BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.EAD-5/BS/ AO/32-34/2017-18]

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:

Sr. No.	Name	PAN No.
1.	Ms. Susha John	ACCPJ6836D
2.	Shri Nikhil Gandhi	AABPG9516A
3.	Shri S. Vijayanand	BBVPS2910L

In the matter of Everonn Education Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigation into the alleged irregularities in the scrip of Everonn Education Ltd. (hereinafter referred to as 'company') for the possible violation of the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations) against the backdrop of allotment of 26,18,120 shares of the company on preferential basis to Verkey Group Ltd. (hereinafter referred to as VGL). Information relating to the approval by the Board of Directors of EEL in its Board

meeting dated September 19, 2011, for allotment of the aforesaid shares was a 'Price Sensitive Information' in terms of Regulation 2(ha)(i) of the PIT regulations, 1992, till it became public. The said information came into the public domain on September 20, 2011 when the company informed the Stock Exchanges. The Unpublished Price Sensitive Information (UPSI) period is between September 19, 2011 to September 20, 2011.

2. It is alleged that the company did not announce closure of trading window during the UPSI period and therefore, Ms. Susha John and Shri Nikhil Gandhi (Directors of the company) and Shri. S. Vijayanand (Compliance Officer) (hereinafter referred to as Noticee No. 1 , Noticee No. 2 and Noticee No. 3 respectively and collectively as Noticees) violated the provisions of Regulation 12(1) read with Regulation 12(3) of (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations) and Clauses 1.2, 3.2-1, 3.2-3 (c) of Model Code of Conduct for Prevention of Insider Trading for listed Companies in Schedule I Part A of PIT Regulations.

3. Based on above, SEBI, initiated Adjudication Proceedings against the Noticees under Section 15HB of SEBI Act, 1992 for the aforesaid violation.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudication Officer vide order dated November 16, 2015 to inquire into and adjudge under Sections 15HB of the SEBI Act, 1992, the aforesaid allegations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A common Show Cause Notice dated January 28, 2016 (hereinafter referred to as 'SCN') was issued to the Noticees in terms of Rule 4 of SEBI (Procedure for Holding

Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with Section 15I of SEBI Act, 1992 for the violations as specified in the SCN.

6. Vide letter dated March 01, 2016, Noticee No. 3, Shri S. Vijayanand replied to the SCN and made the following submissions:

I. *I was only involved in discussions with SKIL, regarding administrative arrangements for conducting the Board Meeting since the meeting was proposed to be held in Mumbai. The Key Promoter and Managing Director of the company were under judicial custody and therefore could not be consulted.*

II. *I was instructed by Ms. Susha John to issue a notice intimating the convening of the board Meeting which was sent by email by me on September, 17, 2011, which was a Saturday at 04.11 PM to the Directors of the Company.. I was not informed for which the Board Meeting was called and therefore, the notice for board meeting could not be accompanied with any agenda for the Board Meeting. I was informed by the Directors that the agenda will be circulated in Mumbai before the Board Meeting.*

III. *The Board Meeting was held at Marine Plaza Hotel in Mumbai at 4PM and continued upto 09.45 PM. I was informed of the agenda of the Board Meeting at the venue.*

IV. *The information cannot be termed as UPSI as neither Regulation 2(ha) not its Explanation includes or deems to include issue of shares on preferential basis as a price sensitive information.*

V. *However, the outcome of the Board Meeting was sent to BSE as well as NSE on the same day i.e. on September 19, 2011 by around 09.54 PM and 09.51 PM respectively, i.e. which was immediately at the end of the Board Meeting. However, the stock exchanges displayed it the next day, i.e. September 20, 2011, around 08.56 AM, before the market opened.*

VI. *The information regarding the proposed subscription of the preferential issue of equity shares was subject such issue being approved at a shareholders' meeting and subject to requisite regulatory and other approvals being received and therefore, such information was not price sensitive information which warranted closure of the trading window because the subscription could be allowed only if it was approved by the shareholders of the company by way of special resolution.*

