholding pattern disclosed by the Target Company to the stock exchanges, for the quarter ending December 31, 2005, the shareholding of Scandent Group Ltd. was disclosed as 43.76% of the share capital of the Target company.*

For June 29, 2006 transaction

f. *On June 29, 2006, pursuant to the Scheme of merger between Cambridge LLC and Scandent Solutions Corporation Ltd., the Target company allotted 5,24,70,000 equity shares to Scandent Mauritius Ltd., representing 50.01% of the paid up share capital of the Target Company. A corporate announcement regarding the merger becoming effective and allotment of equity shares was made by the Target Company on June 29, 2006 to BSE.*
g. *In the quarterly shareholding pattern disclosed by the Target Company to the stock exchanges, for the quarter ending September 2006, the shareholding of Scandent Mauritius Ltd. is disclosed as 50%.*
h. *On October 14, 2008, Scandent made a delayed filing under Regulation 7(1) of the Takeover Regulations. Further, the aforesaid delayed filing made by Scandent under Regulation 7(1) of the Takeover Regulations was also disclosed in the Letter of Offer dated February 14, 2009, at the time of the open offer made by Xchanging.*
i. *The disclosures to be made under Regulation 7(1) and 7(1A) of the Takeover Regulations were made by Scandent on October 14, 2008. In any event, the details of allotment of shares to Scandent on December 28, 2005 and June 29, 2006 were already in the public domain immediately through various other corporate announcements, shareholding disclosures, and filing made by the Target Company. Thus, the disclosures made under Regulation 7(1) and 7(1A) of the Takeover Regulations, on October 14, 2008 did not cause a loss to any investor or shareholder of the target Company, or to the general public, in any manner. Further, no disproportionate gain or unfair advantage has been granted to Scandent due to the aforesaid filings.*
j. *In this context, the decision of the Supreme Court in* ***Hindustan Steel v. State of Orissa*** *AIR 1970 SC 253, discussing the principles governing imposition of penalty for breach of statutory obligations, is relevant. It was held in paragraph 7 that "An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to carry out a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the*

provisions of the Act or where the breach flows from the bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

k. *The above mentioned principles laid down by the Supreme Court in were applied by the SAT in* ***Cabot International Capital v Adjudicating Officer Appeal*** *No. 24/2000, where the SAT observed: "it is to be seen whether the facts of the case warranted a penalty…the facts to be considered are whether there is anything to show that the Appellant acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligations…it is also to be seen whether the breach flows from a bona fide belief of the appellant that it was not liable to act in the manner prescribed by the statute…a penalty is not attracted merely because there is a violation and the adjudicating authority must satisfy himself as to whether the violation deserved punishment."*

l. *The above principles were also laid down by the Hon'ble SAT in the case of* ***Satyadeva Prakash Sinha v. SEBI*** *(Appeal No. 73 of 2002) relating to non-disclosures under the Takeover Regulations. It was further held that "Further in case it is felt that penalty is warranted the quantum has to be decided taking into consideration the factors stated in Section 15J. It is not that the penalty is attracted per se the violation. The Adjudicating Officer has to satisfy that the violation deserved punishment."*

m. *it is submitted that, at best the delay in filing the disclosures by Scandent under Regulation 7(1) of the Takeover Regulations was technical and inadvertent. However, upon becoming aware of the requirements under the Takeover Regulations, Scandent had immediately proceeded to make the relevant filings in October, 2008. Further, given the position of law and the factors to be taken into account by the Adjudicating Officer, Scandent submits that the following facts listed out are sufficient to hold that no penalty ought to be imposed:*

   i. *The required filings under Regulation 7 (1) and 7 (1A) of the Takeover Regulations were made by Scandent on October 14, 2008.*
   ii. *No loss or harm was caused to any investor or shareholder of the Target Company or to the public in any manner, and as such, the default is minor in nature.*
   iii. *No pecuniary gain or unfair advantage was caused to Scandent due to the delayed filings.*
   iv. *The details of allotment of shares to Scandent were already in the public domain due to the corporate announcements made by the Target Company on December 28, 2005 and June 29, 2005 and the periodic filings made by the Target Company with the stock exchanges.*
   v. *The fact of the delayed filings being made was disclosed to the public in the letter of offer dated February 14, 2009.*
   vi. *The two incidents alleged in the SCN are merely isolated incidents and not repetitive in nature.*

11. The authorised representatives (**'ARs'**) appeared on the date of hearing i.e. February 25, 2014. During the course of hearing, the Adjudicating Officer clarified that the change in percentage in respect of acquisition on December 28, 2005 was 3.4% as against 1.72% as wrongly stated in the SCN dated December 03, 2013. Further, the ARs were called upon to submit a statement of past non-compliances of SEBI Act and Regulations made and action taken by SEBI in the past, if any against the Noticee.

