

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/CB/270/2017]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of –

1. **Mr. Vinod Dugar (PAN – ADQPD7934H)** having address at 16A, Dover Road, Regent Kusum Building, Koklata – 700 019 (West Bengal)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) upon suspicion of violation of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter be referred to as, the “**SAST Regulations**”) had conducted investigation in the shares of Eduxel Infotainment Limited (hereinafter be referred to as, the “**EIL**” / “**Company**”), a company listed on BSE Limited (hereinafter be referred to as, the “**BSE**”) for the period from January 01, 2014 to December 31, 2014. Investigation *prima facie* revealed commission of violation of Regulation 29(2) read with 29(3) of the SAST Regulations by Mr. Vinod Dugar (hereinafter be referred to as, the “**Noticee**”) for not making disclosures upon change in its shareholding in the Company.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed Ms. Anita Kenkare as Adjudicating Officer under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the “**SEBI Act**”) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as the “**Adjudication Rules**”) vide order dated December 28, 2015 to inquire into and adjudge under Section 15A (b) of the SEBI Act against the Noticee for the alleged violation of aforesaid provisions of PIT Regulations. Subsequent to transfer of Ms. Anita Kenkare, the undersigned was appointed as Adjudicating Officer vide order dated October 04, 2017.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. SEBI/HO/EAD/EAD6/OW/P/2017/16546/1 dated July 17, 2017 (hereinafter be referred to as, the “**SCN**”) was served upon the Noticee by way of speed post under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against him under Section 15A (b) of the SEBI Act for the alleged violation of Regulation 29(2) read with 29(3) of the SAST Regulations.
4. The core allegations levelled against the Noticee in the SCN are summarized as below:
- a. During the quarter that ended in June 2014, Mr. Vinod Dugar, a shareholder of the Company was holding 6,50,000 shares of the Company, which was 7.68% of the total share capital of the Company. Thereafter, Mr. Vinod Dugar sold 2,48,956 shares, i.e. 2.94% of the total share capital of the Company. The details of the sell of shares by Mr. Vinod Dugar is as follows:

Date of Transaction	Buy / Sell	Opening Holding	Opening Holding in terms of %	Sell Quantity	Closing Holding	Closing holding in terms of %	Change in holding after the transaction
28/08/2014	Sell	6,50,000	7.68%	48,956	6,01,044	0.58%	7.10%
02/09/2014	Sell	6,01,044	7.10%	2,00,000	4,01,044	2.36%	4.74%
			TOTAL	2,48,956		2.94%	

- b. The BSE, vide letter dated November 14, 2014, informed SEBI that Mr. Vinod Dugar, who was holding 7.68% shares of the Company, sold 2.94% of its holding in the Company during August 18, 2014 to September 17, 2014. It also informed that no disclosures were filed by the Noticee in relation to the decrease in shareholding in terms of SAST Regulations.
- c. However, it was observed that the Noticee filed disclosures under Regulation 29(2) of the SAST Regulations for the aforesaid transactions to the BSE on February 10, 2016.

- d. It was alleged that the aforesaid delay in disclosure of reduction in his shareholding by the Noticee was in violation of Regulation 29(2) read with 29(3) of the SAST Regulations, text of which is mentioned as below:

SAST Regulations:

29. Disclosure of acquisition and disposal

- (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 subregulation; 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.

5. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticee liable for monetary penalty under Section 15A(b) of the SEBI Act, which reads as under:

15A. Penalty for failure to furnish information, return, etc-

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.”

6. In response to the SCN, the Noticee submitted a letter dated August 08, 2017 wherein, he sought an opportunity of personal hearing before the Adjudicating Officer. Thereafter, on the request of the Noticee, an opportunity of hearing was granted to the

Noticee on September 18, 2017 vide hearing notice August 22, 2017. Vide the said notice, the Noticee was also advised to submit his reply to the SCN before September 11, 2017.

