BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ASK/AO-33/2014-15]

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

Sanjay Salunkhe

(PAN: AAGPS2938F)

In the matter of

Eins Edutech Limited

FACTS OF THE CASE IN BRIEF

1. An open offer was made by Westfield Apparels Private Limited in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **"SAST Regulations, 2011"**) to the equity shareholders of Eins Edutech Limited (hereinafter referred to as **"EEL/Company"**), Target Company, through a public announcement dated December 29, 2012 for acquisition of 70,200 fully paid up equity shares of the face value of ₹ 10 each, representing 26% of total equity and voting share capital of the Target Company at a price of ₹ 55/- per equity share payable in cash. The equity shares of the Target Company are listed at BSE Limited and The Calcutta Stock Exchange Limited.

2. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) examined the letter of offer pertaining to the aforesaid open offer and observed that Shri Sanjay Salunkhe (hereinafter referred to as **"Noticee"**) had acquired 1,76,450 shares of EEL on September 18, 2010. As this transaction led to acquisition of 72.02% of share capital of EEL by the Noticee, it required a disclosure within 2 days of transaction i.e. by September 20, 2010, as stipulated by regulations 7(1) read with regulation 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011(hereinafter referred to as **"SAST Regulations, 1997**"). However, no disclosures as stipulated by the afore-mentioned regulations, for the said transaction dated September 18, 2010 was made by the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Piyoosh Gupta was appointed as Adjudicating Officer vide order dated July 24, 2013 under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **'Rules'**) to inquire into and adjudge under section 15A(b) of the SEBI Act for the alleged violations of provisions of Regulation 7(1) read with regulation 7(2) of SAST Regulations, 1997; read with Regulation 35 of SAST Regulations, 2011 by the Noticee. Subsequently, upon the transfer of Shri Piyoosh Gupta, I have been appointed as Adjudicating Officer, in the present matter, vide order dated November 08, 2013.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice no. EAD-5/ADJ/ASK/AA/OW/6445/2014 dated February 28, 2014 (hereinafter referred to as "**SCN**") was issued to the

Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of the SEBI Act for the alleged violation specified in the SCN. It was alleged in the SCN that Noticee has violated the provisions of regulation 7(1) read with regulation 7(2) of the SAST Regulations, 1997 read with regulation 35 of SAST Regulations, 2011. The copies of the documents relied upon in the SCN were provided to the Noticee along with the SCN. Noticee vide letter dated March 16, 2014 sought time of three weeks for submitting a detailed reply in the matter. The noticee filed its reply vide letter dated April 14, 2014. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on April 16, 2014 vide notice dated April 02, 2014. On the date of hearing, Advocate Shri Abhishek Borgikar, Senior Associate, Alliance Corporate Lawyers and Shri Ajaykumar Mistry, appeared as Authorized Representatives (ARs) on behalf of the Noticee. ARs reiterated the written submissions made vide letter dated April 14, 2014 and submitted that they would be filing additional written submissions in a week's time. The noticee filed additional written submissions vide letters dated April 22, 2014 and April 24, 2014. Noticee's main submissions in respect of the charges in the SCN are given as under:

- *Noticee entered into a share purchase agreement (SPA) with the then promoters of the company i.e. Thyrocare Diagnostics Private Limited and Thyrocare Biotech private Ltd. on September 18, 2010 for acquisition of 1,76,450 equity shares representing 72.02% of total paid up capital of the company. Pursuant to the aforesaid SPA, Regulation 10 and 12 of SAST Regulations, 1997 was triggered and accordingly noticee made a public announcement on September 21, 2010 to the then shareholders of the company to acquire 20% of the then total paid up capital of the company.*

- *On successful completion of the open offer, Noticee acquired 1,76,450 equity shares representing 72.02% of total paid up capital of the company*

on January 15, 2011. These shares were transferred in name of the noticee in the register of the company on January 15, 2011.

