BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/NH/YK/2024-25/30561]

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

In respect of:

Noticee	PAN	Registration Number
Systematix Corporate Services Limited	AAGCS3420D	INM000004224

In the matter of Systematix Corporate Services Limited

FACTS OF THE CASE

1. Systematix Corporate Services Limited (hereinafter referred to as "**Noticee/Systematix**") has been registered with Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") as a Merchant Banker since June 19, 2013. The registration number of the Noticee is INM000004224. SEBI had undertaken inspection of the Noticee on September 01, 2023 and September 05, 2023 for the period April 01, 2022 to June 30, 2023 (hereinafter referred to as "**Inspection period/IP**").

2. Post the culmination of the aforesaid inspection, an inspection report (hereinafter referred to as '**IR'**) was prepared. The findings of the said inspection were communicated to the Noticee vide letter dated January 04, 2024. In response to the findings in the inspection report, Noticee submitted a reply vide letter dated January 19, 2024. After the receipt of the Noticee's reply to the Inspection Report, a Post Inspection Analysis report (hereinafter referred to as '**PIA'**) was prepared.

3. Based on the findings of Inspection conducted by SEBI and the response of the Noticee dated January 19, 2024 submitted to SEBI, certain non-compliances of

Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (hereinafter referred to as "**ICDR Regulations**"), Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 (hereinafter referred to as "**MB Regulations**"), Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations**") and SEBI Circular No. SEBI/HO/MIRSD/MIRSD1/CIR/P/2017/38 dated May 02, 2017 (hereinafter referred to as **"SEBI Circular dated May 02, 2017"**) were alleged. The extracts of the violations alleged to have been committed by the Noticee and the corresponding provision of the securities law are given in the table below:

Table 1

Sr. No.	Alleged Violations	Regulatory Provisions
1.	The Noticee failed to exercise due care and diligence in the matter of the Initial Public Offer (hereinafter referred to as **"IPO"**) of XYZ Limited[1]	Regulation 24(3) of the ICDR Regulations and Regulation 13 read with clause 4 of Schedule III of the MB Regulations.
2.	The Noticee failed to maintain a Structured Digital Database (hereinafter referred to as **"SDD"**) for merchant banking related activities during the IP.	Regulation 3(5) of the PIT Regulations.
3.	The Noticee failed to make the requisite status updates on 50 instances in the SEBI Intermediary Portal (hereinafter referred to as **"SI Portal"**) in a timely manner.	Regulation 9A(1)(f) of the MB Regulations and the SEBI Circular dated May 02, 2017.

[1] *Name of the Company has been excised for the sake of confidentiality.*

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI had appointed the undersigned as the Adjudicating Officer (hereinafter referred to as ''**AO**'') in the matter vide communique dated April 08, 2024 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"**), to inquire into and adjudge under the provisions of Section 15HB of the SEBI Act for the aforementioned violations of the provisions of law alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice ref no. SEBI/EAD-2/NH/YK/15012/2024 dated April 23, 2024 (hereinafter referred to as **'SCN/Notice'**) was served upon the Noticee in terms of Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act to show cause as to why an inquiry should not be held against the Noticee and why penalty, if any, not be imposed on it in terms of the provisions of the Section 15HB of the SEBI Act for the violations alleged to have been committed by the Noticee.

6. The SCN dated April 23, 2024, *inter alia*, alleged the following:

"***6.1. <u>Failure to exercise due care and diligence</u>***

- *It was observed from IR that one of the inspection areas pertains to due diligence exercised by the Noticee in the IPO of* XYZ Limited[2].

- *In this regard, it was observed that one of the objects of the issue, as disclosed in the "Objects of the Offer" section of the offer document of* XYZ Limited[2] *pertains to – "Growth initiatives". The amount earmarked for this object was Rs. 50 Crores. It is further observed that in the "Objects of the Offer" section, no disclosure was*

[2] *Name of the Company has been excised for the sake of confidentiality.*

made by Issuer Company as to how the requirement of Rs. 50 Crores was determined.

- *It was further observed from IR that during on-site inspection, the Noticee claimed that the amount of Rs 50 Crore was determined based on the discussion with the Issuer Company. However, the Noticee failed to submit any documentary evidence to demonstrate the due diligence carried out with respect to amount of Rs. 50 Crore earmarked for the object - "Growth initiatives".*

- *It was observed that the aforesaid findings were communicated to the Noticee by SEBI vide letter dated January 04, 2024. The Noticee vide letter dated January 19, 2024 (enclosed as Annexure 3) had, inter alia, stated as under in respect of aforesaid findings in the IR/PIA:*

  "We would like to bring to your kind attention that "Growth Initiatives" wrt Objects of the Issue was duly approved by the Board of Directors of the Issuer. A sum of Rs. 50cr was planned to invest towards branding including print & digital marketing, to venture into new line of business/segment in Ed-Tech, towards improving existing content and technological advanced content and also to offer refunds and incentives to retain existing students and learners. This is clearly mentioned on page 102 and 103 of the Prospectus dated April 04, 2022 which is enclosed as Annexure A.

  Since the said object (Growth Initiatives) and corresponding funding requirement was estimated by the management of the Company and therefore as a part of our diligence we had collected CTC of Board Resolution approved by BOD which is enclosed as Annexure B.

  Based on the historical expenses incurred by the Company (including its subsidiaries), we found that the Company had been incurring more than one crore per month towards brand building prior to filing of DRHP with SEBI. Further, the Company's business model was to acquire majority stake in an established brand to venture into different segments of Ed-Tech Sector. We found that the Company *had a track record of acquisitions prior to filing of DRHP with SEBI and the management of the Company was in high level discussion with other Ed-Tech players for majority stake. Referring to the objective mentioned under "Growth Initiatives" on page 102-103 of the Prospectus, we found that proposed utilisation was in line with their business model and to increase their visibility for attracting learners, thus it may be seen an adequate disclosure was made on page 102-103 of the Prospectus. Therefore, we found that the estimate of Rs. 50cr towards growth initiatives was a fair estimate.*

To substantiate the fairness, we would like to bring to your notice the following:

1.The total expense incurred by the Company and its material Subsidiary Edureka or Brain4ce as per the audited financials for FY21 and the 6M Period ended on Sep.30, 2021 which is duly certified by the Statutory Auditors of the Company – Refer "Objects of the Issue" appearing on page 103 of the Prospectus and reproduced below:

(₹ in millions)

Particulars of Historical Expenses	VLS (Consolidated)		Edureka	
	March 31, 2021	September 30, 2021	March 31, 2021	September 30, 2021
Advertisement and Sales Promotion	24.65	62.78	236.13	93.03

As a part of diligence, we had collected comfort letter, circle up pages with respect to stated object along with copies of invoices for print, digital, social media and TVC. We had also seen the Agreements with media agencies such as Adfactors and GroupM.

