BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ORDER/GR/AE/2019-20/4889]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 IN RESPECT OF THE CONCORD RESIDENTIAL SCHOOLS (KERALA) PVT. LTD. [PAN: AABCT6553B] IN THE MATTER OF EVERONN EDUCATION LTD.

BACKGROUND

1. Everonn Education Ltd. (hereinafter referred to as "**Company/EEL**") is a company listed at Bombay Stock Exchange Limited (BSE) and National Stock Exchange of India Limited (NSE). Securities and Exchange Board of India (*hereinafter referred to as "**SEBI**"*) observed that EEL had informed the exchanges that the Extra Ordinary General Meeting (EGM) of the company was held on March 06, 2014 and that it passed special resolutions relating to the special businesses specified below:

    i. Conversion of Rs. 4.33 Crores loan into 10,91,303 equity shares of Rs. 10/- each by way of preferential allotment to Concorde Residential Schools (Kerala) Private Limited.

    ii. Conversion of loan into optionally convertible debentures of value Rs. 4.33 Crores convertible at the option of the holder into 10,91,303 equity shares of Rs. 10/- each on preferential basis to Concorde Residential Schools (Kerala) Private Limited.

2. It was further observed that the shareholding of the promoter group entity viz. The Concorde Residential Schools (Kerala) Private Limited (hereinafter referred to as "**Noticee**") in EEL increased from 10,93,000 shares (4.90% of the share capital of EEL) to 21,84,303 constituting 9.51% of the share capital of EEL, pursuant to allotment of 10,91,303 shares on May 22, 2014. Subsequently, on September 16, 2014, the shareholding of the Noticee further increased to 32,75,606 shares constituting 13.62% of the share capital of EEL, due to allotment of 10,91,303 (4.53%) shares. As the shareholding of the Noticee crossed 5% of the total shares in EEL on May 22, 2014, and subsequently, there was a further increase in the shareholding by more than 2% on September 16, 2014, the Noticee was required to make disclosures to the stock exchanges / company under the provisions of i) Regulations 29(1) and 29(2) read with Regulation 29(3) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST Regulations, 2011**") and (ii) Regulations 13(1), 13(3) and 13(4A) read with Regulation 13(5) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations, 1992**"). However, vide emails dated March 03, 2015 and March 27, 2015, BSE and NSE informed that they have not received any disclosures from the Noticee w.r.t to the aforementioned changes in shareholding. Thus, it was alleged that the Noticee violated the provisions of Regulations 29(1) and 29(2) read with Regulation 29(3) of SAST Regulations, 2011 and Regulations 13(1), 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

3. Initially, Shri S V Krishnamohan, Chief General Manager was appointed as the Adjudicating Officer **(AO)** vide order dated August 10, 2016 to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992, the aforesaid violations alleged to have been committed by the Noticee. Subsequently, Shri Biju S, Chief General Manager was appointed as the AO in the present matter in the place of Shri S V Krishnamohan. Thereafter, Shri Satya Ranjan Prasad was appointed as the AO in the matter, pursuant

to the transfer of Shri Biju S. Presently, pursuant to the transfer of Shri Satya Ranjan Prasad, the undersigned has been appointed as the AO in the matter by SEBI and the same was communicated to the undersigned vide communique dated May 22, 2019. These proceedings are therefore been carried forward from where they had been left off by the previous AO, and an opportunity of personal hearing was granted as detailed hereinafter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated October 05, 2016 (*hereinafter referred to as '**SCN**'*) was issued by erstwhile AO to the Noticee in terms of Section 15I of the SEBI Act, 1992 read with Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "***Rules***") for the violations as specified in the SCN.

5. From the available records, I note that the SCN was sent to the address of the Noticeee available in records viz. *T C 24/53, Post Box No. 7, Opp. Secretariat, M. G. Road, Thiruvanthapuram, Kerala - 695001*, however, the same was returned undelivered. Since the SCN could not be delivered, a public notice was made in the following national and regional newspapers – Times of India, The Hindu and Malayala Manorama on February 27, 2018. Upon response from the Noticee, a copy of the SCN and annexures was provided to the Noticee on March 16, 2018.