VII. *The legal requirement for closure of the trading window itself presumes that within the organization there is some material development which is price sensitive and requires a close of trading activities by persons who are aware of such information. Therefore, a decision to close trading window must be judiciously taken. In our case, the professional judgment of our client was that unless preferential issue proposal was approved in principle by the shareholders, the said proposal could not be considered as materially potential proposal and till then it was not necessary to close the trading window. In fact, the Directors, the Board Meeting resolved to convene an Extra*

Ordinary General Meeting for shareholders' approval on the same on October 19, 2011.

VIII. *Neither I nor the Directors were in possession of the information until the commencement of the Board Meeting or receipt of the agenda which was handed over to each of them immediately preceding the commencement of the board meeting on their arrival at the scheduled venue. Therefore, there is no question of either of them having traded during a period prior to the Board Meeting. Moreover, the very fact that the Board of Directors themselves were not aware of the information until the commencement of the Board Meeting also highlights the fact that it is unlikely that any officer of the Company had such information prior to the Board of Directors. Even if any information was available the same would not be correct because the decision was only made at the Board Meeting. Therefore, there could not have been any information in circulation earlier.*

7. Vide letter dated March 23, 2016, Shri Nikhil Gandhi filed reply to the SCN and made the following submissions:

I. *I resigned from the company on December 31, 2012. I was neither actively involved nor had any access to day to day business or compliance system of the company.*

II. *So far as the UPSI period is concerned i.e. 04.30 PM on September 19, 2011 to 08.56AM on September 20, 2011 is concerned, the markets were closed during the period and no trading would have anyways taken place, hence there was no scope for insider trading to take place.*

III. *I being a non-executive Director, I was never involved in the day to day management of the company nor had any access to compliance system of the company.*

IV. *I had attended Board Meeting of the company held on September 19, 2011 through video conferencing to be a part of decision making about change of promoter and management control which got thereafter vested in Varkey Group who picked up 26,18,120 shares on preferential allotment basis at a total investment of Rs. 138,23,67,360/- only.*

V. *The issues raised in SCN are technical in nature and are in relation to the Compliance which is to be taken care by the Company, Compliance Officer of the Company and Executive/Whole Time Director of the Company and other Directors more so Non-Executive Director shall not be liable for alleged omission in that respect.*

8. Vide letter dated March 04, 2016, Shri S. Vijayanand Made further submissions to the SCN which was primarily a reiteration of the submissions made vide letter dated March 01, 2016.

9. Vide hearing Notice dated October 17, 2017, Noticees were granted another opportunity of being heard on November 08, 2017. However, Hearing Notices addressed to Ms. Susha John and Shri Nikhil Gandhi returned undelivered.

10. Shri S. Vijayanand appeared for the hearing on November 08, 2017 and primarily reiterated the submissions made vide letter dated March 01, 2017.

11. Subsequently, vide hearing notice dated November 09, 2017, Ms. Susha John and Shri Nikhil Gandhi were granted a final opportunity of being heard on November 24, 2017 which was served on Shri Nikhil Gandhi at SKIL Infrastructure Ltd.'s office and affixed at the last known address of Ms. Susha John. However, none of them appeared for the hearing.

