BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/BS/DP/2023-24/28874]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:

Shri Bharat Gupta

(PAN: ALFPG6480L)

R/o House No. V68, Sector-12,

Tech Dadri, Distt. Gautam Budh Nagar,

Noida, Uttar Pradesh- 201 301

In the matter of Edynamics Solution Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") vide its interim order dated September 13, 2017, inter alia, issued the following directions against Edynamics Solutions Limited (hereinafter referred to as "**EDSL/the company**"):

   i. *" The trading in securities of ESL shall be reverted to T group of BSE with applicable price band in trade to trade settlement.*

   ii. *Exchange shall appoint an independent auditor to conduct forensic audit of ESL for verification, including the credentials/financials of ESL and to trace the end-use of funds raised by ESL from public.*

   iii. *The promoters and directors in ESL are permitted only to buy the securities of ESL. The shares held by the promoters and directors in ESL shall not be allowed to be transferred for sale by depositories.*

iv. The other actions envisaged in SEBI's letter dated August 07, 2017 in para 1 (d) as may be applicable, and the consequential action taken by Stock Exchanges shall continue to have effect against ESL.

....

30. The findings in this order have been rendered on the basis of the prima facie evidence available at this stage. However, detailed examination / forensic audit needs to be undertaking to unearth the entire extent of violations. In this context, Edynamics Solutions Limited is advised to file its reply/objections to this interim order, if any, within 30 days from the date of receipt of this Order and may also indicate whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard. In the event Edynamics Solutions Limited fails to file its reply or to request for an opportunity of personal hearing within the said 30 days, the preliminary findings of this Order and ad-interim directions shall stand confirmed against Edynamics Solutions Limited automatically, without any further orders......"

2. EDSL neither filed any reply/objection to the observations / interim findings made in the interim order nor did it avail the opportunity of personal hearing granted by SEBI.

3. In accordance with the directions issued by SEBI vide the aforesaid interim order, BSE Ltd. ("BSE") appointed M/s. CJS Nanda & Associates, Chartered Accountants ("Forensic Auditor") to conduct forensic audit of EDSL. In this regard, SEBI observed the following violations with respect to the company:
   A. Non-furnishing of information/Non-cooperation
   B. Misrepresentation of financial and/or business and misuse of books of accounts/funds

4. Based on the aforesaid violations, it was alleged that
   4.1 Noticee has failed to exercise duty of care and fiduciary responsibility as a director of the company by misrepresenting the financials/misusing the funds and therefore, has violated provisions of Section 12A (a), (b) and (c) of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**"), Regulations 3(b), (c) and (d) and 4(1) and 4(2) (f) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to

Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'), Regulations 4(1) (c), (e) and (g) and 4(2)(f)(i)(2), 4(2)(f)(ii)(6)&(7), 4(2)(f)(iii)(1),(3),(6),(12) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**"). It is also alleged that Noticee did not comply with the provisions laid down in Clause 46a of the erstwhile model listing agreement for SME companies and Regulation 32(1) of SEBI (LODR) Regulations and Section 21 of the SCRA.

4.2 It is further alleged that Noticee has failed to adhere to the SEBI directions by not furnishing the requisite information as sought by the forensic auditor and BSE and have, thus failed to provide information to SEBI leading to violation of Section 11(2)(i) and 11(2)(ia) of the SEBI Act.

5. Vide order dated January 05, 2021, the Adjudicating Officer levied a penalty of Rs. 20,00,000 on the directors of the company, including the Noticee, to be paid jointly and severally.

6. Noticee filed an appeal before Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") against the aforesaid order on the ground that the Noticee never received the SCN and order in the matter. Vide order dated March 20, 2023, Hon'ble SAT remanded the matter to SEBI with a direction to the Noticee to appear before the Adjudicating Officer on April 10, 2023 on which date the SCN will be served on the Noticee and then the matter will proceed in accordance with law.

APPOINTMENT OF ADJUDICATING OFFICER

7. SEBI had appointed undersigned as the Adjudicating Officer (hereinafter referred to as '**AO**') in the matter vide communique dated March 24, 2023 under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) and Section 23-I of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA'**) read with Rule 5 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as '**SCR Rules')**, to inquire into and adjudge under the provisions of

the Sections 15A(a) and 15HA of the SEBI Act and Section 23H of the SCRA, for the violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

8. The Noticee did not collect the SCN from SEBI office on April 10, 2023 and therefore Show Cause Notice ref no. EAD-2/SS-SK/OW/3875/6/2019 dated February 08, 2019 (hereinafter referred to as **'SCN'**) was served on the Noticee on April 29, 2023, through hand delivery, to show cause as to why an inquiry should not be held against the Noticee and why penalty be not imposed on them in terms of the provisions of the Sections 15HA and 15HB of the SEBI Act for the violations alleged to have been committed by the Noticee.