7. Thereafter, the Noticee submitted his reply towards the SCN vide letter dated September 07, 2017. The core submissions made by the Noticee are as follows:
 - a. The Noticee gave instructions to transfer a part of his holding in the Company to the margin account. The Noticee came to know of sale of shares of the Company only on receipt of letter dated October 14, 2015 from the SEBI.
 - b. In relation to the aforesaid sale, the Noticee sought clarification from his stock broker, viz. India Securities Broking Private Limited and only on confirmation of the aforesaid sale by the stock broker, the Noticee came to know of the aforesaid sale transactions.
 - c. The Noticee had inadvertently missed to inform the BSE of the reduction in his shareholding as the aforesaid transaction was misunderstood with margin shares, however, he has complied with the provisions of SAST Regulations thereafter.
 - d. The Noticee did not have any intention to sell the said shares or make any unfair gain. The alleged violations have not caused any harm or loss to any other investor nor adversely affected the market in any manner.
 - e. The Noticee did not have any malafide intention in not making the disclosure nor did he have any intention to hide any information from the public at large.
8. The scheduled hearing on September 18, 2017 was postponed due to certain exigencies. On account of appointment of the undersigned as the Adjudicating Officer in the instant matter, another opportunity of personal hearing was granted to the Noticee on December 04, 2017 vide hearing notice dated November 16, 2017.
9. The hearing on December 04, 2017 was attended by the Noticee in person. During the course of hearing, the Noticee reiterated submissions as mentioned in his reply dated September 07, 2017. The Noticee also submitted a copy of disclosure dated February 05, 2016 filed in terms of SAST Regulations.

10. Since hearing / inquiry in this matter is concluded, therefore, after taking into account the allegations, submissions of the Noticee and evidences / material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS

11. The issues that arise for consideration in the instant matter are:

- 11.1 Whether the Noticee had failed to make disclosures in terms of Regulation 29(2) read with 29(3) of SAST Regulations or had belatedly filed disclosures which was not in consonance with the aforesaid regulations?
- 11.2 If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?
- 11.3 If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

Issue 11.1 Whether the Noticee had failed to make disclosures in terms of Regulation 29(2) read with 29(3) of SAST Regulations or had belatedly filed disclosures which was not in consonance with the aforesaid regulations?

12. The details of allegations levelled against the Noticee and the submissions of the Noticee have already been produced in the pre-paragraphs and the same are not reproduced for the sake of brevity.

13. Regulation 29(2) of the SAST Regulations requires any person who holds shares or voting rights entitling him to five per cent or more of the shares or voting rights in a target company to 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 and such change exceeds two per cent of total shareholding or voting rights in the target company.

14. On perusal of the material available on record, I note that the Noticee held 7.68% of the total share capital of the Company. I note from the reply of the Noticee that the fact of disposal of 2,48,956 shares, i.e. 2.49% of the total share capital of the Company

between August 28 , 2014 and September 02, 2014 is not in dispute by the Noticee. It is also an admitted fact that the Noticee did not make any disclosure within timeline as stipulated under Regulation 29(2) read with 29(3) of the SAST Regulations for the aforesaid transactions. As per admission of the Noticee, he had made such disclosures only in February 2016, which itself makes clear that he had made disclosures too belatedly which were not in time line as required under Regulation 29(2) read with 29(3) of the SAST Regulation.

15. I also note that the BSE, by way of letter dated November 14, 2014 has confirmed that it did not receive any disclosures under SAST Regulations for the aforesaid reduction in the shareholding of the Noticee in scrip of the Company. I also note from the material available on record that for the aforesaid reduction in the shareholding, the BSE had received disclosures from the Noticee under Regulation 29(2) read with 29(3) of the SAST Regulations only on February 10, 2016.

16. In view of the admission of the Noticee and confirmation of the BSE, it is established that the Noticee had committed huge delay of 524 days in making disclosures to the BSE, which is not in timeline stipulated under Regulation 29(2) read with 29(3) of the SAST Regulations and accordingly, I am of the considered view that the Noticee has violated Regulation 29(2) read with 29(3) of the SAST Regulations.