12. Further, vide email dated November 17, 2017, Shri S. Vijayanand made the following additional submissions:

    I. *I was technically prevented from discharging my duty as a Compliance Officer to close the trading window. I cannot take a judgment whether to close the trading window without information in advance.*
    II. *I was only involved with SKIL, regarding administrative arrangements for conducting the Board Meeting since the meeting was proposed to be held in Mumbai.*
    III. *The Model Code requires that the compliance officer should report to Managing Director/ Chief Executive Officer with respect to his actions. At the relevant time, the managing Director was arrested at the time when the Board Meeting was held.*
    IV. *The spirit of the Insider Trading Regulations on trading window closure is to ensure that the person possessing the UPSI should not trade by misusing the information.*
    V. *In the given situation, the information was not available even to me as Company Secretary & Compliance officer till the commencement of the Board Meeting and hence the chance of designated employees and Directors other than the Directors to whom the SCN was issued, knowing the above information in advance is remote.*
    VI. *Until the commencement of the Board Meeting on 19th September, 2011, at 4.00 pm, the information was not in my possession. Therefore, the closure of trading window could not have been announced before 4.00 pm. However, immediately after the Board Meeting was closed, the outcome of the aforesaid Board Meeting was sent to the Bombay Stock Exchange as well as the National Stock Exchange on the same day, i.e. on September 19, 2011, by around 9.54 pm and 9.51 pm respectively i.e. which was immediately at the end of the Board Meeting. However, the stock exchanges displayed it the next day, i.e. September 20, 2011, around 8.56 am, before the market opened.*

VII. *I had never traded in the Company's Shares, nor did any trade take place by any other person at the time when the trading window should have allegedly remained closed. I had not profiteered in any manner nor have I/nor any director has made any personal gain by failing to close the trade window during the alleged period. No loss is caused to any employee or any other person whatsoever on account of alleged failure since there was no trading activity conducted during the alleged time period, despite such non-closure of trading window. Therefore, it is humbly submitted that it is unfair to punish or penalize a person for an act which caused no harm or damage or loss to anybody. I have never defaulted in discharge of my duties in any past and therefore I feel it is not justified to punish a person who acted in good faith.*

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully examined oral and written submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are :

    a. Whether the Noticees have violated Regulation 12(1) read with Regulation 12(3) of (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations) and Clauses 1.2, 3.2-1, 3.2-3 (c) of Model Code of Conduct for Prevention of Insider Trading for Listed Companies in Schedule I Part A of PIT Regulations?

    b. Does the violation, if established, attract monetary penalty under Sections 15HB of SEBI Act, 1992?

FINDINGS

14. The issues for examination and the findings thereon are as follows:

Issue I: Whether the Noticees have violated Regulation 12(1) read with Regulation 12(3) of (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations) and Clauses 1.2, 3.2-1, 3.2-3 (c) of Model Code of Conduct for Prevention of Insider Trading for Listed Companies in Schedule I Part A of PIT Regulations?

15. In September 2011, the Board of Directors of the company approved of issue of 26,18,120 shares of the company on preferential basis to Varkey Group Ltd.(VGL), the chronology of the events leading to the preferential issue of shares by the company is as follows:

Date	Event
15.09.11 & 16.	Acquisition of 804453 shares of EEL (i.e. 4.19% of the share capital of EEL) by Sunny Varkey and Sherly Varkey of VGL from open market.
16.09.11	VGL held a board meeting at Dubai at 5.00 pm Dubai time / 6.30 pm, IST on 16.09.11 and took strategic decision to make an offer in respect of EEL. Letter from VGL to EEL about their interest to invest and participate in the control of EEL should EEL and its BOD decide to issue equity shares on preferential allotment basis.
17.09.11 to 18.09.11	Discussions between VGL, EEL and SKIL.
19.09.11 (at 4.00 pm)	Board Meeting of EEL held to discuss the proposed letter of VGL to acquire 26,18,120 shares (12% share capital) of EEL was placed before the Board of Directors of EEL. BoD of EEL in its meeting approved the allotment of shares on preferential basis to VGL.
20.09.11 (at 8:56 am)	The details of announcement pertaining to the above Board Meeting to the exchanges are as follows: • MOU between EEL, VGL and SKIL Infrastructure Ltd, promoter of EEL • approved the total NRI limit under the portfolio investment scheme from 10% to 24% subject to requisite shareholder/regulatory approvals. • approved the issue of 26,18,120 equity shares to VGL forming 12% of the equity of EEL to VGL • Board of EEL also observed that pursuant to above items, VGL and its persons acting in concert namely Sherly and Sunny Varkey shall be treated as a co-promoter of EEL. Together with the existing holding, it has triggered the requirement of an open offer to be made to the public shareholders of EEL.
23.9.11	Sunny and Sherly Varkey together additionally acquired 3,99,628 shares (2.08% of Share capital) of EEL, thereby increased their holdings to 6.27%.
23.9.11	Open offer announcement was made by Varkey Group to acquire further 20% of the share capital i.e. 44,83,535 shares at a price of Rs. 528 per share in accordance with SEBI (SAST) Regulations.