12. Scandent, vide letter dated February 26, 2014, has confirmed that:

a. *"Except as set out in our reply to the SCN dated February 14, 2014, Scandent has been compliant with the disclosure obligations set out in the Takeover Regulations, and the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011.*
b. *There have been no actions pending with / concluded by SEBI against the associates, key management personnel, directors or promoters of Scandent. "*

13. The Consent application dated January 31, 2014 filed for the present matter was withdrawn by Scandent in June 2015 and subsequently, the adjudication proceedings against Scandent were continued thereafter. Vide letter dated June 05, 2015, again an opportunity of personal hearing on June 12, 2015 was granted to Scandent.

14. During the hearing, the ARs reiterated the submission made in the replies dated February 14, 2014. The ARs further admitted that delayed disclosures were made under PIT Regulations for the transaction for which Regulation 7(1) of Takeover Regulations has been alleged to have been violated. In the earlier hearing, ARs were advised to submit the past non-compliance of SEBI act and Regulations and action taken by SEBI in the past, if any, against Scandent.

15. However, it was noted that vide letter dated February 26, 2014, ARs had only clarified that Scandent had been compliant with disclosure obligations set out in Takeover Regulations and SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011, except for the violations mentioned in the extant SCN. However Scandent had not complied with PIT Regulations as well and the same was not disclosed by the ARs while replying to the information regarding past non-compliance of SEBI Act and Regulations by Scandent sought by the AO at the time of the earlier hearing.

16. Hence, ARs were once again given an opportunity to submit all past non-compliance of SEBI Act and Regulations and action taken by SEBI in the past, if any against the Noticee. Further, the ARs were advised to submit the required information latest by June 19, 2015.

17. Scandent, vide letter dated June 17, 2015 has confirmed that:

a. *Scandent is in compliance with the provisions of the SEBI Act and the various rules and regulations thereunder, except for the delays in the disclosure required to be made Regulations 7(1) and 7(1A) of the Takeover Regulations and the corresponding provisions of the PIT Regulations, with respect to the facts as set out in the SCN and our reply to the SCN dated February 14, 2014. The requisite disclosures under the PIT Regulations for the allotment of shares set out in the SCN were made on July 08, 2014.*
b. *There have been no actions pending with/concluded by SEBI against the associates, key management personnel, directors or promoters of Scandent.*

18. Based on the submission made by Scandent w.r.t disclosures relating to Regulation 13(1) of the PIT Regulations, Adjudication proceedings were amended to include the alleged delayed disclosure for the shares acquired on June 29, 2006, vide Order dated December 01, 2015. A supplementary SCN in this respect was issued on February 20, 2017.

19. Scandent, vide emails dated March 15, 2017 and March 17, 2017, has requested an additional period of 10 days till March 27, 2017 to submit reply. Vide email dated

March 17, 2017, the request of Scandent was acceded and accordingly advised to file reply latest by March 27, 2017.

20. Scandent, vide letter dated March 23, 2017, has filed reply to the SCN, inter-alia submitted that:

Disclosures to be made by Scandent under Regulation 13(1) of the PIT Regulations:

a. *On June 29, 2006, pursuant to the Scheme of merger between Cambridge LLC and Scandent Solutions Corporation Ltd., the target Company (Xchanging) allotted 5,24,70,000 shares to Scandent, representing 50.01% of the paid up share capital of the target Company. A corporate announcement regarding the merger becoming effective and allotment of equity shares was made by the Target company on June 29, 2006 to BSE.*
b. *In the quarterly shareholding pattern disclosed by the Target Company to the stock exchanges, for the quarter ending September 2006, the shareholding of Scandent is disclosed as 50%.*
c. *On June 8, 2014, Scandent made a delayed filing under Regulation 13(1) of the PIT Regulations to the Target Company.*
d. *It is submitted that the disclosures to be made under Regulation 13(1) of the PIT Regulations were made by Scandent on July 8, 2014 to the Target Company. Thereafter, the Target Company disclosed the disclosure under Regulation 13(6) of the PIT Regulations to the stock exchange on July 17, 2014. It is respectfully submitted that the corporate announcement on the BSE site in relation to the said disclosures is clear and unambiguous evidence that Scandent made the filing under Regulation 13(1) of the PIT Regulations to the Target Company.*

