

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/CB/269/2017]

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. **M/s Eduxel Infotainment Limited (PAN – AADCT3496R)** having address at No. 1, Wallers Lane, 1st Floor, Room No. 3, Mataji Complex, Near India Silk House, Mount Road, Chennai – 600 008 (Tamil Nadu)
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BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) upon suspicion of violation of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the “**PIT Regulations**”) had conducted investigation in the shares of M/s Eduxel Infotainment Limited, a company listed on BSE Limited (hereinafter be referred to as, the “**BSE**”) during the period January 01, 2014 – December 31, 2014. Investigation *prima facie* revealed commission of violation of Regulation 13(6) of the PIT Regulations by Eduxel Infotainment Limited (hereinafter be referred to as, the “**Noticee**” / “**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 it under Section 15A (b) of the SEBI Act for the aforesaid alleged violations of the PIT 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 received by BSE under PIT Regulations *inter alia*.
- c. SEBI, under investigation, sought details of disclosures filed by Mr. Vinod Dugar to the Company vide e-mail May 18, 2015. In response to the e-mail dated the Company confirmed by way of e-mail dated May 19, 2015 to SEBI that it received disclosures under Regulation 13(3) of the PIT Regulations from Mr. Vinod Dugar and that it, by way of letter dated September 02, 2014,

submitted the received disclosure to the BSE under Regulation 13(6) of the PIT Regulations.

- d. Similarly, SEBI, under investigation, sought confirmation of the BSE on receipt of disclosures vide e-mail dated May 13, 2015. Vide its e-mail dated May 18, 2015, the BSE confirmed that no disclosures in relation to reduction of shareholding of Mr. Vinod Dugar in the shares of the Company / Noticee were filed with the BSE.
- e. However, it was observed that the Noticee filed disclosures under Regulation 13(6) of the aforesaid transactions to the BSE on May 19, 2015.
- f. In view of the above, it was alleged that the aforesaid delay in disclosure by the Noticee was in violation of Regulation 13(6) of the PIT Regulations, text of which is mentioned as below:

PIT Regulations:

13. Disclosure of interest or holding [in listed companies by certain persons]

- (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 (1), (2), (2A), (3), (4) and (4A) [in the respective formats specified in Schedule III.]*

- 5. It was stated in the SCN that the aforesaid violation, 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. The aforesaid SCN was returned undelivered from the address of the Noticee with the remark, “left”. Thereafter, a copy of SCN was served upon the Noticee by way of Speed Post with Acknowledged Delivery (“SPAD”) along with hearing notice dated August 09, 2017, wherein, the Noticee was required to submit its reply within 14 days of receipt of

the aforesaid notice dated August 09, 2017. The Noticee was also advised to appear for personal hearing on September 11, 2017. The Noticee, vide letter dated September 08, 2017, confirmed receipt of notice dated August 09, 2017 and sought extension of four weeks.

7. Thereafter, vide hearing notice dated November 16, 2017, the Noticee was provided with another opportunity of personal hearing on December 04, 2017. However, the Noticee did not appear before the undersigned. The undersigned also received a letter dated December 02, 2017 from the Noticee, seeking another extension of four weeks.
8. Thereafter, vide hearing notice dated December 04, 2017, the Noticee was provided with a final opportunity of personal hearing on December 14, 2017. It was also communicated to the Noticee that if no appearance is made or no reply is furnished by the Noticee, the matter would be decided on the basis of evidence available on record in terms of Rule 4(7) of the Adjudication Rules.
9. In response to the notice dated December 04, 2017, the Noticee submitted another letter dated December 12, 2017 wherein, the Noticee had stated, “...*please note that the instant proceeding related to year 2014 and the concerned personnel looking after SEBI Regulations had left in sudden in the year 2015 and the documents pertaining to the transaction in question for SEBI Regulations were kept properly, which we had provided in response to the instant inquiry by SEBI later in the year 2015 as well as stated in your Notice. Therefore, you are kindly requested to consider our humble request and please close instant proceedings...*” The Noticee also requested another extension of three weeks for any further clarifications.
10. Here, I am of the opinion that the Noticee has been provided with sufficient opportunities for filing its reply and to appear before the undersigned for the hearing. However, the Noticee has failed to avail the same. From the reply dated December 12, 2017, it is clear that the Noticee has no further submissions to make in relation to the SCN. Thereafter, no other reply / submission / clarification has been received from the Noticee.
11. After taking into account the allegations and other evidences / material available on record, I, hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS

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

- 12.1 Whether the Noticee had failed to make disclosures or made disclosures belatedly against the timeline stipulated under Regulation 13(6) of the PIT Regulations?
- 12.2 If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?
- 12.3 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 12.1 Whether the Noticee had failed to make disclosures or made disclosures belatedly against the timeline stipulated under Regulation 13(6) of the PIT Regulations?