9. The aforesaid SCN *inter alia* alleged the following:

9.1 In accordance with the directions issued by SEBI vide the aforesaid interim order, BSE Ltd. ("BSE") appointed M/s. CJS Nanda & Associates, Chartered Accountants ("Forensic Auditor") to conduct forensic audit of the company and observed the following:

9.1.1 It was alleged that despite various correspondences by the forensic auditor and BSE, the company failed to furnish the information / documents essential to conduct the exercise of forensic audit. Further, the company did not cooperate with BSE and the forensic auditor appointed by BSE. It is, therefore, alleged that the company has failed to adhere to the directions of SEBI by not furnishing the requisite information as sought by the forensic auditor and BSE and thus failed to provide information to SEBI leading to violation of Section 11(2)(i) and 11(2)(ia) of SEBI Act.

9.1.2 It was alleged that the irregularities observed above tantamount to misrepresentation of financial and misuse of funds/ books of accounts which are detrimental to the interests of genuine investors. Therefore, it was alleged that the acts of the company are fraudulent in nature leading to violation of Section 12A (a), (b) and (c) of SEBI Act, Regulations 3(b), (c) and (d) and 4(1) and 4(2) (f) and (r) of PFUTP Regulations, 2003 and Regulations 4(1)(c),(e),(g), 4(2)(f)(i)(2), 4(2)(f)(ii)(6)&(7), 4(2)(f)(iii)(1),(3),(6),(12) of LODR Regulations.

10. Vide letter dated May 10, 2023, the Authorised Representative (AR) of the Noticee sought copies of certain annexures of the SCN, which were provided, vide email dated May 12, 2023. Vide email dated May 15, 2023, the AR of the Noticee sought one month's time to file reply to the SCN.

11. Subsequently, vide email dated May 15, 2023, the Noticee was granted time till May 30, 2023 to file his reply. Vide letter dated May 22, 2023, the Noticee filed his reply to the SCN and submitted the following:

12.1Noticee was not involved in the working of EDSL and the deployment of IPO funds was made by EDSL without knowledge & consent of Noticee. He neither attended any Board Meeting nor any Notice were being served by EDSL to attend any Board Meeting.

12.2 EDSL fraudulently appointed Noticee as its director and filed Form 32 with MCA.

12.3 Noticee neither attended any Board Meeting nor signed any Board Resolution nor flied any form with MCA nor taken any decision w.r.t. deployment of funds of EDSL nor received any sitting fee or other remuneration from EDSL.

12.4 The alleged act of omission or commission by EDSL was done without following due processes of Board of Directors; without the knowledge of Undersigned Noticee; & even without the consent/ connivance of Undersigned Noticee. As far as question of non-diligent act of Undersigned Noticee is concerned, Undersigned Noticee had never taken part in any working of EDSL so the question of diligent act or non-diligent act does not arise.

12.5 That the SCN under reply had relied upon certain reports/ documents/Emails i.e. SEBI Interim order dated 13.09.2019; the Forensic Auditors' Report; BSE Report & correspondencces between SEBI, BSE, Forensic Auditor and EDSL. It is prima facie understood (after analyzing said documents)/ that these documents do not implicate the role of Undersigned Noticee w.r.t. alleged non-Compliances made by EDSL. Amid that neither the SCN nor any of the Annexure made part of SCN contains any direct evidence to press any specific allegation/ averment against Undersigned Noticee making him responsible *for the alleged fraudulent and unfair trade practice by EDSL & for making him liable for any penal action under section l5HA of SEBI Act; Section 23H of SCRA or/and under any other provisions of the SEBI laws.*

12.6 The Undersigned Noticee also filed Police Complaint against EDSL for wrongly/fraudulently making him director of EDSL as he never gave his consent to become director of EDSL.

12.7 Somewhere in 2012 he was being approached by Sh. Manish Gupta Ex-Director of EDSL to develop website of ESL & software installation work. That during conversation Mr. Manish succeeded to convince undersigned Noticee to join as a freelancer IT consultant of EDSL. Hence the Undersigned Noticee, in good faith, signed certain documents as provided by Mr Manish Gupta without reading the contents of the same, but no work was being assigned to Undersigned Noticee during 2012.

12.8 That later during 2013 Mr. Manish Gupta again approached undersigned Noticee to initiate website development work for which he again got sign of Undersigned Noticee on certain documents at the behest that documentation work is necessary in a Limited Company for its compliances. This time also though the work to make website got started but the same was again put on hold. It is worthy to mention here that the Undersigned Noticee was never provided with the copy of documents signed by him.