With respect to regulation 7(1) and 7(1A) of Takeover regulations, Scandent reiterated the submissions made vide letter dated February 14, 2014 and further it submit that:

e. *The method of computation in relation to acquisition of equity shares has also been clarified in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, in Explanation (ii) to Regulation 3(2) which provides as follows:*
"in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the pre-allotment and post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition."
f. *Without prejudice to the submissions contained herein, it is submitted that the disclosures to be made under Regulation 13(1) of the PIT Regulations were made by Scandent on July 8, 2014 to the Target Company and the disclosures to be made under Regulation 7(1A) of the Takeover Regulations were made on October 14, 2008.*
g. *In any event, the details of allotment of shares to Scandent on December 28, 2005 and June 29, 2006 were already in the public domain immediately through various other corporate announcements, shareholding disclosures, and filings made by the Target Company as explained in the facts hereinabove. Thus, delayed disclosure under Regulation 13(1) of the PIT Regulations and Regulation 7(1A) of the Takeover Regulations did not cause loss to any investor or shareholder of the Target Company, or to the general public, in any manner. Additionally, Scandent also made filings under Regulation 7(1) of the Takeover Regulations on October 14, 2008 in relation to the allotment to Scandent on June 29, 2006; detailed submissions and hearings in relation to which have already been submitted and taken place before the Hon'ble Adjudicating Officer, Ms. Anita Kenkare. Furthermore, no disproportionate gain or unfair advantage has been gained by Scandent due to delayed submissions of the aforesaid filings.*
h. *Strictly without prejudice to the above, it is submitted that, at best the delay in filing the disclosures by Scandent under Regulation 13(1) of the PIT Regulations and Regulation 7(1A) of the Takeover Regulations were technical and inadvertent. However, upon becoming*

becoming aware of the requirements under the PIT Regulations and the Takeover Regulations, Scandent had immediately proceeded to make the relevant filings in July 2014 and October 2008, respectively. Further, given the position of law and the factors to be taken into account by the Adjudicating Officer, Scandent submits that the following facts listed out are sufficient to hold that no penalty ought to be imposed:

i. The required filings under Regulation 13(1) of the PIT Regulations were made by Scandent on July 8, 2014, which filing has thereafter, been submitted to the BSE and is available on the BSE site. Filings in relation to the same transaction were made by Scandent under Regulation 7(1) of the Takeover Regulations on October 14, 2008, as soon as Scandent became aware of the requirement for making the said disclosure.

ii. The required filings under Regulation 7(1A) of the Takeover Regulations were made by Scandent on October 14, 2008.

iii. No loss or harm was caused to any investor or shareholder of the Target Company or to the public in any manner, and as such, the default is minor in nature.

iv. No pecuniary gain or unfair advantage was caused to Scandent due to the delayed filing.

v. The details of allotment of shares to Scandent were already in the public domain due to the corporate announcements made by the Target Company on December 28, 2005 and June 29, 2006 and the periodic filings made by the Target Company with the stock exchanges.

21. Vide Notice dated April 25, 2017, Scandent was granted an opportunity to avail personal hearing on May 24, 2017.

22. The ARs of Scandent, appeared on the date of hearing and reiterated their earlier submissions. Further, the ARs were asked to confirm, along with documentary evidence, the proof of the disclosures made by them under PIT Regulations for the acquisition made on June 29, 2006. In this regard, ARs sought time till June 05, 2017 to submit the aforesaid information.