2.The Company has been started and grown through inorganic acquisitions - Refer "Major events and milestones of our Company" appearing on page 173 of the Prospectus and reproduced below:

Major events and milestones of our Company

The table below sets forth some of the key events in the history of our Company:

Calendar Year	Events
November 2018	Incorporated as Andromeda Edutech Private Limited
September 2020	The name of our Company was changed from "Andromeda Edutech Private Limited" to "Veranda Learning Solutions Private Limited"
November 2020	Our Company acquired content, brand, education materials from Chennai Race Coaching Institute Private Limited through our wholly-owned subsidiary Veranda Race Learning Solutions Private Limited
November 2020	Our Company launched a mobile app in the name for Veranda Learning comprising integrated courses offered exclusively for our students
December 2020	Our Company digitized and launched the content acquired from Chennai Race Coaching Institute Private Limited through Veranda Race
March 2021	Our Company engaged SAI IAS Academy to provide content for our subsidiary Veranda IAS Learning Solutions Private Limited
July 2021	Our Company commercially launched our CA course offered by Veranda CA
August 2021	Our Company commercially launched our UPSC course offered by Veranda IAS
September 2021	Our Company acquired 100% shareholding of Brain4ce Education Solutions Private Limited
October 2021	Our Company converted into a public Company
October 2021	The name of our Company was changed from "Veranda Learning Solutions Private Limited" to "Veranda Learning Solutions Limited"

The current Promoters had acquired the Company from its original promoters and subsequently they acquired other brands (full or part or their content) through the Company such as Chennai RACE, BRAIN4CE/EDUREKA and partnership with SAI IAS for content development. We found that there was an established track record for acquisitions done by the Company and its promoters. We had examined the agreement/arrangement with acquired brands as a part of our diligence.

Additionally, we had carried out due diligence wrt the content mentioned under "Growth Initiatives", the summary of the same are given below:

1.The Company (including its subsidiaries) had already been incurring expenses towards brand building prior to filing of DRHP and therefore we have obtained the *necessary supporting documents and bills related the expenses as a part of diligence.*

2.The historical expenses incurred by the Company on various advertisement and sales promotion activities (on consolidated basis) and by Edureka, respectively was verified by us and necessary back-ups were collected.

3.The copies of agreements with media agencies, copies of invoices for print, digital, social media have been collected.

4.The copies of agreements/MOU for venturing into other EdTech segment have been collected.

5.The copies of agreements with various Delivery Partners were collected.

6.The copies of agreements with Instructors (Freelance Faculties) were collected.

The extract of "Growth Initiatives" and corresponding back-ups are enclosed as Annexure C.

Furthermore, we are enclosing herewith the following documentary evidence as a part of extended diligence confirming that Rs. 50cr was spent towards the growth initiatives post IPO:

1.Expenses incurred towards branding and press release of the Company for acquisition of T.I.M.E. (100% for Rs. 287 crore) and JK Shah (76% of the stake for Rs 337.82 crore) enclosed as Annexure D and Annexure E respectively.

2.Certificate from Statutory Auditor (Deloitte) stating that amount raised through IPO was utilised towards stated objects as Annexure F and Report from Monitoring Agency (Axis Bank) certifying that IPO proceeds was utilised towards the stated objects as Annexure G.

From the aforesaid submissions supported with contemporaneous documents attached herewith by us, it may be appreciated that we in our capacity as a Merchant Banker had exercised due skill, care and due diligence and had satisfied ourself about all aspects of the issue including the veracity and adequacy of disclosures in the offer document."

- *In this regard, it was observed from PIA that during the course of onsite inspection, the details of due diligence carried out and backup documents with respect to the object of the issue "Growth Initiatives" was sought from the Noticee. The Noticee communicated that the said disclosure is based solely on the discussion with the management of the Company, and therefore, there was no documentary evidence available with them for this query. However, now vide letter dated January 19, 2024, the Noticee has, inter alia, submitted that "the Issuer Company had a track record of acquisitions prior to filing of Draft Red Herring Prospectus (**DRHP**). Also, the proposed utilization of Rs 50 Crore for the object "Growth Initiatives" was in line with the business model of the Company. Therefore, the estimate of Rs. 50 Cr towards growth initiatives was a fair estimate, as per the Noticee. The Noticee has also submitted that the funding requirement was estimated by the Company and Certified True Copy (**CTC**) of the board resolution approved by BOD was collected as a part of diligence. "*

- *In view of the above, it is alleged that the Noticee has solely relied on past acquisitions and submissions made by the Company. No independent due diligence has been carried out to assess the future growth prospects of the Company and its expansion plans to the tune of the proposed amount to be raised. It is further alleged that the Noticee had failed to exercise due care and diligence. Therefore, it is alleged that the Noticee has violated the provisions of Regulation 24(3) of the ICDR Regulations and Regulation 13 read with clause 4 of Schedule III of the MB Regulations.*

6.2. <u>Failure to maintain SDD for merchant banking activities</u>

- *It was observed from IR that during the course of inspection, it was enquired whether the Noticee has maintained SDD under the PIT Regulations, satisfying all the requirements provided under "Comprehensive FAQs on PIT Regulations". In this regard, the Noticee submitted to the inspection team that no such database is being maintained by the Noticee with respect to its merchant banking activities.*

- *It was observed that the aforesaid findings were communicated to the Noticee by SEBI vide letter dated January 04, 2024. The Noticee vide letter dated January 19, 2024 (enclosed as Annexure 3) had, inter alia, stated as under in respect of aforesaid findings in the IR/PIA:*

  "We would like to bring to your kind attention that being a listed entity we have been maintaining Structured Digital Database ("SDD") software which contain nature of unpublished price sensitive information and the names of persons who have shared it and to whom it is shared along with their PAN no's and internal controls and checks etc, as mandated u/r 3(5) of PIT Regulations.

  Please note that our Merchant Banking ("MB") activity is carried on through our listed entity itself and our MB team is maintaining database in-house related to transactions executed by them in other digital mode instead of incorporating into SDD software. The sample of the database maintained by MB team is enclosed as Annexure H.

  However during the time of inspection, as advised that we have to maintain separate database for our MB transaction in SDD software instead of other digital mode, accordingly we have taken additional SDD software wherein MB activity is captured in compliance with the PIT regulations and related SEBI FAQs."

- *In this regard, it was observed from PIA that maintaining database in digital mode does not satisfy the prescribed conditions laid down under the PIT Regulations. Moreover, the Noticee in its reply dated January 19, 2024 has, inter alia, stated that they have now taken SDD software for merchant banking activities. Therefore, it is alleged that violation of Regulation 3(5) of the PIT Regulations persisted since the year 2019 when the SDD requirements were introduced under the PIT Regulations and also during the IP.*

6.3. Failure to make the requisite status updates in the SI Portal in a timely manner

- *It was observed that the Noticee vide its letter dated September 14, 2023 (enclosed as **Annexure 6**) submitted the details of changes/updates occurred since December 08, 2016. There were 50 changes/updates that were not submitted on the SI Portal.*

- *It was observed that the aforesaid findings were communicated to the Noticee by SEBI vide letter dated January 04, 2024. The Noticee vide letter dated January 19, 2024 (enclosed as Annexure 3) had, inter alia, stated as under in respect of aforesaid findings in the IR/PIA:*

  "We would like to bring to your kind attention that our company, as a listed and SEBI registered intermediary has been complying with all applicable provisions of regulations at all times.

  Earlier, when SEBI directed us to move to SI portal vide SEBI Circular no. SEBI/HO/MIRSD/MIRSD1/CIR/P/2017/38 dated May 02, 2017, we also got ourselves registered on SI portal. Since then, we have been uploading the requisite information/ documents from time to time, in compliance with the SEBI (Merchant Bankers) Regulations, 1992. Vide our email dated October 10, 2023; we had also shared the screenshots of the last submissions made on August 29, 2023, then.