16. In terms of Section 2(ha) of PIT Regulations, 1992, "price sensitive information" (PSI) includes issue of securities or buy-back of securities and amalgamation, mergers or takeover. Thus, the approval by the BoD of the company in its Board Meeting held at 4.00 pm on September 19, 2011 for allotment of 26,18,120 shares (12% share capital) of EEL on preferential basis to VGL is considered as PSI in terms of the

provisions of the PIT Regulations. Hence, the contention of the Noticees that the said information cannot be considered as PSI is devoid of any merit.

17. It is alleged that Noticees have failed to implement model code of conduct by not announcing closure of trading window on account of the information pertaining to allotment of shares on preferential basis to VGL and thus, violated Regulation 12(1) read with Regulation 12(3) of PIT Regulations and Clauses 1.2, 3.2-1, 3.2-3 (c) of Model Code of Conduct for Prevention of Insider Trading for Listed Companies in Schedule I Part A of PIT Regulations. The relevant regulations are as under :

Code of internal procedures and conduct for listed companies and other entities.

12. (1) All listed companies and organisations associated with securities markets including:

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;

(b) the self-regulatory organisations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

…

(3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

Model Code of Conduct- Schedule I, Part A

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation : For the purpose of this Schedule, the term 'designated employee' shall include :—

i. officers comprising the top three tiers of the company management;
ii. the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

3.2 Trading window

3.2.1 The company shall specify a trading period, to be called "trading window", for trading in the company's securities. The trading window shall be closed during the time the information referred to in para 3.2.3 is unpublished.

..

3.2.3 The trading window shall be, inter alia, closed at the time:—

…

(c) Issue of securities by way of public/rights/bonus etc.

18. Thus, as can be seen from above the trading window needs to be closed at the time of issuance of securities by any manner whatsoever. Further as per the provisions of Clause 3.2.4, the trading window can only be opened 24 hours after the information referred to in para 3.2.3 is made public. However, in the present case, it is an admitted position that the trading window was not closed during the period PSI was not available to the public.

19. As per the submission of the Noticee No. 3, he was not given any agenda papers before the meeting, therefore, he could not close the trading window. As per the Clause 1.1 of the model code of conduct, a compliance officer is required to report to the Managing Director of the Company, however, as submitted by the Noticee No. 3 the Managing Director of the Company was arrested so there was nobody to report to. This cannot be treated as an excuse. It is pertinent to mention that the Compliance Officer cannot abdicate his responsibility by stating that he could not contact anybody in the management to effect closure of trading window.

20. It was reasonably expected from Noticees to ensure that the trading window is closed on account of issuance of preference shares to VGL. As per the material available on record, the Noticee No.1 and 2 knew the agenda of the meeting beforehand. Despite that the trading window was not closed during the relevant period.

21. However, from the facts of the case it is noted that the EGM was held in Mumbai and the Company Secretary, Noticee No. 3 who was stationed in Chennai had to come to Mumbai to make the arrangements for the meeting at short notice. Noticee No. 3 has submitted that he was kept in dark regarding the business to be discussed in meeting. Though this cannot be taken on face value it is pertinent to note that other Noticees have not given a satisfactory reply to the SCN issued to them. This adds credence to the contention of Noticee No.1 in the facts and circumstances of the case. It is also noted that Noticee No. 3 was only an employee of the Company.