6. Subsequently, the Noticee Vide its letter dated May 21, 2018, made the following main submission to the SCN.

    a) They had always acted in a boa fide and transparent manner with respect to the acquisitions of shares in EEL and there was no deliberate attempt whatsoever to violate the provisions of law.

    b) The Noticee had extended unsecured loan to EELl. Since, EEL was not in a position to pay the loan, it was agreed to convert the loan into equity shares.

c) For conversion of loan, EEL called meeting of the shareholders for their approval and accordingly sharehiolders in the meeting dated 6th March 2014 approved the following –

i) Allotment of 10,91,303 equity shares by way of preferential allotment. For a consideration of Rs. 4.33 crores.

ii) Allotment of 1 optionally convertible debenture (OCD) for a sum of Rs. 4.33 crores convertible into 10,91,303 equity shares.

d) The fact of conversion of loan into equity was clearly specified by EEL to its shareholders in its notice for EGM called for this purpose.

e) Based on the aforesaid approval of members at EGM, the Board of EEL on 27th March 2014 allotted 10,91,303 shares to the Noticee. Further on the same day, the Board of EEL allotted one OCD to the Noticee convertible into 10,91,303 equity shares.

f) The Aforementioned fact i.e. the outcome of the said Board meeting dated 27th March 2014 as well as the shareholding pattern for the quarter ended 31st March 2014 was duly communicated by EEL to stock exchanges.

g) Again the Board of EEL converted 1 OCD to 10,91,303 equity shares, which was allotted on 27th May 2014 to the Noticee.

h) The Aforementioned fact i.e. the outcome of the said Board meeting dated 27th May 2014, as well as the revised shareholding pattern (post allotment) was communicated by EEL to stock exchange.

i) Since the Noticee belonged to the promoter group, the disclosure requirement was under 29(2) of SAST Regulations, 2011 and under Regulation 13(4A) of PIT Regulations, 1992 for both the acquisitions. Hence the reporting requirement stands limited to disclosure of Regulation 29(2) of SAST Regulations, 2011 and Regulation 13(4A) of PIT Regulations, 1992 for allotment of Equity Shares and OCD dated 27th March 2014, and Regulation 29(2) of SAST Regulations, 2011 and

Regulation 13(4A) of PIT Regulations, 1992 for allotment of Equity Shares on conversion of OCD dated 27th May 2014.

j) The Noticee had made filings under Regulation 29(2) read with 29(3) of the SAST Regulations, 2011 and Regulations 13(4A) read 13(5) of PIT Regulations, 1992 with EEL and the stock exchanges at the time of increase in shareholding to 9.51% and 13.62%, respectively, and they referred the email dated March 26, 2015 from Mr. Math Lingan in this regard. They were surprised to note the alleged emails from NSE and BSE which mention that the said filings are not in their records.

k) Since the copies of the said disclosures could not be traced, the Noticee with a view to put an end to the issue and also with the intention to go for settlement, re-filed the said disclosures and the same has been duly acknowledged by BSE and NSE dated 8th May 2018.

l) The changes in shareholding mentioned in the SCN are insignificant since the same did not result in any change in overall management or control of EEL.

m) No other notices / proceedings have been initiated against the Noticee by SEBI or stock exchanges in the past.

n) No loss has been caused to the investors and neither has the Noticee made any undue gain due to the alleged violation.

o) The Current financial position of the Noticee is very critical. The alleged violation are trivial and technical in nature and excessive penalty shall cause undue hardship to the Noticee and its shareholders.

p) The information was already available in the public domain. The Noticee has not made any disproportionate gain or undue advantage as a result of the alleged default. No loss has been caused to any investors or group of investors, and the alleged default was not repetitive.

7. Further it is observed that the Noticee was granted opportunities of personal hearing on April 20, 2018 and May 17, 2018 by the erstwhile AO, Shri Biju S, however the same were adjourned at the request of the Noticee. Subsequently, a personal hearing was held before the erstwhile AO on May 23, 2018, wherein the authorized representatives appeared on behalf of the Noticee and submitted that the Noticee had filed an application dated May 22, 2018 for settlement in the matter.

8. From the material available on record, I note that the settlement application No. 3834/2019 filed by the Noticee was rejected in terms of Regulation 6 of the SEBI (Settlement Proceedings) Regulations, 2018, and the disposal of the Settlement Application was communicated to the Noticee vide email dated March 18, 2019.