  Further, we would also like to inform you that earlier SEBI vide its letter no. SEBI/HO/MIRSD/RTAMB/OW/P/2020/23075/1 dated December 30, 2020 had conducted inspection of our books of accounts, other records and documents on March 22, 2021 & March 23, 2021 from the date of implementation of the circular and there were no adverse observations against us including about non-submission of updates on SI Portal.

  Recently, we were informed by your good office vide email dated September 6, 2023 that information uploaded by us on SI portal is not reflecting in SEBI database. Thereafter our compliance officer had met a SEBI official at your good office to understand the issue/problem. Subsequent to the meeting, we had once *again uploaded all the information in the tab “SI portal > Post Registration Activities > Update Details” vide application id: 1024737 and the same is approved by your good office vide email dated November 3, 2023.*

Thus, all changes/updates have been duly submitted by us on SI Portal and we are in full compliance with the circular dated 02.05.2017, in this regard.”

- *In this regard, it was observed that Regulation 9A(1)(f) of MB Regulations states as under:*
  “9A. (1) Registration granted under regulation 8 shall be subject to the following conditions, namely: —
  (f) it shall ***immediately intimate the Board****, details of changes that have taken place in the information that was submitted, while seeking registration.”* ***(Emphasis Supplied)***

- *It was further observed that, in terms of, SEBI Circular dated May 02, 2017 and guidance provided by SEBI in the form of FAQs dated November 25, 2020 (enclosed as* ***Annexure 7****), applications pertaining to updation/changes in details should be filed on the Sl Portal on a real time basis, but not later than 7 days from the date of the change being effective.*

- *In view of the above, it is alleged that the Noticee has failed to make the requisite 50 status updates in the SI Portal in a timely manner. Therefore, it is alleged that the Noticee has violated the provisions of Regulation 9A(1)(f) of the MB Regulations and the SEBI Circular dated May 02, 2017.*

7. The SCN along with annexures was served upon the Noticee in the following manner as mentioned below:

Table 2

Sr. No.	Mode of Delivery of SCN	Addresses/ E-mail IDs[3]	Remarks
1.	Digitally signed SCN delivered through E-mail	s............@systematixgroup.in; d..............@systematixgroup.in	Digitally Signed SCN duly delivered on April 23, 2024. The Noticee vide e-mail dated April 24, 2024 acknowledged the receipt of the SCN through e-mail.
2.	Delivered through Speed Post with Acknowledgment Due	*The………Mumbai – 400 051*	Delivered on April 25, 2024 as per the consignment tracking on India Post.

8. The Noticee, vide letter dated May 06, 2024, requested additional time until May 21, 2024, to submit its reply to SCN. In the interest of natural justice, the request of the Noticee to grant additional time to submit its reply to the SCN was considered, and vide e-mail dated May 07, 2024, the Noticee was advised to submit its reply to the SCN, if any, latest by May 21, 2024 which was submitted by the Noticee vide letters dated May 21, 2024, and June 05, 2024.

[3] *E-mail ID and address excised for the sake of confidentiality.*

REPLY OF THE NOTICEE

9. Vide letters dated May 21, 2024 and June 05, 2024, the Noticee has made its submissions in response to SCN which are discussed in the subsequent paragraphs under different headings for the ease of discussion.

HEARING

10. In consonance with the Adjudication Rules, an opportunity of hearing was granted to the Noticee on June 06, 2024, vide hearing notice dated May 30, 2024. On the scheduled date of the personal hearing, the Noticee appeared through its Authorized Representatives (ARs) who reiterated the submissions made by the Noticee vide letters dated May 21, 2024, and June 05, 2024. During the hearing, ARs also requested additional time to make further submissions in the matter that was acceded to and the Noticee was advised to file its additional submissions, if any, latest by June 14, 2024, which was submitted by the Noticee vide e-mail dated June 14, 2024. Vide e-mail dated June 14, 2024, the Noticee has made its additional submissions in response to SCN, which are discussed in the subsequent paragraphs under different headings for ease of discussion.

11. It is noted that the SCN, along with the annexures and the Hearing Notice, were duly served on the Noticee. The Noticee was granted sufficient opportunities to make submissions in reply to the SCN and of personal hearing.

CONSIDERATION OF ISSUES

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

   I. **Whether the Noticee has violated provisions of securities law by not complying with regulatory provisions regarding:**

a. Failure to exercise due care and diligence in the matter of the IPO of XYZ Ltd.[4]

b. Failure to maintain SDD for its merchant banking related activities during the IP.

c. Failure to make the requisite status updates on 50 instances in the SI Portal in a timely manner.

II. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15HB of SEBI Act?

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

13. Before proceeding further, it is pertinent to refer the relevant provisions of law, allegedly violated by the Noticee. The same are reproduced hereunder:

"ICDR Regulations

Disclosures in the draft offer document and offer document

24.

(3) The lead manager(s) shall exercise due diligence and satisfy themselves about all aspects of the issue including the veracity and adequacy of disclosure in the draft offer document and the offer document.

MB Regulations

Code of conduct.

13. *Every merchant banker shall abide by the Code of Conduct as specified in Schedule III.*

SCHEDULE III

CODE OF CONDUCT FOR MERCHANT BANKERS

[4] *Name of the Company has been excised for the sake of confidentiality.*

4. A merchant banker shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.

Conditions of registration.

9A. *(1) Registration granted under regulation 8 shall be subject to the following conditions, namely: —*

(f) it shall immediately intimate the Board, details of changes that have taken place in the information that was submitted, while seeking registration.

PIT Regulations

Communication or procurement of unpublished price sensitive information

3.

(5) The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that a structured digital database is maintained containing the nature of unpublished price sensitive information and the names of such persons who have shared the information and also the names of such persons with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such database shall not be outsourced and shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.

SEBI Circular dated May 02, 2017[5]"

[5] The text of SEBI Circular dated May 02, 2017 is available at the below mentioned link: https://www.sebi.gov.in/legal/circulars/may-2017/online-registration-mechanism-for-securities-market-intermediaries_34793.html

Issue I*.* Whether the Noticee has violated provisions of securities law by not complying with regulatory provisions regarding:

14. **<u>Failure to exercise due care and diligence in the matter of the IPO of XYZ Ltd.[6]</u>**

14.1. I note that one of the inspection areas pertains to due diligence exercised by the Noticee in the IPO of XYZ Ltd.[6] One of the objects of the issue, as disclosed in the "Objects of the Offer" section of the offer document of XYZ Ltd.[6] pertains to – "Growth initiatives". The amount earmarked for this object was Rs. 50 Crores. In this regard, it was alleged in the SCN that the Noticee has solely relied on past acquisitions and the submissions made by XYZ Ltd.[6] No independent due diligence has been carried out by the Noticee to assess the future growth prospects of the Company and its expansion plans to the tune of the proposed amount to be raised. Therefore, it was alleged in the SCN that the Noticee had failed to exercise due care and diligence.

14.2. In response to the above allegations, the Noticee has, *inter alia*, submitted various grounds as their defense, which are discussed in the following paragraphs under different headings for ease of discussion:

14.3. **Several rounds of discussion with the management of the Company**

14.3.1. The Noticee in its replies dated May 21, 2024, June 05, 2024 and June 14, 2024 have, *inter alia*, stated:

"*In connection with our Due Diligence in the IPO of XYZ Ltd.*[6]*, we had multiple rounds of extensive discussions with the management and the concerned officials of the Company, inter alia, to understand their IPO requirements, Company plans, strategy, Company processes and· procedures. We had collected relevant documents as detailed in our earlier replies. We had evaluated the same with the practices followed by other Educational Institutes in India. We also undertook visits*

[6] *Name of the Company has been excised for the sake of confidentiality.*

to the premises of the Company to have a first-hand evaluation during our Due Diligence of IPO of XYZ Ltd.[7].