- *Noticee was under obligation to make disclosure under regulation 7(1) read with 7(2) of SAST Regulations, 1997. As the open offer was already made to public shareholders and exit opportunity was offered to public shareholders, Noticee was under genuine impression that no further disclosures were required to be made under any other provision of SEBI Takeover Regulations.*

- *Referring to the judgment of Hon'ble securities Appellate Tribunal in the matter of 'Milan Mahendra securities Pvt. Ltd. vs. SEBI', Noticee submitted that he had made the Public Announcement about the acquisition of shares in the company on September 21, 2010 i.e. nearly 4 months before the actual date of acquisition. This disclosure to the public at large was made much before the similar disclosure under regulation 7(1) read with regulation 7(2) was required to be made. Further, Noticee also provided an exit opportunity to shareholders through open offer. This clearly demonstrates that the investors were aware and well informed about noticee's acquisition of shares in the company and even exit opportunity was also offered to them. Therefore, the spirit behind the legislative intent for making disclosures is fulfilled. The non-disclosure of regulation 7(1) read with regulation 7(2) was merely a technical default and noticee had made all disclosures about his acquisition to the public at large including the company's shareholders through the open offer made by him in compliance with SEBI Takeover Regulations. After receipt of the Show cause Notice, Noticee made the proper disclosure under regulation 7(1) of SEBI Takeover regulations.*

- *Noticee was appointed as additional director and managing director of the company on January 15, 2011. On the same date noticee made a disclosure in respect of acquisition of 72.05% shares to the company in compliance of regulation 13(2) of SEBI PIT regulations. Thereafter, the company had made proper disclosure to BSE under regulation 13(6) of SEBI PIT Regulations on January 17, 2011. It clearly demonstrates that the information required to be disclosed under regulation 7(1) of SEBI takeover regulations in respect of actual acquisitions of shares on January 15, 2011 was disclosed to BSE and was very well in public domain on January 17, 2011.*

- *Referring to the judgment of Hon'ble securities Appellate Tribunal in the matter of 'Vitro commodities Private Limited vs. SEBI', Noticee submitted that such compliance of regulation 13(2) be treated as sufficient compliance and delay of filing disclosure under regulation 7(1) of SEBI Takeover regulations be condoned.*

- *The scrip of the company was infrequently traded at that particular point of time and there were hardly any transactions in the scrip. The said non-disclosure under regulation 7(1) read with regulation 7(2) of SEBI Takeover regulations is a minor and technical violation as the information about the acquisition of shares of Company was in public domain much before the actual date of acquisition and even the exit opportunity was provided to the shareholders of the company.*

- *No disproportionate gain or unfair advantage has been made by me as a result of default. No loss has been caused to any investor or group of investor as a result of my default. Default is one time default and not of repetitive in nature*

CONSIDERATION OF ISSUES AND FINDINGS

5. I have carefully perused the oral and written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :
   a. Whether the Noticee had violated the provisions of regulation 7(1) read with regulation 7(2) of the SAST Regulations, 1997?
   b. Does the violation, if any, attract monetary penalty under section 15A(b) of SEBI Act?
   c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

6. Before moving forward, it is pertinent to refer to the relevant provisions of SAST Regulations, 1997 which reads as under:-

SAST Regulations, 1997

*"**Acquisition of 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.

(1A).....

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two 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."

Finding

The issues for examination in this case and the findings thereon are as follows:

(a) Whether the Noticee had violated the provisions of regulation 7(1) read with regulation 7(2) of the SAST Regulations, 1997?

7. Upon perusal of submissions of the Noticee and documents available on record, I find that Noticee had admittedly entered into a share purchase agreement (SPA) with the then promoters of the company i.e. Thyrocare Diagnostics Private Limited and Thyrocare Biotech Private Ltd. on September 18, 2010 for acquisition of 1,76,450 equity shares representing 72.02% of total paid up capital of the company. Pursuant to the aforesaid SPA, Noticee made a public announcement on September 21, 2010 to the then shareholders of the company to acquire 20% of the then total paid up capital of the company and on completion of the open offer, he acquired 1,76,450 equity shares representing 72.02% of total paid up capital of the company on January 15, 2011.