9. It is also observed that vide its letters dated March 30, 2019, and April 15, 2019, the Noticee *inter alia* reiterated its submissions that being a promoter group company, it had extended loan to EEL, and in order to convert the said loan, it was allotted 10,91,303 shares and 1 OCD, which was subsequently converted to 10,91,303 shares. It further submitted that the dates of both the acquisition were incorrectly recorded in the SCN as 22nd May 2014 and 16th September 2014 instead of 27th March 2014 and 27th may 2014 respectively.

10. Pursuant to the appointment of the undersigned as AO, the Noticee was granted an opportunity of personal hearing on September 12, 2019, however the same was adjourned upon request of the Noticee. However, subsequently, the hearing in the matter was held on September 20, 2019, wherein the authorized representatives of the Noticee were present and reiterated the written submissions filed earlier in the matter by the Noticee vide letters dated May 21, 2018, March 30, 2019 and April 15, 2019.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully examined the material available on record, and the submissions made by the Noticee. The issues that arise for consideration in the present case are :

I. Whether the Noticee has violated the provisions of provisions of Regulations 29(1) and 29(2) read with Regulation 29(3) of SAST Regulations, 2011 and Regulations 13(1), 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992?

II. Does the violation, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?

III. If so, what would be the monetary penalty that can be imposed on the Noticee?

12. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticee and the same is reproduced below:

SAST 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

(2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the 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.

PIT 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.

Continual disclosure.

(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company

(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations (3, (4) and (4A) shall be made within two working days of:

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

Issue I) **Whether the Noticee has violated the provisions of provisions of Regulations 29(1) and 29(2) read with Regulation 29(3) of SAST Regulations, 2011 and Regulations 13(1), 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992?**

13. I note that the allegation against the Noticee is mainly to the effect that the Noticee has not filed disclosures under Regulations 29(1) and 29(2) read with Regulation 29(3) of SAST Regulations, 2011 and Regulations 13(1), 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 w.r.t to his 2 acquisitions viz. 10,91,303 equity shares on , and ii) 10,91,303 equity shares on May 22, 2014 and September 16, 2014.

14. I also note that the Noticee has *inter alia* submitted that since it belonged to the promoter group, the disclosure requirement was under Regulation 29(2) of SAST Regulations, 2011 and under Regulation 13(4A) of PIT Regulations, 1992 for both the acquisitions of 10,91,303 equity shares each. In this regard, on perusal of the shareholding pattern of EEL for the quarter ended March 31, 2014, I find that the Noticee was part of the promoters and promoter group. Further, I also note that the Noticee has now made a disclosure dated May 08, 2018 (i.e. post the issue of SCN in the instant adjudication proceedings) to BSE and NSE under the Regulation 29(2) of SAST Regulations. Upon perusal of the said disclosure, I find that the other entities of the promoters and promoter group of EEL viz. Varkey Group Limited, Gems Education Asia1 Limited, Sherly Varkey and Sunny Varkey, were persons acting in concert (PACs) with the Noticee when it made the aforementioned acquisitions. In the 1st acquisition, the acquirers' holding changed from 94,109,153 shares (43.02%) to 105,00,457 shares (45.73%) to 115,91,759 shares (48.19%), and in the 2nd acquisition,

the acquirers' holding changed from 105,00,457 shares (45.73%) to 115,91,759 shares (48.19%). Thus, I note that since the acquirers were holding more than 43.02% of the total shares of EEL prior to the 1st acquisition of 10,91,303 equity shares (which is more than 5%), Regulation 29(1) of SAST Regulations, 2011 will not be applicable to the Noticee with regards to the 1st transaction. However, it is noted that the other provisions for disclosure viz. Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011 and Regulations 13(1), 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 shall apply to the Noticee.