Regarding "Growth Initiatives" related to one of the Objects of the Issue, we had meticulously ensured the veracity and adequacy of all disclosures by reviewing historical data and collected back up documents from the Company and certificate from the statutory auditors and had also conduced both physical site visit of the Company's premises and virtual site visit of its material subsidiary i.e. Edureka's premises.

The Company had also provided us a Board Resolution and Minutes in this regard. The components of "Growth Initiatives" were discussed amongst the BRLM, the Legal Counsel and the Company to understand the said requirements. We had also evaluated the same with the practices followed by other Educational Institutes in India.

During our due diligence process, we had several rounds of discussion with the Company's management along with the Legal Counsel to its Public Issue. We are elaborating each of the above points to demonstrate the details of due diligence carried out by us.

a) Investment towards branding including print & digital marketing

We state that for our due diligence exercise, we needed some authenticated document or a report of any authority or an expert.

XYZ Ltd.[7] including its wholly owned subsidiary PQR Ltd.[7] had historically made investments towards advertisement and sales promotion activities as disclosed on Page 103 of its Prospectus. The total amount based on audited half yearly financials of XYZ Ltd.[7] on account of the same was slightly above Rs. 30 Crores for FY22E.

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[7] *Name of the Company has been excised for the sake of confidentiality.*

In view of the above, we assessed that the sum of Rs. 30 Crores earmarked for the said purpose out of the total apportioned amount of Rs. 50 Crores was fair. We may add that this amount did not factor into any cost escalation and hence was a conservative estimate.

Thus, based on the audited details, we exercised our due diligence and satisfied ourselves about the veracity and adequacy of disclosure in OD.

b) Venturing into new line of business/segment in Ed-Tech Sector

During our Due Diligence process, we also noted that during July 2021, the Company had commercially launched CA course through its subsidiary XYZ CA[8]*. Further, in August 2021 the Company had commercially launched UPSC course through its subsidiary XYZ IAS*[8]*. The Company had acquired Edureka for IT training and upskilling.*

Thus, based on the actual earlier events, we exercised our due diligence and satisfied ourselves about the veracity and adequacy of disclosure in OD.

We may add that post IPO, in October 2022, XYZ Ltd.[8] *joined hands with the Electronics and Information, Communication Technology Academy IIT Guwahati to offer a slew of technical and management courses and programmes, unequivocally demonstrates that our due diligence was correct. This fact demonstrates that our due diligence process was adequate.*

c) Acquiring brands that already had a good market presence and a robust content platform of their own

During our due diligence process, we noted that in November 2020, XYZ Ltd.[8] *had acquired content, brand, education materials from Chennai Race Coaching Institute*

[8] *Name of the Company has been excised for the sake of confidentiality.*

Private Limited through its wholly-owned subsidiary XYZ Race Learning Solution Private Limited[9]. Further, in September 2021, the Company had acquired 100% shareholding of Edureka. During the time of our engagement (prior to filing of DRHP), the management had informed us that they were in high level discussion for acquisition of 3 targets namely, T.I.M.E. at Hyderabad, Vidyamandir at Delhi and JK Shah at Mumbai, but it was planned to be partly funded by the IPO but nothing was crystallized till the IPO was launched.

Post Listing, in April 2022, XYZ Ltd.[9] had acquired T.I.M.E. (Advanced Educational Activities Pvt Ltd) for a consideration of Rs. 287 crores, and post IPO, in October 2022, XYZ XL Learning Solutions Private Limited[9], a Wholly Owned Subsidiary of the Company, entered into definitive documents for acquisition of equity Shares of J.K Shah Education Private Limited for a consideration of Rs. 337.82 crores. This post-IPO fact demonstrates that our due diligence process was adequate.

d) Improving existing content and technological advanced content

During our due diligence process, we noted that in November 2020, the Company had launched a mobile app in the name for "XYZ Learning[9]" comprising of integrated courses which were offered exclusively to the students. In December 2020, XYZ Ltd.[9] had digitalized and launched the content acquired from Chennai Race Coaching Institute Private Limited through XYZ Race[9]. In March 2021, XYZ Ltd.[9] was engaged with SAI IAS Academy to provide content for its subsidiary XYZ IAS Learning Solutions Private Limited[9]. Prior to IPO, the Company was providing study material/content in English and Tamil. The Company also informed us that it had a plan to launch its content multilingually so as to increase its reach amongst learners and it had started hiring faculties for the same. In view of the above, we were satisfied during our due diligence process.

[9] *Name of the Company has been excised for the sake of confidentiality.*

Post IPO, in May 2022, the Company had launched XYZ Acacia[10], a comprehensive learning platform aimed to bridge the workplace-ready IT skills gap in India, through a nationwide network, with the signup of its first set of Delivery Centres across 25 locations. The Company is currently providing study material/content in Telugu, Malayalam, Kannada and Hindi other than English and Tamil. This post-IPO fact demonstrates that our due diligence process was adequate.

e) Offering refunds and incentives to retain existing students and learners

During our due diligence process, the Company was planning to assist providing 'skill development and career guidance to students in government colleges' so as to help them acquire industry based skills, and become more job-ready. This was to fulfil its mission 'No Student Is Left Behind'

In view of the above, we were satisfied during our due diligence process.

Post IPO, in October 2022, the Company had signed Memorandum of Agreement ("MoA") with the Tamil Nadu Skill Development Corporation to assist in the implementation of the Naan Mudhalvan scheme, aimed at providing skill development and career guidance to students in government colleges. This partnership, helped students across streams acquire industry based skills, and become more job-ready which is also a part of XYZ Ltd.[10] *mission 'No Student Is Left Behind'. This is the part of incentive that XYZ Ltd.*[10] *provides to learners in the low-income group. This post-IPO fact demonstrates that our due diligence process was adequate.*

From the aforesaid submissions, it may be observed that we had exercised our due diligence adequately and satisfied ourselves about the veracity and adequacy of disclosure in OD.

[10] *Name of the Company has been excised for the sake of confidentiality.*

During Covid-19 pandemic, when the movements were restricted, our team and the counsel team visited 2-3 times and spent almost a month in Chennai to carry out the due diligence in terms of the ICDR Regulations and MB Regulations. We are submitting a copy of some of the air tickets dated 24.10.2021, 03.11.2021, 06.11.2021 in support of our aforesaid submissions regarding travel of our officials viz. Mr. Manish Tejwani, Ms. Pari Vaya and the counsel team viz. Mr. Himanshu Pandey and Mr. Rahul Pandey to Chennai, to carry out the due diligence in terms of the ICDR Regulations and MB Regulations. We may add that there were Diwali holidays on 04.11.2021 and 05.11.2021."

14.3.2. In this regard, from the material available on record, I note that one of the objects of the issue, as disclosed in the "Objects of the Offer" section of the offer document of XYZ Ltd.[11] pertains to – "Growth initiatives". The amount earmarked for this object was Rs. 50 Crores out of the total gross proceeds of Rs. 200 Crores from the Offer, which is around 25% of the total gross proceeds.