23. The ARs vide email dated June 06, 2017 has requested one more day to file submission and the same was acceded.

24. Scandent, vide letter dated June 06, 2017, has filed reply pursuant to the hearing, inter-alia submitted that:

a. We are unable to track the acknowledgement from the Company for filing the said form under the PIT Regulations. You may accordingly go by the date of filing of the said disclosure under the PIT Regulations as reflected from the BSE website.

b. However, we reiterate that the filings under the PIT Regulations have indeed been made and the same is clearly reflecting in the website of BSE.

c. It is submitted that the corporate announcement on the BSE in relation to the said disclosures is clear and the unambiguous evidence that Scandent made the filing under Regulation 13(1) of PIT Regulations to the Target Company (Xchanging).

d. As regards the preferential allotment of 10,25,227 equity shares made by Xchanging to Scandent, the shareholding of Scandent prior to the preferential allotment is 41.78% of the paid up equity share capital of the Target Company and post allotment of the 10,25,227 equity shares, the shareholding of Scandent increased to 43.76%. The change in shareholding of Scandent Group ltd was only 1.98% viz less than 2% of the paid up share capital of the Target.

e. It is clear from the disclosure requirement under Regulation 7(1A) of the Takeover Regulations is triggered only when the acquisition of equity shares or voting rights is equal to or exceeds 2% of the paid up share capital of a company.

f. *We are attaching an order of the Hon'bel WTM of SEBI dated October 28, 2015 in the matter of VAS Infrastructure Ltd. Though the facts are completely different, one of the violations asserted in this order is disclosure violation under Regulation 7(1A) of the Takeover Regulations, pursuant to the fresh allotment of equity shares upon conversion of warrants. The increase in the shareholding in the order viz 2;19% has been calculated factoring the post shareholding pattern and the pre shareholding pattern of the promoters and the net increase. This is in line with our submissions made above.*

g. *It is humbly submitted that no penalty ought to be imposed on Scandent under the New or existing SCN for the alleged violation of PIT Regulations, Takeover Regulations etc.*

25. Pursuant to the transfer of the Adjudicating proceedings, vide letter dated November 29, 2017, Scandent was provided a copy of the Appointment Order of the Adjudicating Officer dated October 04, 2017 and also called upon Scandent to provide the mode i.e. letter/email/fax or any other mode, on which the claimed disclosure dated July 08, 2014 was made by Scandent to Xchanging. An opportunity for personal hearing on December 19, 2017 was also granted.

26. ARs vide letter dated December 18, 2017 sought extension of 3 weeks to reply to the letter dated November 29, 2017 and also to reschedule the personal hearing. As requested, Scandent was granted time till January 02, 2018 to file reply and rescheduled the hearing to a date convenient to the Noticee i.e. January 08, 2018.

27. ARs of Scandent, vide email dated December 29, 2017 has forwarded the submission of Scandent dated December 29, 2017, inter-alia submitted that:

a. *It is submitted that the disclosures to be made under Regulation 13(1) of the PIT Regulations were made by Scandent on July 8, 2014 to the Target Company. Thereafter, the Target Company disclosed the disclosure under Regulation 13(6) of the PIT Regulations to the stock exchange on July 17, 2014. It is respectfully submitted that the corporate announcement on the BSE site in relation to the said disclosures is clear and unambiguous evidence that Scandent made the filing under Regulation 13(1) of the PIT Regulations to the Target Company.*

b. *As regards the filings by Scandent under Regulation 13(1) of the PIT Regulations to the Target Company, we are unable to track the acknowledgement from the Target Company for filing the said form under the PIT Regulations. You may accordingly go by the date of filing of the said disclosure under the PIT Regulations as reflected from the BSE website. Therefore, we reiterate that the filings under the PIT Regulations have indeed been made and the same is clearly reflecting on the website of the stock exchanges.*

28. Further, Scandent reiterated the submission made vide letters dated February 14, 2014 and March 21, 2017. ARs of Scandent appeared on the date of hearing i.e. January 08, 2018 and reiterated their submission made vide email dated December 29, 2107.

CONSIDERATION OF ISSUES AND FINDINGS:

29. Charges levelled against Scandent as per SCN, submissions of Scandent in reply to SCN, and the documents available on record have been perused. The issues that arise for consideration in the present case are:-

a. Whether Scandent had violated Regulations 7(1) and 7(1A) of Takeover Regulations and Regulation 13(1) of PIT Regulations.
b. If yes, does the violation, on the part of the Noticees attract monetary penalty under section 15A(b) of SEBI Act?
c. If yes, what would be the monetary penalty that can be imposed upon Scandent taking into consideration the factors mentioned in Section 15J of the SEBI Act.

Issue a) Whether Scandent had violated Regulations 7(1) and 7(1A) read with 7(2) of Takeover Regulations and Regulation 13(1) of PIT Regulations.

