BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUICATION ORDER No./MS/CM/2018-19/1776]

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 M/s. ESQUIRE ENCLAVE PRIVATE LIMITED

(PAN No: AACCE7065J; CIN: U45400WB2010PTC152133)

In the matter of Santowin Corporation Ltd

FACTS OF THE CASE IN BRIEF

1. From the surveillance alerts of Securities and Exchange Board of India (hereinafter, **SEBI**) it was alleged that **M/s. Esquire Enclave Private Ltd.** (hereinafter, **the Noticee / the Acquirer**) did not disclose its acquisition of shares of **M/s. Santowin Corporation Ltd.** (hereinafter, **Target Company**), as required under the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter, **Takeover / SAST Regulations**) and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'PIT Regulations'**).

APPOINTMENT OF ADJUDICATION OFFICER

2. Ms. Anita Kenkare was appointed as the Adjudicating Officer (hereinafter, **AO**), which was communicated vide order dated January 28, 2014, under section 15-I of Securities and Exchange Board of India Act, 1992, (hereinafter, **SEBI Act**) and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, **Rules**) to enquire into and adjudge under section 15A (b) of SEBI Act the alleged violation of the noticee as aforesaid. Subsequently, the matter was transferred to

Ms. Soma Majumder, vide order dated December 09, 2014 and thereafter to Mr. P. Mahapatra vide order dated June 22, 2015. Pursuant to his transfer, the undersigned was appointed as AO vide Order dated January 27, 2016.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice (hereinafter, **SCN**) dated April 23, 2014, was issued to the noticee under Rule 4 of the Rules, calling it to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the Rules, read with section 15-I of SEBI Act and penalty be not imposed on it under Section 15A (b) of SEBI Act for its alleged non-disclosure of its increase in its shareholding in the target company above the five percent threshold, within 2 days of the acquisition, to the target company and stock exchanges under Regulation 29(1) read with 29(3) of the SAST Regulations and Regulation 13(1) of the PIT Regulations. It was alleged that the noticee did not disclose its increase in its shareholding in the target company from 46,25,791 shares (4.69%) in March 2013 to 5.26% of the latter's share capital in June 2013 quarter, pursuant to its acquisition of 5,60,000 shares of the target company on May 11, 2013. The SCN had the following annexures and returned undelivered.

   a. Quarterly shareholding pattern statement of target company from BSE website, for the quarter ended March 2013
   b. Statement showing transaction/s of the noticee in the scrip of target company.
   c. Quarterly shareholding pattern statement of target company from BSE website, for the quarter ended June 2013
   d. E-email dated October 07, 2013 of Bombay Stock Exchange Ltd. (hereinafter, **BSE**)

4. Copy of the SCN was sent vide letter dated May 09, 2014 and the noticee was given an opportunity of personal hearing on June 12, 2014. Another opportunity of personal hearing was given on July 02, 2014 vide letter June 13, 2014. Notice of personal hearing vide letter dated August 11, 2014, sent by Registered Post with Acknowledgement Due, returned undelivered. However, material available in the reconstructed file does not contain copies of these notices and the status of delivery is also not ascertainable.

5. Accordingly, the noticee was granted personal hearing on October 20, 2014 vide letter dated September 22, 2014, enclosing copy of the SCN. This notice of personal hearing was affixed on the premise of the noticee on September 30, 2014, at its registered office address as available on the portal of Ministry of Corporate Affairs (**MCA**). However, there was no response from the noticee.

6. Another, opportunity of hearing was granted on February, 11, 2015 vide letter dated January 20, 2015 and the same was delivered to the noticee by hand delivery. The noticee, vide letter dated February 11, 2015 through facsimile, sought copy of the SCN with respect to 'SCORES authentication', as mentioned in the notice of hearing and thereafter sought further time to furnish its reply and also for its representative to appear for the hearing.