8. It has been alleged in the SCN that the noticee had acquired these shares on September 18, 2010 and he was required to make a disclosure within 2 days of transaction i.e. by September 20, 2010, as stipulated by regulations 7(1) read with regulation 7(2) of SAST Regulations, 1997. However, the noticee has claimed that the said shares were acquired by him on January 15, 2011 on completion of open offer and on the same date the said shares were transferred in his name in the register of EEL. In support of his claim noticee also submitted the copy of relevant pages of register of EEL showing that his name was entered as a member in the register of EEL on January 15, 2011. Noticee also submitted the shareholding patterns filed by the company with BSE for the quarter ended December 2010 and March 2011 which showed that the Noticee for the first time was shown as promoter of EEL only in the quarter ended March 2011. I tend to agree with the submissions of the noticee that he acquired 1,76,450 shares of EEL only on January 15, 2011 and not on September 18, 2010 as has been alleged in the SCN. Be that as it may, the fact remains that the noticee had not made the disclosure within 2 days of the acquisition as stipulated by regulations 7(1) read with regulation 7(2) of SAST Regulations, 1997. Noticee in his reply has also admitted that he was under obligation to make the disclosure under the afore-mentioned regulations and the said disclosure was made by the Noticee on March 27, 2014 after the receipt of the SCN. I am of the view 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. Timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all.

9. However, the noticee, while admitting the lapse on his part, has contended that the information required through the disclosure under regulation 7(1)

read with regulation 7(2) of SAST regulations, 1997 was already known to the investors when he made the public announcement for acquisition of shares of EEL on September 21, 2010 and shareholders were also given an exit opportunity through open offer. I note that public announcement was made by the noticee on September 21, 2010 much before the date of acquisition, whereas the obligation of disclosure under regulation 7(1) is to be performed post acquisition of shares. I am, therefore, of the view that the said public announcement cannot be accepted as substitute for discharge of disclosure obligation by the noticee under regulation 7(1) read with regulation 7(2) of SAST regulations, 1997. It is needless to state here that the disclosure obligation has to be discharged only in the manner prescribed under the law.

10. In this context, I would also like to rely on the judgment of Hon'ble SAT in *Premchand Shah and Others V. SEBI* (*Appeal no. 108 of 2010 decided on February 21, 2011*), wherein it was observed that "..... *When law prescribes a manner in which a thing is to be done, it must be done only in that manner or not at all. Both sets of regulations prescribe formats in which the disclosures are to be made and those are then put out for the information of the general public through special window(s) of the stock exchange which did not happen in this case. The fact that non disclosure has been made penal makes it clear that the provisions of regulation 7(1A) of the takeover code and regulations 13(3) and 13(4) of the insider regulations are mandatory in nature. Non disclosure of the information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take an informed decision while making investments."*

11. Noticee has further contended that on being appointed as additional director and managing director of the company on January 15, 2011, he made a disclosure in respect of acquisition of 72.05% shares to the company in compliance of regulation 13(2) of SEBI PIT regulations. Thereafter, the company had made proper disclosure to BSE under regulation 13(6) of SEBI PIT Regulations on January 17, 2011 and it showed that the information required to be disclosed under regulation 7(1) of SEBI takeover regulations in respect of actual acquisitions of shares on January 15, 2011 was disclosed to BSE and was very well in public domain on January 17, 2011. In this regard, I note that the disclosures requirement under PIT regulations, 1992 and SAST regulations 1997 are independent of each other and the disclosure made under PIT Regulations, 1992 does not absolve the person from making the relevant disclosure under the SAST Regulations. Therefore, the argument of the Noticee that it had made the disclosure under PIT Regulations, 1992 is also without merit.

12. In this context, I would like to rely on the judgment of Hon'ble Securities Appellate Tribunal (SAT) in *Bindal Synthetics Private Limited V. SEBI* (*Appeal no. 75 of 2014 decided on June 09, 2014*), wherein it was observed that "..... *fact that the appellant had made disclosures under PIT Regulations, 1992 does not absolve appellants obligation to make disclosure under regulation 7(1A) of SAST Regulations, 1997*."