30. Before going forward, it is important to refer to the following provisions:

SEBI (SUBSTANTIAL ACQUSITION OF SHARES AND TAKEOVER) REGULATIONS, 1997

Application 5 per cent and more shares or voting rights of a company.
7(1) *Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent [or fifty four per cent or seventy four per cent] shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.*

7(1A) *Any acquirer who has acquired shares or voting rights of the company under sub-regulation (1) or regulation 11, [or under second proviso to sub-regulation (2) of regulation 11] shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.]*

Explanation- For the purpose of sub-regulations (1) and (1A), the term acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

7(2) *The disclosures mentioned in sub-regulations (1) [and (1A)] shall be made within [two days] if,-*
a) The receipt of intimation of allotment of shares; or
b) The acquisition of shares or voting rights, as the case may be.

SEBI (PROHIBITION OF INSIDER TRADING REGULATIONS), 1992

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies- initial disclosure

Reg. 13(1) *Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within four working days of:-*

a) The receipt of intimation of allotment of shares; or
b) The acquisition of shares or voting rights, as the case may be.

31. It is observed that Scandent Group Ltd., Mauritius, promoter of Xchanging (**'Scandent Group'**), as on quarter ended September 2005, held 1,21,53,344 shares of Xchanging

which is 42.04% of the share capital of Xchanging (total share capital of Xchanging – 2,89,08,755 shares).

32. As per letter of offer, on December 28, 2005 and June 29, 2006, Scandent was allotted 10,25,227 shares and 5,24,70,000 shares of Xchanging. The details of holdings of Scandent prior and post allotment of shares, the change in share capital of Xchanging due to such allotments, disclosures made and Regulatory compliance in this regard are as follows:

Date of Allotment	Shares held by Scandent prior to allotment (% to Share Capital)	Total Share Capital of Xchanging prior to the allotment	No. of Shares allotted to Scandent (% to Share Capital	Shares held by Scandent post allotment (% to share capital)	Total Share capital of Xchanging post the allotment	Disclosure Requirement Triggered	Due date of Compliance	Date of Compliance	Delay (No. of days)
28/12/2005	1,21,53,344 (quarter ended September 2005- 42.04%)	2,90,88,229*	10,25,227 (3.4%)	1,31,78,571 (43.76%)	3,01,13,456	7(1A) of Takeover Regulation	30/12/2005	14/10/2008	1020
29/06/2006 (acquisition pursuant to merger)	1,31,78,151 (quarter ended March 2006- 43.76%)	3,01,13,456	5,24,70,000 (50.01%)	6,56,48,571 (62.57%)	10,49,16,160^	7(1) of Takeover Regulation	01/07/2006	14/10/2008	837
						13(1) of PIT Regulation	05/07/2006	17/07/2014	2574

**Total share capital of xchanging prior to allotment was 2,89,08,755 shares (total share capital for the quarter ended September 2005) + 1,79,474 shares (allotted on ESOP basis i.e 1,69,355 shares, 3000 shares on 3/10/05 and 7,119 shares on 28/12/05) = 2,90,88,229 shares*

^Total share capital of xchanging prior to allotment to Scandent was 3,01,13,456 shares (total share capital of xchanging for the quarter ended March 2006) + 45,197 shares (allotted on ESOP basis i.e. 25,424 shares on 28/04/06 and 19,773 shares on 6/6/06) + 7,47,57,507 (shares allotted to Scandent, AMPS and others entities)- Source Letter of Offer

33. Scandent filed disclosure on October 14, 2008 i.e. after a delay of 1020 days for acquisition of December 28, 2005 and a delay of 837 days for the acquisition made June 29, 2006 with respect to disclosures in terms of provisions of Regulation 7(1) and 7(1A) read with Regulation 7(2) of the Takeover Regulations. Scandent stated that the delay in filing the disclosures was technical and inadvertent. Thus, Scandent admitted to the delay in complying with above provisions.

34. Further, there appears to be no merit in the submissions of Scandent w.r.t. net acquisition of equity shares of Scandant Group was less than 2% of the paid up share capital. It is to be noted that in terms of the Takeover Regulations, the disclosure requirement triggers as when the acquirer purchased or sold shares aggregating two per cent or more of the share capital of the company. So the trigger is based on the aggregate of purchase/transaction of the acquisition.