12.9 That the Undersigned Noticee never received any Notice of Board Meeting of EDSL was received from EDSL. Amid that he never approached EDSL as he was not aware of his alleged appointment as director of EDSL. Amid that as no Notice of Board Meeting was received from ESL, he never attended any of the Board Meetings of EDSL and hence EDSL never paid any alleged sitting fee to the Undersigned Noticee.

12.10 That the Undersigned Noticee also filed Police Complaint against EDSL for wrongly/fraudulently making him director of EDSL as he never gave his consent to become director of EDSL.

12. Vide Hearing Notice dated May 29, 2023, Noticee was granted an opportunity of being heard on June 23, 2023. The AR of the Noticee appeared for the hearing on the said date and submitted the following:

14.1 The AR reiterated the submissions made vide reply dated May 22, 2023.

14.2 The AR submitted that the Noticee was fraudulently made the Independent Director of the company.

14.3 The Noticee has filed a police complaint for the same.

CONSIDERATION OF ISSUES AND EVIDENCE

13. I have carefully perused the charges levelled against the Noticees in the SCN, their replies and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination: -

I. **Whether** ***Noticee has failed to exercise duty of care and fiduciary responsibility as a director of the company by misrepresenting the financials/misusing the funds and therefore, has violated provisions of Section 12A (a), (b) and (c) of the SEBI Act, Regulations 3(b), (c) and (d) and 4(1) and 4(2) (f) and (r) of the PFUTP Regulations, Regulations 4(1) (c), (e) and (g) and 4(2)(f)(i)(2), 4(2)(f)(ii)(6)&(7), 4(2)(f)(iii)(1),(3),(6),(12) of the LODR Regulations?***

II. Whether Noticee has violated Clause 46a of the erstwhile model listing agreement for SME companies and Regulation 32(1) of SEBI (LODR) Regulations and Section 21 of the SCRA?

III. Whether Noticee has violated 11(2)(i) and 11(2)(ia) of the SEBI Act?

IV. Do the violations, if any, on the part of the Noticee attract monetary penalty under sections 15A(a) and 15HA of SEBI Act and Section 23H of the SCRA?

V. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

14. Before proceeding with the matter on merits, it would be relevant to reproduce the provisions of law:

"**SEBI ACT**

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

…

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c)employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d)engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are

listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1)Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2)Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

…

(f)publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities; an intermediary predating or otherwise falsifying records such as contract notes.

…

(r)planting false or misleading news which may induce sale or purchase of securities.

LODR Regulations

Principles governing disclosures and obligations.

4.(1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

...

(c)The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.

...

(e)The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

...

(g)The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

(2) The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.

(f)Responsibilities of the board of directors: The board of directors of the listed entity shall have the following responsibilities:

(i) Disclosure of information:

...

(2) The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.

(ii) Key functions of the board of directors-

...

(6) Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.

(7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

(iii) Other responsibilities:

(1) The board of directors shall provide strategic guidance to the listed entity, ensure effective monitoring of the management and shall be accountable to the listed entity and the shareholders.

...

(3) Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.

...

(6) The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders.

...

(12) Members of the board of directors shall be able to commit themselves effectively to their responsibilities."

15. Now I deal with the issues raised in para 13.

I. **Whether *Noticee has failed to exercise duty of care and fiduciary responsibility as a director of the company by misrepresenting the financials/misusing the funds and therefore, has violated provisions of Section 12A (a), (b) and (c) of the SEBI Act, Regulations 3(b), (c) and (d) and 4(1) and 4(2) (f) and (r) of the PFUTP Regulations, Regulations 4(1) (c), (e) and (g) and 4(2)(f)(i)(2), 4(2)(f)(ii)(6)&(7), 4(2)(f)(iii)(1),(3),(6),(12) of the LODR Regulations?***

II. Whether Noticee has violated Clause 46a of the erstwhile model listing agreement for SME companies and Regulation 32(1) of SEBI (LODR) Regulations and Section 21 of the SCRA?

III. Whether Noticee has violated 11(2)(i) and 11(2)(ia) of the SEBI Act?

16. From the material available on record it is alleged that Noticee being an independent director has failed to exercise duty of care by misrepresenting the financials/misusing the funds. It was further alleged that the Noticee has failed to discharge his fiduciary responsibility as a director. It was further alleged that the Noticee did not furnish the requisite information as sought by the Forensic Auditor.

17. In this regard Noticee has submitted that he was fraudulently made the director of the company and that he never gave consent to become director of the company. The Noticee filed a police complaint dated October 31, 2020 in this regard. The Noticee has further submitted that he did not receive any notices from SEBI or the forensic auditor with respect to his role in the company.

18. The said police complaint has been perused and it is noted that the Noticee filed the Police Complaint against the company stating that he was made the Independent Director of the company without his consent. He further submitted that he visited the registered address of the company, however, he could not locate it.