13. Further, referring to the judgment of Hon'ble SAT in the matter of 'Vitro commodities Private Limited vs. SEBI', Noticee submitted that such compliance of regulation 13(2) be treated as sufficient compliance and delay of filing disclosure under regulation 7(1) of SEBI Takeover regulations be condoned. I am of the view that the reliance placed by the

Noticee on the afore-mentioned case does not support his case as in the referred case the non-disclosure by the appellant occurred mostly by not as active action by appellant but as a result of bonus shares, shares allotted due to amalgamation and again by issue of bonus shares. However, in the instant matter, Noticee has admittedly indulged in the transaction of acquisition of shares of EEL above the benchmark limit specified under regulation 7(1) of SAST Regulations, 1997.

14. Noticee has further contended that the scrip of the company was infrequently traded at that particular point of time and that no disproportionate gain or unfair advantage has been made by him nor any loss has been caused to any investor or group of investor as a result of default. In this context, I would like to rely on the judgment of Hon'ble SAT in *Ashok Jain V. SEBI* (*Appeal no. 79 of 2014 decided on June 09, 2014*), wherein it was observed that "..... *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..*"

15. In view of the above, I find that the Noticee did not make the requisite disclosure regarding the acquisition of 72.02% of the share capital of EEL within the time specified therefor and thereby has violated regulation 7(1) read with regulation 7(2) of SAST Regulations, 1997.

(b) Does the non-compliance, if any, attract monetary penalty under section 15A (b) of SEBI Act?

16. By not making the disclosures on time, the Noticee failed to comply with its statutory obligation. The timely disclosure is mandated for the benefit of the investors at large. There can be no dispute that compliance of regulations is mandatory and it is duty of SEBI to enforce compliance of these regulations. The Hon'ble Supreme Court of India in the matter of *Chairman, SEBI v.. Shriram Mutual Fund* {[2006] 5 SCC 361} held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

17. In this context, I would also like to rely on following observation of Hon'ble Securities Appellate Tribunal in the case of *Mr. Ranjan Verghese vs. SEBI* (Appeal No. 152 of 2009 decided on September 22, 2009) *"....Failure to furnish the necessary information by way of disclosures under the Takeover Code entitles the adjudicating officer to impose a penalty of Rs. 1 lac for each day during which such failure continues or Rs. 1 crore whichever is less. The law was amended in October, 2002 requiring the adjudicating officer to impose stringent penalties on the defaulters so that they act as deterrent for other market players. What is contended by the learned counsel for the appellant is that the disclosures which were required to be made by the appellants were already in public domain and, therefore, no damage was caused either to the market or to any investor and that this was not a case where the adjudicating officer should have levied a penalty and, in any case, it is a fit case where it should be considerably reduced. We are*

unable to accept this contention. Once it is established that the mandatory provisions of the Takeover Code were violated, the penalty must follow."

18. In this context, I would also like to rely on following observation of Hon'ble Securities Appellate Tribunal in the case of *Mrs. Komal Nahata vs. SEBI* (Appeal No. 5 of 2014 decided on January 27, 2014) "*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. Secondly, penalty under Section 15A(b) for non compliance of the regulation framed by SEBI is ₹ 1 lac for each day during which such failure continues or 1 crore rupees whichever is less."*

19. I have considered other contentions raised by the Noticee in his reply and find no merit in them in the context of the facts and circumstances of the matter in hand. As the violation of the statutory obligation under regulation 7(1) read with regulation 7(2) of SAST Regulations, 1997 has been established, I hold that the Noticee is liable for monetary penalty under section 15A(b) of 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 there under, -*
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"

(c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

20. 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:-

"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."

21. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default is not quantifiable. Further, there is no material on record to indicate that such default was repetitive. However, it is pertinent to mention here that our entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Correct and timely disclosures are also 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.

ORDER

22. After taking into consideration all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of ₹ 10,00,000/- (Rupees Ten Lakh only) under Section 15A(b) for violation of regulation 7(1) read with regulation 7(2) of SAST Regulations,

1997; read with Regulation 35 of SAST Regulations, 2011 by the noticee by the noticee i.e. Sanjay Salunkhe. I am of the view that the penalty imposed is commensurate with the violation committed by the Noticee.

23. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to The Division Chief (CFD-DCR), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C– 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

24. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: June 24, 2014 **A. Sunil Kumar**

Place: Mumbai **Adjudicating Officer**