14.3.3. In this regard, I note that the Noticee, in its replies, has submitted that it has held multiple rounds of discussions with the management and the concerned officials of XYZ Ltd.[11] However, in support of its submissions, the Noticee has not adduced any documentary evidence that substantiates the discussions claimed to have been held by the Noticee with the Company like minutes of the meetings, correspondences held with the Company, etc.

14.3.4. I further note that the Noticee has submitted the air tickets of their officials mentioning that the officials had visited Chennai to carry out due diligence and the site visit report of the registered office of XYZ Ltd.[11] which includes photographs of the premises of XYZ Ltd.[11] However, these tickets and site visit reports do not corroborate the discussions held by the Noticee with the management and officials of XYZ Ltd.[11] as claimed by the Noticee in its submissions.

[11] *Name of the Company has been excised for the sake of confidentiality.*

14.3.5. Further, whether the Noticee has visited the premises of XYZ Ltd.[12] to conduct due diligence or not is not the question before me in the present proceedings. The ambit of the present proceedings is specific to the due diligence conducted by the Noticee for one of the Objects of the Offer of XYZ Ltd.[12] i.e. "Growth Initiatives". In this regard, the Noticee has not adduced any documentary evidence to substantiate its submissions.

14.3.6. I further note that the Noticee has mentioned that a few initiatives have been taken by XYZ Ltd.[12] post IPO in its reply to substantiate the sufficiency of the due diligence carried out by it. In this context, it is noteworthy that, no corroborating document was provided to bolster those claims. Furthermore, even if it is presumed that money was utilised in accordance with the offer document as claimed by the Noticee, it cannot absolve the Noticee of the lapses occurred in carrying out due diligence.

14.3.7. In view of the above, the contention of the Noticee in this regard cannot be accepted.

14.4. Exercised reasonable "due diligence"

14.4.1. The Noticee in its replies dated May 21, 2024, June 05, 2024 and June 14, 2024 have, *inter alia*, stated:

"*We also note that under para 6 of SCN, it is mentioned that the inspection areas of SEBI pertained to the due diligence exercised by us in the IPO of XYZ Ltd.[12], where one of the objects of the issue pertained to "Growth Initiatives" and the amount earmarked for this object was Rs. 50 crores. In this regard, we further note that paragraphs 6.1.5 and 6.1.6 of SCN read as under:*

[12] *Name of the Company has been excised for the sake of confidentiality.*

*6. 1. 6. In view of the above, it is alleged that the **Noticee has solely relied on past acquisitions and submissions made by the Company. No independent due diligence has been carried out to** assess the future growth prospects of the Company and its expansion plans to the tune of the proposed amount to be raised. It is further alleged that the Noticee had failed to exercise due care and diligence. Therefore, it is alleged that the Noticee has violated the provisions of regulation 24(3) of the ICDR Regulations and Regulations 13 read with clause 4 of schedule Ill of the MB regulations." (emphasis supplied)*

On perusal of the aforesaid allegation, it is evident that the SCN while acknowledging that we did carry out the 'due diligence', alleges that "No independent due diligence" was carried out.

On perusal of the aforesaid regulatory provisions alleged to have been violated by us, it is evident that the said provisions, in fact, require the Merchant Banker to satisfy himself about all aspects of the issue. These regulatory provisions do not stipulate to carry out the due diligence at the discretion or direction of anyone else.

21. In this regard we wish to state that in appeal no. 56/2003 in the matter of Imperial Corporate Finance & Services Pvt. Ltd. Mumbai V. SEBI the Hon'ble Securities Appellate Tribunal in its Order dated 30.07.2004 observed as under:

19 ....A Lead Manager is required to employ reasonable skill and care but he is not required to begin with suspicion and to proceed in a manner of trying to detect a fraud or lie unless such information excites his suspicion or ought to excite his suspicion as a professional man of reasonable competence.

22. Further, Hon'ble Supreme Court of India in Civil Appeal no. 1893 of 2008 in Chander Kanta Bansal V. Rajinder Singh Anand in its Order dated 11.03.2008 observed as under:

"11 .....The words "due diligence" have not been defined in the Code. According to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due Diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edition 13 A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due Diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs….."

14.4.2. In this regard, I note that the submission of the Noticee that Para 6.1.6. of the SCN acknowledges that 'due diligence' was exercised is fallacious. Instead, the SCN alleges that the Noticee had failed to exercise reasonable care and diligence by failing to conduct an independent assessment of the Company future development prospects and its plans for expansion to the extent of the proposed sum to be raised. I further note that Para 6.1.6 of the SCN, *inter alia,* states, "***It is further alleged that the Noticee had failed to exercise due care and diligence."*** Therefore, the above submission of the Noticee is misleading.

14.4.3. I further note that the Noticee, in its replies, have submitted two case laws in regard to "Due Diligence". On perusal of the said case laws, it can be noted that *"a lead manager is required to employ reasonable skill and care*". The Hon'ble Supreme Court in the case of *Chander Kanta Bansal Vs. Rajender Singh Anand reported in 2008 (5) SCC 117,* as submitted by the Noticee, *inter alia*, held that, *"Due Diligence" means reasonable diligence, it means such diligence as a prudent man would exercise in the conduct of his own affairs….*". Thus, in this matter, someone with ordinary caution and reasonable diligence would independently have examined how

Rs. 50 Crore requirement for "Growth Initiatives" was determined, as well as look into the company's future growth prospects and its expansion plans. In this instance, despite the required amount of Rs. 50 Crores for "Growth Initiatives" being nearly 25% of the offer's entire gross proceeds, the Noticee has neglected to conduct an independent assessment, which ought to have been done. Therefore, the Noticee has not conducted reasonable due diligence that was expected to be done by the Noticee as a merchant banker.

14.5. IPO funds were utilised as per disclosures made in Offer Document

14.5.1. The Noticee in its replies dated May 21, 2024, June 05, 2024 and June 14, 2024 have, *inter alia*, stated:

"*We are also enclosing herewith a copy of Certificate dated February 11, 2023 issued by the Independent Auditor viz. Deloitte Haskins & Sells for quarter ending December 31, 2022 certifying utilisation of the IPO proceeds of XYZ Ltd.*[13] *and also a Report dated February 14, 2023 issued by the Monitoring Agency viz. Axis Bank for quarter ending December 31, 2022 in connection with utilisation of IPO proceeds of XYZ Ltd*[13]*, as 'Annexure IV'.*

On perusal of these documents, it is evident that both these documents confirm that there was no deviation as regards the utilisation of funds from the objects stated in the IPO of XYZ Ltd.[13]*. Further, on perusal of the Report dated February 14, 2023 issued by the Monitoring Agency viz. Axis Bank for quarter ending December 31, 2022 it may be noted that the amount of Rs. 50 crores envisaged for one of the object of the issue i.e. the "Growth Initiative" i.e. was fully utilsed for the said purpose. These documents unequivocally demonstrate that the due diligence exercised by us was accurate, adequate and in accordance with the MB Regulations. Thus, there is no failure in exercising Due Diligence by us, which is alleged in the SCN."*

[13] *Name of the Company has been excised for the sake of confidentiality.*

14.5.2. In this regard, I note that whether IPO proceeds have been utilized in accordance with the Objects of issue is not in question in the present proceedings. Hence, the aforesaid contention of the Noticee does not require further consideration.