35. Further, it is to be noted in this respect that is a halfhearted and feeble argument presented by Scandent, as Scandent itself has on its own volition filed the requisite disclosures albeit belatedly in October 2008 and the contentions have not been pressed further.

36. With respect to disclosure in terms of Regulation 13(1) of PIT Regulations, it was observed that Scandent's letter addressed to Xchanging making disclosures in respect of June 29, 2006 transaction is dated July 08, 2014.

37. Scandent, initially in its submission had maintained that the details of allotment of shares to Scandent on December 28, 2005 and June 29, 2006 were already in the public domain through corporate announcements, shareholding disclosure and filing made by Xchanging. Subsequently, when Scandent was informed to provide the mode on which the disclosure was made to Xchanging, Scandent, vide its letters dated June 06, 2017 and December 29, 2017, has stated *"that the date of filing of the said disclosure under the PIT Regulations as reflected from the BSE website may be considered as the date of the disclosure"*.

38. It is matter of fact that the disclosures were made on July 17, 2014 accordingly, the date of compliance for the said disclosure under PIT Regulation was considered as July 17, 2014.

39. On the issue that the company had already made disclosure of the change in the share capital, it is to be held that Scandent cannot absolve itself of the mandatory disclosures required to be made under the PIT Regulations and Takeover Regulations by claiming that the disclosures were already made by the company.

40. It is pertinent to state that, Takeover Regulations and PIT Regulations mandates disclosure to made as per the format prescribed in the Regulations for the shares acquired in terms of Regulations 7(1) and 7(1A) of Takeover Regulations and in Form A in terms of Regulation 13(1) of PIT Regulations and that too within the timelines as mentioned.

41. Thus, the filings made through corporate announcements and shareholding disclosures cannot be substituted as disclosure made in terms of Takeover Regulations and PIT Regulations. Further, timeliness of the disclosure of the information in the prescribed manner is the essence of the disclosure based regime put in place in this respect. Any delay in the disclosures disturbs the very fabric of disclosure structure put in place by virtue of law.

42. Thus, it is clear from the facts that indeed the appropriate disclosures were not made at the relevant point of time. The sole purpose of such disclosure is to bring transparency by dissemination of complete information to the investors at large by the individual buyer/seller of shares as well without any delay.

43. It is pertinent to state that timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all. It is clear that when mandatory time period

is stipulated for a doing a particular activity, it must be complied within the said period to serve the purpose and delayed compliance would not absolve Scandent.

44. At this juncture, I would like to quote the order of Hon'ble Securities Appellate Tribunal (SAT) in G. Suresh vs. SEBI dated 29.04.2014, wherein it was held that "*True and timely disclosures by an acquirer of shares in a company are an important regulatory tool in tended to serve a public purpose of disseminating this information to the company as well as to Stock Exchange expeditiously. Such disclosures are very important as they help investors to take an informed decision in investing in the scrip of said company."*

45. While ascertaining whether Scandent have complied with the Takeover Regulations and PIT Regulations or not, Scandent submission that "*no loss or harm was caused to any investor or to the public in any manner, and as such, the default is minor in nature, no pecuniary gain or unfair advantage was caused to Scandent due to the delayed filing"* is not material as the regulation is triggered the moment there is acquisition or sale of shares irrespective of any prejudice being caused to any person, authority or investors.

46. As regards the contention that due to non-disclosures no loss has been caused to the investors, the issue was dealt by Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI dated January 27, 2014 has held that: "*..argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.*"

47. Hon'ble SAT in Ensen Holdings Ltd. Vs SEBI decided on 13.06.2014 has observed as follows "...*Second argument of the appellant to the effect that there was no disproportionate gain or unfair advantage derived by the appellants or loss caused to the investors as a result of failure on part of the appellant to make disclosures and hence penalty ought not to have been levied is also without any merit because obligation to make disclosure under Regulation 8(1) and 8(2) of SAST Regulations, 1997 is not restricted to cases where there is disproportionate gain or unfair advantage and where loss is caused to the investors as a result of failure to make disclosures. In other words, irrespective of disproportionate gain or unfair advantage derived or any loss caused to the investors, obligation to make disclosures under Regulation 8(1) and 8(2) of SAST Regulations, 1997 have to be complied with. No doubt, that these factors are required to be taken into consideration while determining the quantum of penalty."*

48. Although the above observation was on failure to disclose under Regulation 8(1) and 8(2) of Takeover Regulations but the rational applies to the disclosures under Regulation 7(1) and 7(1A) of Takeover Regulations and Regulation 13(1) of PIT Regulations.