7. In view of the erroneous mention in the previous notice of hearing as aforesaid, the noticee was granted a final opportunity of personal hearing on November 27, 2018, vide letter dated October 31, 2018, enclosing copy of the SCN and its annexures. This notice was dispatched by Speed Post with Acknowledgement Due (**SPAD**) to the address of the noticee available in the MCA, but returned un-delivered. Attempt to affix this notice on November 08, 2018 was unsuccessful, as the entity was not found in the aforesaid address. Scan copy of this notice was also sent to noticee's e-mail addresses as available in 1) MCA portal and 2) that printed on its letter head. However, there was no response from the noticee.

CONSIDERATION OF ISSUES AND FINDINGS

8. As noted above, the notice of personal hearing dated October 31, 2018, enclosing copy of the SCN, was despatched by SPAD to the registered office address of the noticee as available in the MCA portal and retuned undelivered. The noticee, being an incorporated company, is under statutory obligation vide Section 12 r/w Section 398 of Companies Act, 2013 to receive and acknowledge all communications and notices addressed to its registered address and also to make necessary filing with the Registrar of Companies / MCA portal, in case of change in this address. Accordingly, the consequences of non-compliance to these

provisions, if any, vests solely with the noticee. I therefore, hold that the service of the notice through SPAD, as aforesaid, as valid service under 7(b) of the cited Rules. I also note that serving of notice through affixture and newspaper publication in terms of Rules 7 (c) & (d), respectively, are more relevant to natural persons who are under no statutory obligation to intimate any authority about their address or its change thereof. Be that as it may, the noticee could not be found even while attempting service through affixture. Further, I also note that service of notice through e-mail is valid service under the provisions of Sections 13 of the Information Technology Act, 2000.

9. As there are at least two instances of valid service of notice, enclosing copy of the SCN (i.e. including the notice dated September 22, 2014) to which the noticee has not responded, I proceed in this matter on the basis of the material available on records, and the issues that arise for consideration are:

a. Whether the noticee acquired shares of the target company, which taken together with its existing holding, aggregated to the threshold of 5% or more and
b. Whether it failed to disclose the shareholding as aforesaid to the target company and the stock exchanges, under the cited SEBI Regulations?
c. Does the violation, if any, on the part of the noticee attract monetary penalty under Section 15 A (b) of the SEBI Act?
d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15 J of the SEBI Act?

10. The applicable provisions of the regulations on shareholding threshold and its disclosure, during the relevant period, are as follows;

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

Disclosure of acquisition and disposal

29. (1) *Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall*

disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to, —*

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office

SEBI (Prohibition of Insider Trading) Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

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 2 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.

….

13. (6) *Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations "(l), (2), (2A), (3), (4) and (4A) in the respective formats specified in Schedule III.*

11. I intersperse the findings with relevant narrative on the applicable disclosures. Listed companies are, *inter-alia,* required to disclose to the stock exchanges on a quarterly basis the holding of public shareholders, who hold more than 1% of shares listed, in terms of the Listing Agreement and w.e.f. September 02, 2015, under the provision of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. In turn, the stock exchanges are required to disclose the same, immediately on their website. Accordingly, I find, from the shareholding pattern of the target company in the web site of BSE, that the noticee held 46,25,791 and 51,85,791 shares, constituting 4.69% and 5.26% of the target company's share capital, for the quarter ending March 2013 and June 2013, respectively. Further, I also note that, as per the demat transaction statement, the noticee acquired 5,60,000 equity shares of the target company on May 11, 2013 through off-market transaction from one

M/s. Mangalmayee Hirise Private Limited. Therefore, I conclude that the noticee acquired shares of the target company, which taken together with its existing holding, increased its shareholding above the prescribed threshold of 5%.