15. Further, I note that the Noticee has inter alia submitted that "*the dates of both the acquisition are incorrectly recorded in the SCN as 22nd May 2014 and 16th September 2014 instead of 27th March 2014 and 27th may 2014 respectively*". In this regard, I note that the dates mentioned in the SCN viz. May 22, 2014, and September 16, 2014 were the dates when the shares were received (credited) in the Noticee's demat account. The Noticee has submitted that the Board of EEL had allotted 10,91,303 shares to the Noticee on March 27, 2014 and subsequently converted 1 OCD to 10,91,303 shares on May 27, 2014. I further note that Regulation 29(3) of SAST Regulations, 2011 and Regulation 13(5) of PIT Regulations, 1992 specify that the disclosures are to be made by the entity 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.* Accordingly, I note that March 27, 2014 and May 27, 2014 can be considered as dates of acquisitions.

16. The Noticee has also contended that it had made filings under Regulation 29(2) read with 29(3) of SAST Regulations, 2011 and 13(4A) read with 13(5) of PIT Regulations, 1992 with EEL and the stock exchanges at the time of increase in its shareholding to 9.51% and 13.62% (i.e. both the acquisitions). From the material available on record, with regards to the disclosures received by EEL from the Noticee, I note that EEL vide its email dated March 26, 2015 to SEBI has enclosed the disclosures made under Regulation 29(2) of SAST Regulations, 2011 and Regulation 13(4A) of PIT Regulations, 1992. However upon perusal of the same, I note that no disclosure under

Regulation 13(1) or 13(3) of PIT Regulations, 1992 has been made by the Noticee to EEL. Further, with regards to intimation to Stock Exchanges, from the available records, I note that BSE vide emails dated March 03 & 27, 2015 and NSE vide email March 03, 2015 have informed SEBI that no disclosures under SAST Regulations, 2011 and PIT Regulations, 1992 has been received by them from the Noticee. Thus, I find that the Noticee has violated the provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011 and Regulations 13(1), 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992.

17. Further, with regard to the contention of the Noticee that it had made four disclosures including two under Regulation 29(2) read with 29(3) of SAST Regulations, 2011, and two under Regulations 13(4A) read with Regulation 13(5) of PIT Regulations, 1992, w.r.t both its acquisitions to EEL and the stock exchanges, as already noted above, BSE and NSE have confirmed to SEBI that they were not in receipt of the requisite disclosures in the instant matter from the Noticee. It is therefore, in this regard I find it relevant to mention that the Hon'ble Securities Appellate Tribunal (hereinafter be referred to as, the "**Hon'ble SAT**") in the matter of ***Mega Resources Ltd. v. SEBI*** (Appeal No. 49/2001 dated March 19, 2002) had observed that, *"....the regulation is not simply on sending the information, it requires disclosure. Mere dispatch of the information is short of the said requirement..... Regulation 7(1) requires the acquirer to disclose the aggregate of this holding... Thus the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox... I am not inclined to view that by posting a letter under certificate of posting, stating the shareholding by itself is sufficient compliance of regulation 7(1). In my view the Appellant has failed to comply with the requirement of regulation 7(1), for the reason that it has failed to make the disclosure of the requisite information*".

18. Apart from the above, reliance is also placed on the observations of the Hon'ble SAT in the matter of ***Kalindee Rail Nirman (Engineers) Limited v. Securities and Exchange Board of India*** (Appeal No. 97 of 2010 dated July 19, 2010) wherein it had

observed that, *".. the agency through which the document is sent acts as the agent of the sender and if a dispute were to arise whether the said document has been received by the addressee or not, the onus would be on the sender to establish the fact by clear and cogent evidence in this regard. Admittedly, the appellant has not placed on record any acknowledgment received from BSE in regard to the mails that were allegedly sent containing the compliance reports. On the other hand, we have on record a letter from BSE specifically stating that it had not received the compliance reports for the aforesaid quarters from the appellant. … In this view of the matter, no fault can be found with the impugned order…*".

19. The Noticee has also further submitted that the company i.e. EEL had informed /disclosed to the stock exchanges the outcome of the board meetings held on March 27, 2014 and May 27, 2014 regarding the allotment of shares to the Noticee. The Noticee had also submitted that the acquisition of shares by it were reflecting in the shareholding pattern of the company for the quarter ending March 31, 2014 and June 31, 2014 and the revised shareholding pattern dated May 27, 2014, which had been filed by EEL to the stock exchanges. In this regard, I note that the provisions of the Regulation 29(2) and 29(3) of SAST Regulations, 2011, and Regulations 13(1), 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 cast a statutory obligation on the Noticee (and not the company) to make the disclosure. I further note that the aforesaid provisions stipulate that the disclosures regarding the acquisitions are to be made in the prescribed format. I would also like to rely on the observations of the Hon'ble Securities Appellate Tribunal (**SAT**) in ***Premchand Shah and Others V. SEBI*** dated February 21, 2011, wherein it was held that *".…….When a law prescribes a manner in which a thing is to be done, it must* be *done only in that manner.…….Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments ……".* In view of the same, I don't find merit in the above contentions of the Noticee.