Issue b) If yes, does the violation, on the part of the Noticee attract monetary penalty under section 15A(b) of SEBI Act?

49. The aforesaid delay in filing the report as well as in making the disclosures makes the noticee liable for penalty under Section 15A(b) of the SEBI Act which is reproduced below:

"Penalty for failure to furnish information, return, etc.

***15A**. If any person, who is required under this Act or any rules or regulations made thereunder,—*
...
(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;"

50. In respect to the penalty to be imposed, Scandent, in its submission has quoted the decision of SAT, in the case of Satyadeva Prakash Sinha V. SEBI (Appeal No. 73 of 2002), decision of the Supreme Court, in the case of Hindustan Steel v. state of Orissa AIR 1970 SC 253 and Cabot International Capital v Adjudicating Officer Appeal No. 24/2000.

51. The above do not come to the aid of the Noticee as at this juncture, as the Hon'ble Supreme Court of India in the matter of ***SEBI Vs. Shri Ram Mutual Fund (Appeal no. 9523-9524)*** *decided on May 23, 2006*, has already settled the matter and it clear held that *"penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

52. Thus from the above it can be held that the Noticee is liable for imposition of penalty.

Issue c) If yes, what would be the monetary penalty that can be imposed upon Scandent taking into consideration the factors mentioned in Section 15J of the SEBI Act.

53. While determining the quantum of penalty under section 15A(b), it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

*"**Factors to be taken into account by the adjudicating officer***

***15J.** While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default."

54. The available records neither reveals any disproportionate gains/ unfair advantage made by Scandent, the specific loss suffered by the investors due to such violations and nor has such allegations been made against Scandent.

55. It is noted that there were two instances of non-disclosure and thus can be considered as repetitive.

56. Further it is to be noted that the change in the shareholding that took place in June 2006 was substantial which ought to have been in the public domain in terms of the prescriptions in law.

57. The factors set out the in the Order of the Hon'ble Securities Appellate Tribunal in *Ashok Jain V. SEBI* (*Appeal no. 79 of 2014 decided on June 09, 2014*), have been considered as under "..... *Under SAST Regulations, 1997 as also under SAST Regulations, 2011 disclosures are liable to be made within specified days irrespective of the scrip being traded on the Exchange or not. Similarly, disclosures have to be made irrespective of whether investors have suffered any loss or not on account of non-disclosure within the time stipulated under those regulations..."*

58. As regards the delayed disclosures made, it is noted that the Hon'ble Securities Appellate Tribunal in the matter of *Yogi Sungwon (India) Ltd.* Vs *SEBI* dated May 04, 2001 in the appeal No. 36 of 2000 has observed that: "*…….that when mandatory time period is stipulated for doing a particular activity, completion of the same after that period would constitute default in compliance and not delay."*

59. Though not argued by the Noticee, the Order of the Hon'ble SAT in Appeal no 118 of 2013 dated 04.09.2013 in the matter of Vitro Commodities Private Limited v SEBI has been considered wherein the Hon'ble SAT held that "... *provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other."*

60. While the material made available on record does not clearly indicate the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. However, it is important to note that securities market operates on disclosure based regime and hence true and timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to enable the investors to take a well-informed investment decision.

61. Therefore, taking into consideration the facts / circumstance of the case and above factors, a justifiable penalty needs to be imposed upon Scandent to meet the ends of justice.

ORDER

62. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, I, in exercise of the powers conferred upon me under Section 15-I(2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, conclude that the proceedings against the Noticee stands established in terms of the provisions of the SEBI Act. Hence, in view of the

charges established under the provisions of the SEBI Act a monetary penalty of Rs. 10,00,000 (Rupees Ten Lakhs) is imposed upon Scandent Holding Mauritius Ltd. under Section 15A(b) of SEBI Act, 1992.

63. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

64. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department 1, Division of Regulatory Action - I [EFD1-DRA-I], SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;

1. Case Name :
2. Name of Payee:
3. Date of payment:
4. Amount Paid:
5. Transaction No:
6. Bank Details in which payment is made:
7. Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)

65. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to the Noticee and also to the SEBI.

Date: January 29, 2018 **Jeevan Sonparote**
Place: Mumbai **Adjudicating Officer**