Issue 11.2 If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?

17. I have taken into account the well-known judgment of the Hon'ble Supreme Court in the matter of ***The Chairman, SEBI v Shri Ram Mutual Fund*** [2006] 68 SCL 216, wherein it was held that, *"In our considered opinion, penalty is attracted as soon as contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of parties committing such violations becomes wholly irrelevant"*.

18. I also take note of the judgment dated January 15, 2014 of Hon'ble Securities Appellate Tribunal in the matter of ***Ambaji Papers Pvt. Ltd. v. The Adjudicating Officer, Securities and Exchange Board of India*** (Appeal No. 201 of 2013), wherein the Tribunal observed, *"...To this extent, the appellants, though inadvertently and without*

any intention, have defaulted in complying with the regulations regarding disclosures in question in our considered view and in the facts and circumstances of the present cases. The infraction, although venial in nature, is an infraction nonetheless.” Thus, I am of the view that the submission of the Noticee that the delay in making disclosures to the BSE in terms of Regulation 29(2) read with 29(3) of the SAST Regulation was inadvertent because of misunderstanding is without any merit.

19. In view of the aforesaid, I am convinced that the failure of Noticee in making disclosures to the BSE within stipulated time as required under Regulation 29(2) read with 29(3) of the SAST Regulations attracts imposition of monetary penalty on the Noticee under Section 15A (b) of the SEBI Act, text of which is reproduced as under:

“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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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 11.3 If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

20. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, I have considered the factors stipulated in Section 15J of the SEBI Act, which reads as under:

“15J. 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.*

Explanation.--For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”

21. From the material available on record, I note that there are no quantifiable figures available for assessing disproportionate gains or unfair advantage or specific loss suffered by the investors. I also note that no past default against the Noticee has also been revealed in the examination. However, I note that the SAST Regulations seek to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change. Correct and timely disclosures, *therefore*, are an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision.
22. I find it relevant to refer to the judgment dated September 30, 2014 of the Hon'ble Securities Appellate Tribunal in the matter of **Akriti Global Traders Ltd. v. Securities and Exchange Board of India** (Appeal No. 78 of 2014) wherein it held, “*Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay*”
- In view of the same, the submission of the Noticee that it has not made any unfair gain as a result of the aforesaid transactions cannot be accepted.
23. Similarly, I note that the Securities Appellate Tribunal in its judgment dated January 27, 2014 in the matter of **Komal Nahata v. Securities and Exchange Board of India** (Appeal No. 5 of 2014) has held, “*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.*”

In view of the same, the submissions of the Noticee that disclosure violations have not caused any loss to any investors and have not affected the securities market in any manner cannot be accepted.

24. Taking into account aforesaid factors, considering the facts and circumstances of the case, judicial precedents relied upon and the purpose of the SAST Regulations, I am of the view that a justifiable penalty needs to be imposed upon the Noticee to meet the ends of justice.

ORDER

25. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty of Rs. 2,60,000/- (Rupees Two Lakhs Sixty Thousands only) upon the Noticee, viz. Vinod Dugar under Section 15A(b) of the SEBI Act. I am of the view that the said penalty would commensurate with the violations committed by the Noticee.
26. 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 e-payment facility into Bank Account the details of which are given below;

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

27. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of the SEBI. The format for forwarding details of e-payments shall be made in the following tabulated form as provided in the SEBI Circular No.

SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID – tad@sebi.gov.in.

Date	Department of SEBI	Name of Intermediary / Other entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount in Rs.	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually etc.)	Bank name and Account number from which payment is remitted	UTR No.

28. Copies of this Adjudication Order are being sent to the Noticee and also to the SEBI in terms of Rule 6 of the Adjudication Rules.

Date : December 27, 2017

Place : Mumbai

(Rachna Anand)
Adjudicating Officer