19. The Noticee has further submitted that even if it is assumed that he was the Independent Director in the Company, he did not receive the sitting fee, he did not receive notice of Board meeting, he did not attend any Board meetings. The Noticee in support of his submissions provided his Bank statements.

20. In this regard, the material available on record has been perused and it is observed that the allegation against the Noticee is that he failed to take due care and diligence as director of the company and has failed to discharge the fiduciary responsibility. It is further alleged, that the directors are responsible for all the acts of omission and commission by the company including providing the information to the forensic auditor. It is the duty and responsibility of the directors to ensure that proper systems and controls are in place for financial reporting and to monitor the efficacy of such controls and systems.

21. From the record, it is observed that Noticee was Non-executive and Independent Director of the company. As per the Annual Reports, Noticee, being Independent Director of the company, was a member of the audit committee, Nomination and Remuneration Committee and Stakeholder Relationship Committee. It is also observed that Shri Vikas Saini (Executive and Whole Time Director) and Ms. Anita Gupta (Non-Executive & Non-Independent Director) were the only authorised representatives from the company to sign the Balance Sheets, Profit and Loss Account and financial results of the company.

22. To understand the role of the Noticee, it is important to appreciate the role of an independent director in a company. Section 149(4) of the Companies Act, 2013 mandates that atleast one third of the directors in a public company are required to be independent directors. The purpose of mandating minimum number of independent directors is to improve ethical behaviour, corporate governance and business practices of the company which in turn may increase the

shareholders value. Independent Directors being people of prominence, are expected to bring objectivity and fairness in the dealings of a company. However, these independent directors bring the objectivity to the Board on the basis of the facts and data put before it by the Company. These independent Directors may not be involved in the day-to-day running of the business.

23. In this regard, Hon’ble Supreme Court in the matter of SEBI v. Gaurav Varshney [MANU/SC/0778/2016] order dated July 15, 2016 held that:

“*The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status*.”

24. Further, in the matter of Agritech Hatcheries & Food Ltd. Vs Valuable Steels India Pvt. Ltd. [MANU/TN/0075/1997], it has been held by the Hon’ble Madras High Court that *where there is a managing or whole time director or a manager, it would be an abuse of the process of the court if proceedings are launched against the ordinary directors without examining their role in default*.

25. Hon’ble SAT in the matter of Sayanti Sen Vs SEBI (Appeal No. 163 of 2018), date of order August 09, 2019 held that :

“… There has to be a specific finding that a Director or Directors were responsible for the acts of the Company. The mere fact that a person is a Director would not make him automatically responsible for refund of monies under Section 73(2) of the Companies Act.”

26. Thus, from the above it can be inferred that the test to determine the liability of a director is to find out his/her involvement in the day-to-day affairs of the company. In the present case, allegations against the Noticee are premised on the fact that Noticee being an independent

director, failed to discharge his duty of care with respect to the misrepresenting the financials/misusing the funds by the company. On the contrary, it is brought to the record from the Board resolution dated March 31, 2014 that any functions with respect to the financials of the company are to be discharged by Mr Vikas Saini and Ms. Anita Gupta. Therefore, I do not find it tenable to fasten the liability on the Noticee regarding any misrepresentation of the financials. There is no document available on record that the Noticee was involved in the day-to-day functions of the company. It is also to be noted that the Noticee has filed a police complaint against the company for his fraudulent appointment as the director of the company, a copy of which is available on record. Further, with respect to the failure to provide the information to the forensic auditor, it is observed that the forensic auditor addressed all the communications to the registered email and postal address of the company and these communications were not marked to the Noticee. Further, as per the order dated March 20, 2023, while remanding the matter to SEBI, Hon'ble SAT noted that the Noticee did not receive any notice in the matter. Further, as regards the liability of the independent directors, the same has to be seen from the board processes and whether they are involved in the management of the company. Further, section 149(12) of the Companies Act, makes it abundantly clear that an independent director shall be held liable only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent.

27. Therefore, on the basis of the orders discussed above, the facts and circumstances of the case and in the absence of any other material document evidencing the role of the Noticee in the Board process, I am inclined to give the benefit of doubt to the Noticee. In view of the same, I am of the view that this is not a fit case for imposition of monetary penalty on the Noticee on the basis of the material available on record.

28. Since, the allegations against the Noticee are not proved, I do not find it necessary to deal with the other issues raised in para 13.

ORDER

29. In view of my findings noted in the preceding paragraphs, I hereby dispose of the adjudication proceedings initiated against the Noticee and Show Cause Notice dated February 08, 2019 without imposition of any monetary penalty. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date : August 23, 2023 **Biju S**
Place : Mumbai **Adjudicating Officer**