22. Reference is drawn to the order Hon'ble Securities Appellate Tribunal in the matter of G Jayaraman v SEBI (Appeal No. 182 of 2012), where it was held that :

'Model Code contained in PIT Regulations further requires Compliance Officer to keep the trading window closed during the period when information referred to in para 3.2.3 is unpublished. Object of keeping the trading window closed under para 3.2.3 of Model Code in addition to prohibition contained in regulation 3 of PIT Regulations is to doubly ensure that directors/officers and designated employees of the Company do not misuse 'Price Sensitive Information' and trade in securities of the Company while in possession of such unpublished price sensitive information. Therefore, Compliance Officer is mandatorily obliged under Model Code to keep the trading window closed when in possession of price sensitive information specified in para 3.2.3 of Mode Code. If Compliance Officer fails to close the trading window inspite of being in possession of price sensitive information, then he would be violating PIT Regulations. In such a case, whether any employee/director by taking undue advantage has traded in securities of that company or not, Compliance Officer would be liable for violating PIT Regulations.

In other words, Compliance Officer would be liable for penalty if he fails to close trading window when in possession of unpublished price sensitive information even if no employee

has traded in shares of that company when in possession of unpublished price sensitive information."

23. Thus, it is not material whether any employee or Director traded in the securities during the UPSI period, it is mandatory on the part of the Compliance Officer of the Company to ensure that the trading window remains closed during the UPSI period and opened 24 hours after the public announcement is made. In the instant case, though no trades took place during the window closure period but it was the responsibility of the Compliance Officer to close the trading window. However, Noticee No. 3 failed to do that. Further, as Directors, the Noticee Nos. 1 and 2 also have to ensure that the code of conduct is adhered to in strictest sense.

24. Therefore, Noticees failed to abide by their internal code of conduct and hence violated Regulation 12(3) of PIT Regulations and Clauses 1.2, 3.2-1, 3.2-3 (c) of Model Code of Conduct for Prevention of Insider Trading for Listed Companies in Schedule I Part A of PIT Regulations.

(c) Does the non-compliance, if any, attract monetary penalty under Section 15HB of SEBI Act, 1992?

25. The aforesaid violation attracts penalty under Section 15A(b) of the SEBI Act which reads as follows:

> **"Penalty for contravention where no separate penalty has been provided.**
>
> **15HB.**
> Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

26. In this regard, the provisions of Section 15J of the SEBI Act 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

27. It may also be noted that the Investigation Report has not quantified the profit/ loss for the nature of violations committed by Noticees and no quantifiable figures are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors.

28. In this context, it is relevant to quote the judgment of Supreme Court in the matter of SEBI vs. Shri Ram Mutual Fund wherein it was inter alia 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."*

29. It is pertinent to note that pursuant to order dated September 20, 2016 passed by the Hon'ble High Court of Madras, official liquidator has been appointed and the liquidator has taken possession of all the assets of the Company. Further, in light of the order of Hon'ble High Court of Madras, vide Adjudication Order dated April 21, 2017, the proceedings against the company has been disposed of as no leave of court was obtained prior to initiation of the same.

30. Therefore, taking into consideration the facts / circumstance of the case and aforesaid judgment of the Hon'ble High Court of Madras, I am of the view that penalty is not warranted on the Noticees especially in light of the fact that Adjudication Proceedings against the company has been disposed of without imposition of monetary penalty.

ORDER

31. In view of my findings noted in the preceding paragraphs, I am of the view that the adjudication proceeding initiated against the Noticees vide SCN dated January 28, 2016 does not warrant any penalty. The matter is, accordingly, disposed of.

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

Place: Mumbai **Biju. S**

DATE: 29.11.2017 **ADJUDICATING OFFICER**