20. As has been observed in para 16 supra, the Noticee have not made the disclosures as stipulated. In view of the above, I hold that the Noticee has violated the provisions of Regulation 29(2) and 29(3) of SAST Regulations, 2011, and Regulations 13(1), 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992.

Issue II) **Does the violation, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?**

21. I note that the Noticee has submitted that they had no intention to conceal any facts, and that the alleged violations were of technical in nature. In this regard, I note that the Hon'ble Supreme Court of India in the matter of ***SEBI vs. Shri Ram Mutual Fund*** held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.*"

22. As regards the contention that due to non-disclosures no disproportionate gain or unfair advantage has occurred to the Noticee and that no loss has been caused to the investors, the issue was dealt by Hon'ble SAT in the matter of ***Komal Nahata Vs. SEBI*** dated January 27, 2014 wherein it was 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."*

23. In the context of disclosure related violations, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance of the mandatory obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of ***Akriti Global Traders Ltd. Vs SEBI*** had observed that -

"Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective *of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations."*

I also note that in Appeal No. 66 of 2003 - ***Milan Mahendra Securities Pvt. Ltd. Vs. SEBI*** – the Hon'ble SAT has observed that, "*the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market*". Further, in the matter of ***Ranjan Varghese v. SEBI*** (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed "*Once it is established that the mandatory* provisions *of Takeover Code was violated, the penalty must follow*".

24. Thus, the violation of Regulation 29(2) and 29(3) of SAST Regulations, 2011, and Regulations 13(1), 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 makes the Noticee liable for penalty under Section 15A(b) of the SEBI Act, 1992, which reads as under –

SEBI Act, 1992

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;

***Issue* III) What would be the monetary penalty that can be imposed on the Noticee?**

25. In this regard, the provisions of Section 15J of the SEBI Act, 1992 and Rule 5 of the Rules, require that while adjudging the quantum of penalty, 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.

26. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that no quantifiable figures or data are available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default committed by the Noticee. I also note that no prior default of the Noticee is available on record. I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. Disclosures in respect of the vital information of any company has been made mandatory for the protection of the investors so as to enable them to take suitable informed investment decisions. The objective behind such requirement is that the investing public shall not be deprived of any vital information in respect of their investments in the securities market. If any person who is to make such disclosures doesn't make it and are depriving the investing public the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. As a result of the violation committed by the Noticee, the investors were deprived of valuable information which would have enabled them to take well informed decisions regarding their investments in the company. In the present matter, I note that Noticee has not made requisite disclosures under Regulations 29(2) read with Regulation 29(3) of

SAST Regulations, 2011 and Regulations 13(1), 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992.

27. Therefore, taking into consideration the facts / circumstance of the case and aforesaid judgments of the Hon'ble SAT, I am of the view that a penalty needs to be imposed upon the Noticee to meet the ends of justice.

ORDER

28. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under section 15 I of the SEBI Act read with rule 5 of the Rules, I hereby impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) on the Noticee viz. The Concord Residential Schools Kerala Pvt. Ltd. (PAN ABCT6553B) under Section 15A(b) of SEBI Act, 1992 for the violations of the provisions of Regulations 29(2) read with Regulation 29(3) of SAST Regulations, 2011 and Regulations 13(1), 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992.

29. The Noticee shall remit / 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 Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

30. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department - DRA-I), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.". The Noticee shall also provide the following details while forwarding DD / payment information:

a) Name and PAN of the Noticee
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings

d) Bank Name and Account Number
e) Transaction Number

31. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties

32. In terms of rule 6 of the Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: October 11, 2019 **G Ramar**
Place: Mumbai **Adjudicating Officer**