14.6. Disclosures of historical expenses in Offer Document

14.6.1. The Noticee in its replies dated May 21, 2024, June 05, 2024 and June 14, 2024 have, *inter alia*, stated:

"*We state that vide its Interim Observation Letter reference no. SEBI/SRO/SG/JP/OW/P/2021/39965/1 dated December 29, 2021, the SRO-SEBI had sought certain clarifications and issued certain directions to us on the draft OD of XYZ Ltd.[14]. The said letter is attached herewith as "Annexure II". As may be perused from the said letter, as regards "Growth Initiatives", SRO-SEBI had directed us as under:*

"13. In respect of the object of growth initiatives in the DRHP, LM shall provide the <u>detail of historical expenses under heads and Cross reference to be provided in the RHP</u>."

Vide our letter dated January 04, 2022 had duly complied with the aforesaid direction. The said letter is attached herewith as "Annexure III". As may be observed at point 13 on pages 6-7 of 'Annexure I to this letter', we had duly complied with the said direction.

From the above it is evident that,

i. SEBI was satisfied with the disclosures and due diligence.

ii. SEBI had directed us to disclose past data i.e. historical expense.

iii. The disclosure of the historical data which is being alleged as failure of disclosure and due diligence was in fact as per direction of SRO-SEBI letter dated December 29,2021.

[14] *Name of the Company has been excised for the sake of confidentiality.*

Thus, the disclosure and Due Diligence made by us was in full compliance with the direction of SRO-SEBI letter dated December 29, 2021. Any compliance with the earlier SEBI direction, in hindsight is being alleged to be in violation vide SCN, which is untenable.

It may be noted that ICDR Regulations, do not permit to write any 'forward looking statement that cannot be submitted'. In view of the above, in addition to the SRO-SEBI direction vide its letter December 29, 2021, we also strictly complied with the requirements of Part A and Part B-1 of Schedule VI to ICDR Regulations and accordingly, the disclosure of "Growth Initiative" were made. Compliance with the said regulatory provisions, in hindsight is being alleged to be in violation, which is untenable.

We state that the aforesaid provisions of ICDR Regulations and the letter dated December 29, 2021 from SRO-SEBI, make it abundantly clear that in absence of any substantiation, it is absolutely legal to rely upon the historical data to carry out the due diligence. In view of the above, the allegation in this regard in SCN is not tenable"

14.6.2. In this regard, I note that whether the Noticee was in compliance with the direction of SRO-SEBI letter dated December 29, 2021 or failed to disclose any historical expenses or forward looking statements in the offer document is not in question in the present proceedings. The ambit of the present proceedings is specific to the due diligence ought to have been conducted by the Noticee for one of the Objects of the Offer of XYZ Ltd.[15] i.e. "Growth Initiatives" being a merchant banker. Hence, the aforesaid submission of the Noticee does not require further consideration.

[15] *Name of the Company has been excised for the sake of confidentiality.*

14.7. In view of the discussions in the preceding paragraphs, I note that no justifiable reason has been brought on record by the Noticee with regard to the violations alleged in the SCN. As noted from previous paragraphs, although the Noticee in its submissions claimed that it had conducted several rounds of discussion with the management and the concerned officials of XYZ Ltd.[15], it had not adduced any supporting documents like minutes of the meetings, correspondences held with the Company, etc. to substantiate the same. Further, the Noticee has also failed to demonstrate the steps taken by it to independently evaluate how the requirement of Rs. 50 Crores was determined for "Growth Initiatives" despite the fact that the amount earmarked for the object "Growth Initiatives" was around 25% of the total gross proceeds from the offer. The Noticee, being a merchant banker, is expected to independently evaluate all aspects of the issue, including the veracity and adequacy of disclosures in the offer document. Thus, it is established that the Noticee had failed to exercise due care and diligence and violated the provisions of Regulation 24(3) of the ICDR Regulations and Regulation 13 read with clause 4 of Schedule III of the MB Regulations.

15. <u>Failure to maintain SDD for merchant banking related activities during the IP.</u>

15.1. It was alleged in the SCN that the Noticee has not maintained SDD with respect to its merchant banking activities during the IP.

15.2. In response to the above allegations, the Noticee has, *inter alia*, submitted various grounds as their defense which are discussed in the following paragraphs under different headings for the ease of discussion:

15.3. **Specific condition prescribed under the PIT Regulations did not mentioned in the PIA Report/SCN**

15.3.1. The Noticee in its replies dated May 21, 2024, June 05, 2024 and June 14, 2024 have, *inter alia*, stated:

"……it is noted that the PIA report and hence the SCN alleges that maintaining database in digital mode by us did not satisfy the prescribed conditions laid down under the PIT Regulations. The PIA report and hence the SCN, however, do not bring out as to which specific condition prescribed under the PIT Regulation was not followed by us.

In this regard, we would also like to draw your attention that Supreme Court in Canara Bank & Ors. Vs. Debasis Das & Ors. (2003) 4 SCC 557 has observed that,

"The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. <u>Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet</u>. Time given for the purpose should be adequate so as to enable him to make his representation. <u>In the absence of a notice of the kind</u> and such reasonable opportunity, <u>the order passed becomes wholly vitiated. Thus. it is but essential that a party should be put on notice of the case before any adverse order is passed against him</u>. This is one of the most important principles of natural justice. It is after all an approved rule of fair play The concept has gained significance and shades with time.

Due to absence of mention in the PIA report/SCN of any specific condition prescribed under the PIT Regulations, which was allegedly not followed by us, our ability to submit our comments effectively and adequately on this allegation is impaired."

15.3.2. In this regard, I note that the SCN dated April 23, 2024, *inter alia*, alleged as under:

"The Noticee failed to maintain a Structured Digital Database (hereinafter referred to as "SDD") for merchant banking related activities. Therefore, it is alleged that ***the Noticee has violated the provisions of Regulation 3(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT Regulations").***

……………..it was observed from PIA that maintaining database in digital mode does not satisfy the prescribed conditions laid down under the PIT Regulations. Moreover, the Noticee in its reply dated January 19, 2024 has, inter alia, stated that they have now taken SDD software for merchant banking activities. Therefore, it is alleged that ***violation of Regulation 3(5) of the PIT Regulations*** *persisted since the year 2019 when the SDD requirements were introduced under the PIT Regulations and also during the IP."*

15.3.3. In this regard, I further note that Regulation 3(5) of the PIT Regulations, *inter alia*, states as under:

"(5) The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that a structured digital database is maintained containing the nature of unpublished price sensitive information *and the names of such persons who have shared the information and also the names of such persons with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such database shall not be outsourced and shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database."*

15.3.4. In view of the above, I note that the specific regulation of PIT Regulations alleged to be violated by the Noticee i.e. Regulation 3(5) of the PIT Regulations was mentioned in the SCN. I further note that the requirement of maintaining a structured digital database by the person handling unpublished price sensitive information has also been clearly mentioned in Regulation 3(5) of the PIT Regulations. Hence, the aforesaid contention of the Noticee that SCN has not mentioned the specific condition prescribed under the PIT Regulations is misleading.

15.4. Compliance with Clause 26 of schedule Ill read with Regulation 13 of MB Regulations

15.4.1. The Noticee in its replies dated May 21, 2024, June 05, 2024 and June 14, 2024 have, *inter alia*, stated:

“Incidentally, we also wish to place on record that para 4.8 of PIA report confirms that as a Merchant Banker, we were in compliance with clause 26 of schedule Ill read with Regulation 13 of MB Regulations, which reads as under:

" A merchant banker shall develop its own internal code of conduct for governing its internal operations and laying down its standards of appropriate conduct for its employees and officers in carrying out their duties. Such a code may extend to the maintenance of professional excellence and standards. integrity. confidentiality, objectivity, avoidance or resolution of conflict of interests, disclosure of shareholdings and interests etc."