12. The noticee is required to disclose the aforesaid increase in its shareholding to the target company within 2 days of its acquisition on May 11, 2013, under Regulation 29 (1) r/w (3) (b) of SAST Regulations and Regulation 13(1) of PIT Regulations. Further, under 13 (6) of PIT Regulation, the target company is required to disclose the aforesaid information within two days of its receipt to all the stock exchanges in which its shares are listed. And in turn, stock exchanges are required to immediately disclose on their website, the disclosures made by 1) the acquirers and 2) the target companies under the PIT Regulations. In this regard, I note that BSE, vide its e-mail to SEBI on October 07, 2013, *inter-alia*, mentioned that it did not receive any disclosure u/r 13(6) of PIT, which leads two possible inference; that 1) the noticee informed the target company and the latter failed to inform BSE or 2) the noticee failed to inform the target company. Be that as it may, I hold that the material available on records in this regard is insufficient to conclude either way.

13. As regards the disclosure required to be made by the noticee to the stock exchanges under Regulation 29 (1) r/w (3)(a) of SAST Regulations, I note that BSE vide its cited e-mail, has confirmed that noticee did not disclose the aforesaid increase in its shareholding in the target company to the exchange. The foregoing renders the noticee liable for penalty under section 15A(b) of SEBI Act, which read as follows:

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, -*
(a)…..
(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.

The penalty amount was amended as "*liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a*

maximum of one crore rupees", by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.

14. As the acquisition which led to the default, happened in May 2013, Section 15 A (b) of SEBI Act, as it stood prior to its amendment, would be applicable. Nevertheless, guided by the principle of rule of beneficial construction of even ex post facto law to mitigate the rigour of law, as was laid by the Hon'ble Supreme Court in T. Barai vs. Henry Ah Hoe and Ors. (07.12.1982 - SC): MANU/SC/0123/1982 - (1983)1SCC177, the amended version of section 15 A(b) of SEBI Act is applied in the instant matter also.

15. While determining the quantum of penalty under Section 15 A (b) of SEBI Act, as it stood after its amendment, provisions of Section 15J of SEBI Act would be applicable, which read as under:-

15 J - Factors to be taken into account by the adjudicating officer:

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.*

With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain or unfair advantage made by the noticee or loss caused to the investors as a result of its non-compliance or the repetitiveness of the default, are not available on record. Nevertheless, it is well recognized that disclosure is a key pillar in the efficient functioning of financial markets, as it empowers the stakeholders by facilitating informed decision making. The benefit of disclosures is not restricted to just the existing shareholders alone for their reappraisal; a person, who decides to invest pursuant to the disclosure and a person, who is not a shareholder in a company and chooses to continue to be so, are also beneficiaries of the disclosures. Further, the character

of an investor metamorphoses from that of financial to strategic investor as his/ her shareholding increases. When shareholding crosses certain substantial or critical level, then it may also lead to takeover or change in control of the target company. It is precisely to address such scenarios that the Takeover Regulations provide disclosures at various levels of shareholding, including for non-substantial acquisition, such as in the instant case, to empower stake holders. Therefore, noncompliance to the disclosure requirement, such as in the instant case, cannot be treated as a mere technical lapse, as it undermines the aforesaid investor protection framework.

ORDER

16. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs. 3,00,000 /- (Rupees Three Lakhs only)** under Section 15A (b) of the SEBI Act against **ESQUIRE ENCLAVE PRIVATE LTD** which will be commensurate with its non-compliance.

17. The noticee shall pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "**SEBI - Penalties Remittable to Government of India**", payable at **Kolkata** OR through e-payment to the following bank account:

Bank account details 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

18. The noticee shall forward the said Demand Draft or the details/confirmation of penalty so paid through e-payment, as per format below, to the Regional Director, SEBI, Eastern Regional Office, L & T Chambers, 16, Camac Street, V Floor, Kolkata – 700 017

Case Name	
Name of Payee	

Date of Payment	
Amount Paid	
Transaction Number	
Bank details in which payment is made	
Payment is made for (like Penalties / disgorgement / recovery / settlement amount and legal charges along with order details	

19. In terms of Rule 6 of the Rules, copy of this order is sent to the noticee and to Securities and Exchange Board of India.

Date : December 27, 2018 **S. MANJESH ROY**
Place : Kolkata **ADJUDICATING OFFICER**