13. It is noted from Regulation 13(6) of the PIT Regulations that every listed company is required to disclose information received under Regulation 13(1), (2), (2A), (3), (4) and 13(4A) of the PIT Regulations to all stock exchanges where it is listed, within 2 days of receipt of such information.

14. From Annexure 4 of the SCN (letter dated September 02, 2014 of the Noticee), I have noted that the Noticee had confirmed the receipt of disclosures made to it by Mr. Vinod Dugar under Regulation 13(3) of the PIT Regulations regarding the same transactions as mentioned in paragraph 4 hereinabove. From the said Annexure, it is clear that under Regulation 13(3), it had received such disclosure. In the present proceeding, the Noticee had submitted that the said disclosure was in turn forwarded by it under Regulation 13(6) of the PIT Regulations to the Stock Exchange on September 02, 2014 itself.

15. However, the said copies are not accepted as the Noticee had not produced any proof of delivery / acknowledgment of the letter dated September 02, 2014 by the BSE. Mere providing a copy would not be sufficient to refute the allegation without any authentic proof. I also note that the BSE, by way of letter dated November 14, 2014 had clearly confirmed that it did not receive any disclosures under PIT Regulations for the aforesaid reduction in the shareholding of Mr. Vinod Dugar in scrip of the Noticee. I

also note from the material available on record, i.e. Annexure 5 of the SCN, that for the aforesaid reduction in the shareholding of Mr. Vinod Dugar, the BSE had received disclosures from the Noticee under Regulation 13(6) of the PIT Regulations only on May 19, 2015. From the above records, it is clear that the Noticee / Company had made the disclosure under Regulation 13(6) of the PIT Regulations only on May 19, 2015, i.e. with a delay of 257 days. Therefore, it is established that the Noticee had not made the disclosure within time line as stipulated under Regulation 13(6) of the PIT Regulations but made disclosures belatedly and accordingly, had violated Regulation 13(6) of the PIT Regulations.

16. At this juncture, I find it pertinent to refer to the judgment of Hon'ble Securities Appellate Tribunal in the matter of **Mega Resources Ltd. v. SEBI**, (Appeal 49 of 2001 dated March 19, 2002), wherein, the Hon'ble Tribunal observed, "*... the regulation is not simply on sending the information, it requires disclosure. Mere dispatch of information is short of the said requirement... 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....*".
17. In view of the aforesaid observation of the Hon'ble Tribunal, I note that the onus of ensuring that disclosure in the form desired has reached the mandated recipient in terms of PIT Regulations lies on the Noticee, which it had failed to prove. Since, BSE had received required disclosures under Regulation 13(6) of the PIT Regulations only on May 19, 2015, I find that the Noticee had committed a delay of 257 days in making disclosures to the BSE.
18. In view of the aforesaid, it is established that the Noticee, being a listed company, was in receipt of disclosures received under Regulation 13(3) of the PIT Regulations from Mr. Vinod Dugar and in turn committed a delay of 257 days in making disclosures of the same to the BSE in terms of Regulation 13(6) of the PIT Regulations. Therefore, I am of the considered view that the Noticee has violated Regulation 13(6) of the PIT Regulations.

Issue 12.2 If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?

19. Since the violation of Regulation 13(6) of the PIT Regulations has been established, therefore, I am convinced that a penalty needs to be imposed upon the Noticee under Section 15A (b) of the SEBI Act, which reads 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.”

20. I have taken into account the well-known judgment of the Hon'ble Supreme Court in the matter of **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”*.

Issue 12.3 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?

21. 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."

22. 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.
23. However, I note that the Noticee, being a listed company, had a greater responsibility to ensure compliance with PIT Regulations and ought to have put in place appropriate levels of accountability to ensure that the documents dispatched in compliance of PIT Regulations were received by the addressee within the timeframe provided under PIT Regulations. I find that because of not ensuring the receipt of disclosures required under PIT Regulations, there was delay in dissemination of information to the general public. I also note that the Noticee committed a delay of 257 days in making disclosures to the BSE.

ORDER

24. 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.3,00,000/- (Rupees Three Lakh only) upon the Noticee 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.
25. 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

26. 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.

27. 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