15.4.2. In this regard, I note that whether the Noticee was in compliance with Clause 26 of Schedule Ill read with Regulation 13 of the MB Regulations is not in question in the present proceedings. Hence, the aforesaid contention of the Noticee does not require further consideration.

15.5. **Maintaining SDD being a listed entity and other 'digital database' instead of SDD for merchant banking activities**

15.5.1. The Noticee in its replies dated May 21, 2024, June 05, 2024 and June 14, 2024 have, *inter alia*, stated:

"In this regard, we submit that being a listed entity we have been maintaining SDD software which contain nature of unpublished price sensitive information and the names of persons who have shared it and to whom it is shared along with their PAN no's and internal controls and checks etc. as mandated under Regulation 3(5) of PIT Regulations read with "Comprehensive FAQ on PIT Regulations". Further, to maintain strict confidentiality, in addition, our MB team was maintaining the requisite 'digital database' for transactions executed by it.

Additionally, as advised at the time of inspection that we should maintain separate SDD for our MB activities, instead of other 'digital database' mode, we have taken an additional SDD software, wherein the nature of unpublished price sensitive information related to MB activities and the names of persons who have shared it and to whom it is shared along with their PAN no's with internal controls and checks is captured on real time basis, as mandated under Regulation 3(5) of PIT Regulations and related SEBI FAQs. A Screenshot of SDD Software which was purchased post inspection exclusively for Merchant Banking is attached as "Annexure E". We wish to add that in the screenshot email id of our merchant banking division is mentioned in the said 'Annexure E'.

Additionally, at "Annexure F" we are also enclosing a screenshot of UPSI entry made in said separate SDD maintained for our MB activities (i.e. referred above as 'Annexure E'), evidencing the list of all entries made in the separate SDD software since it's purchase. We had also migrated couple of entries which were 'work-in-progress' information at that time from 'digital database' onto this separate SDD.

It is pertinent to note that the first entry in this separate SDD software is dated 10.10.2023 which was immediately after conclusion of the SEBI inspection in our office and a few months before the date of receiving 'findings of inspection from SEBI on 04.01.2024 (as noted from Annexure 2 to SCN) and several months before initiating these proceedings on 05.04.2024 (as noted from 'Annexure 5' to SCN). This fact supported with documentary evidence unequivocally demonstrates that we were compliant with the said requirement even before initiation of these proceedings. We request your good self to kindly take note of this fact. Further, this fact also demonstrates that we, in our capacity of the SEBI registered Merchant Banker, are always promptly endeavouring to comply with the regulatory requirements and we will always be duty bound to do so, in future too."

15.5.2. In this regard, I note that Regulation 3(5) of the PIT Regulations provide specific requirement of maintaining structured digital database by the person handling unpublished price sensitive information. I further note that comprehensive FAQs on PIT Regulations[16], *inter alia*, states as under:

*"**The requirement to maintain structured digital database under Regulation 3(5)**, containing the names of such persons or entities with whom UPSI is shared, **is applicable to** listed companies, and **intermediaries and fiduciaries who handle UPSI of a listed company in the course of business operations**."*

15.5.3. In light of the foregoing, I note that the Noticee, being a registered intermediary in the capacity of a merchant banker, is required by Regulation 3(5) of the PIT Regulations to maintain a separate SDD for its merchant banking activities because as a merchant banker, it may handle UPSI in the course of its activities. Furthermore, the question that is at hand in this proceeding is not whether the Noticee maintained SDD in accordance with Regulation 3(5) of the PIT Regulations in its role as a listed entity. In the current proceedings, it is alleged that the Noticee failed to preserve SDD

[16] https://www.sebi.gov.in/enforcement/clarifications-on-insider-trading/mar-2023/comprehensive-faqs-on-sebi-pit-regulations-2015_69639.html

for its merchant banking operations in accordance with Regulation 3(5) of the PIT Regulations.

15.5.4. In this regard, I note that it is an undisputed fact that the Noticee was not maintaining SDD for its merchant banking related activities during the IP. It is noted from the screenshot of SDD enclosed along with the replies of the Noticee that the Noticee has taken corrective measures in this regard and started maintaining a separate SDD for its merchant banking activities. Even the Noticee in its submission claimed that the first entry in the SDD software was made on October 10, 2023. However, the IP pertains to the period from April' 2022 to June'2023. Hence, it is a fact that the Noticee failed to maintain SDD for its merchant banking related activities during the IP.

15.5.5. In this context, I would like to refer to the judgment of Hon'ble SAT in the case of *Premchand Shah & ors. Vs. SEBI, (Appeal No. 192 of 2010)*, wherein it was, *inter alia*, held that:

"When law prescribes a manner in which a thing is to done, it must be done only in that matter or not at all."

15.6. In view of the discussions in the previous paragraphs, I note that no justifiable reason has been brought on record by the Noticee with regard to the violations alleged in the SCN. As noted from previous paragraphs, it is an undisputed fact that the Noticee failed to maintain SDD for its merchant banking related activities during the IP. Being a registered intermediary, the Noticee is required to abide by all legal requirements, both in letter and spirit. Thus, it is established that the Noticee had violated the provisions of Regulation 3(5) of the PIT Regulations during the IP.

16. <u>Failure to make the requisite status updates on 50 instances in the SI Portal in a timely manner</u>

16.1. It was alleged in the SCN that the Noticee has failed to make the requisite status updates on 50 instances in the SI Portal in a timely manner.

16.2. In response to the above allegations, the Noticee in its replies dated May 21, 2024, June 05, 2024 and June 14, 2024 have, *inter alia*, stated:

"*As regards allegation at para 6.3.4 and 6.3.5 of the SCN, we wish to submit that earlier when SEBI directed us to move to Sl portal vide SEBI Circular no SEBI/HO/MIRSD/MIRSD1/CIR/P/2017/38 dated May 02, 2017, we also got ourselves registered on Sl portal. Since then, we have been uploading the requisite information/documents from time to time, in compliance with the SEBI (Merchant Bankers) Regulations, 1992.*

We would like to inform you that earlier also, SEBI vide its letter no. SEBI/HO/MIRSD/RTAMB/OW/P/2020/23075/1 dated December 30, 2020 had conducted inspection of our books of accounts, other records and documents on March 22, 2021 & March 23, 2021 from the date of implementation of the circular and there were no adverse observations whatsoever against us

Further, we were informed by SEBI vide email dated September 6, 2023 that information uploaded by us on Sl portal is not reflecting in SEBI database. Thereafter, our compliance officer had met SEBI officials to understand the issue/problem. Subsequent to the meeting, we had once again uploaded all the information in the tab "SI portal> Post Registration Activities > Update Details "vide application id: 1024737 and the same is approved by SEBI vide email dated November 3, 2023. This mail is attached herewith as "Annexure V". Thereafter, all the changes/updates have been duly submitted by us on Sl Portal and as on date, we are in full compliance with the said circular dated 02.05.2017.

Screenshot of the uploading done by us in the SI portal regarding the Appointment of Mr. Sampath Kumar on August 29, 2023 is attached as "Annexure G". The top left hand corner of the screenshot reads as "SSL- VPN Portal for Intermediary' and below those words, the words "Silogin.sebi.gov.in" are visible.

It is pertinent to mention here that the bottom right corner of the screenshot has a time stamp which reads as "5:13 29.08.2023" which evidences that this updating was done by us before the commencement of SEBI inspection on September 01, 2023 and before receipt of the mail on September 06, 2023 from SEBI. This fact supported with documents demonstrates that we were updating SI Portal and there was no failure to make updation from our side.

Subsequently, we had received a mail from SEBI on September 06, 2023 along with its attachment stating that information uploaded by us were not reflecting to SEBI. The same is attached herewith as "Annexure H")

A copy of mail received from SI portal, SEBI on September 30, 2023 acknowledging the upload and submission of all the details on the SI portal vide Application id 1024737 is attached as "Annexure 1".

16.3. In this regard, from SEBI's e-mail dated September 06, 2023 as submitted by the Noticee, I note that the Noticee vide letter dated August 11, 2023 has informed SEBI about appointment of compliance officer. Pursuant to which SEBI vide e-mail dated September 06, 2023, *inter alia*, asked the following details from the Noticee:
"*W.r.t. the update mentioned in the aforesaid letter, kindly demonstrate compliance with SEBI circular no. SEBI/HO/MIRSD/MIRSD1/CIR/P/2017/38 dated May 02, 2017 and inform the details of Application that was submitted to SEBI through SI Portal. As you may be aware that such updates are to be submitted on SI Portal within 7 days of the change being effective in terms of Regulation 9A.(1)(f) of SEBI (Merchant*

Bankers) Regulations, 1992, read with SEBI FAQs and read with SEBI Circular no. SEBI/HO/MIRSD/MIRSD1/CIR/P/2017/38 dated May 02, 2017.

Kindly also inform whether the necessary supporting documents (indicative list mentioned hereunder) pertaining to the aforementioned update have been submitted to SEBI through SI Portal and in original/hardcopy. [Please be advised that all supporting documents are to be signed/attested by Compliance Officer on every page and bearing stamp of the entity on every page, and thereafter scanned copy of such documents to be uploaded on SI Portal and original/physical to be submitted to SEBI Office.]

It is observed from details available in the SI Portal database that NO Update Application have been submitted by Systematix Corporate Services Ltd. in last 5 years. You are advised to demonstrate compliance with requirements mentioned in the Regulation, Circular, FAQs mentioned at Para 2 above. Further, you are advised to inform details pertaining to any such change in information since 08-12-2016 onwards"

16.4. From the aforesaid, it is noted that SEBI, vide e-mail dated September 06, 2023, had asked the Noticee to demonstrate compliance with Regulation 9A(1)(f) of MB Regulations read with SEBI Circular dated May 02, 2017 and SEBI FAQs and to submit the details of the application that was submitted to SEBI through SI Portal. Moreover, in the aforesaid e-mail, SEBI also highlighted that no update application has been submitted by the Noticee in the last 5 years in the SI Portal and advised the Noticee to inform details pertaining to any such change in information since December 08, 2016. Thereafter, the Noticee, vide its letter dated September 14, 2023, submitted the details of changes and updates that occurred since December 08, 2016. It was noted from the letter of the Noticee that there were 50 changes/updates that were not submitted to the SI Portal.

16.5. I further note that the Noticee, in its replies, has mentioned that they have uploaded the requisite information/documents to the SI portal from time to time. However, to bolster its contention, the Noticee has not provided specific documentary evidence, such as notification e-mails received from SEBI for updates made in the SI Portal, like the one submitted by the Noticee for the update made in the SI portal on September 30, 2023.

16.6. I further note that the Noticee, in its replies, has submitted that it had uploaded all the information to the SI Portal on September 30, 2023 and submitted the notification e-mail received from SEBI for such an update.

16.7. In view of the discussions in the preceding paragraphs, I note that no justifiable reason has been brought on record by the Noticee with regard to the violations alleged in the SCN. As noted from previous paragraphs, although the Noticee in its submissions claimed that it had periodically uploaded the requisite information/updates to the SI Portal, it had not adduced any specific documentary evidence to bolster its argument, like notification e-mails to be received from SEBI for such updates. I further note that in terms of the SEBI Circular dated May 02, 2017 and guidance provided by SEBI in the form of FAQs dated November 25, 2020[17], applications pertaining to updation/changes in details should be filed on the SI Portal on a real time basis, but not later than 7 days from the date of the change being effective. However, in the instant case, the changes/updates pertain to the period since December 08, 2016, which was updated only on September 30, 2023, as per the submissions of the Noticee. Thus, it is established that the Noticee has failed to make the requisite 50 status updates in the SI Portal in a timely manner and violated the provisions of Regulation 9A(1)(f) of the MB Regulations and the SEBI Circular dated May 02, 2017.

[17] https://www.sebi.gov.in/sebi_data/faqfiles/nov-2020/1606287096983.pdf

Issue II. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15HB of the SEBI Act?

17. As it has been established that the Noticee has violated the provisions of law as alleged in the SCN, the Noticee is liable for payment of a monetary penalty in terms of Section 15HB of the SEBI Act.

18. The Noticee in its replies dated May 21, 2024, June 05, 2024 and June 14, 2024 have, *inter alia*, stated:
"We further state that, assuming but without admitting, every little deficiency or technical violation noticed during the course of the inspection is not culpable and does not call for penalty."

19. In this regard, I note that the Noticee, in its replies, has also placed reliance on the orders of the Hon'ble Supreme Court in the matter of the Hindustan Steel case and the Hon'ble SAT in the matter of UPSE Securities Ltd. v. SEBI, DSE Financial Services Ltd. v. SEBI, Reliance Industries Limited v. SEBI, and also the SEBI orders passed in the matter of Life Insurance Corporation of India, IFCI Financial Services Ltd., Marfatia Stock Broking Private Limited, and JM Financial Institution Securities Limited.

20. All the submissions of the Noticee in this regard, including case laws, have been considered.

21. In the present case, lapses in conducting due diligence has been established against the Noticee. I note that the merchant banker is entrusted with the responsibility of conducting due diligence under the SEBI Regulations to ensure that the contents of offer documents are true, fair, and adequate. Disclosures empower investors to make an informed investment decision. Due diligence by a merchant banker is germane to the veracity of disclosures in the offer document. It is a serious activity

to be undertaken by the merchant banker and cannot be dismissed as a casual exercise.

22. In this context, I would also like to refer to the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}* wherein Hon'ble Supreme Court of India held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.''*

23. It is also pertinent to refer to the order of the Hon'ble Supreme Court of India in the matter of *SEBI vs Sandip Ray (Appeal Diary No. 791/2023*) wherein Hon'ble Supreme Court of India held that:
"Learned counsel for appellant further submits that even review application filed to make a correction in the order and to justify that the order reducing the penalty below Rs. 1,00,000/- is not permissible under Section 15HB of the SEBI Act, 1992. After we have heard learned counsel for the appellant, it clearly manifests that the ***Tribunal has not taken into consideration the effect and mandate of Section 15HB of the SEBI Act, 1992.*** *Taking into consideration the facts and circumstances of this case, there appears no justification in calling upon the respondent and we modify the order impugned dated 29.07.2022 and the penalty of Rs. 75,000/- as inflicted upon noticee no. 5 (Mr. Sandip Ray) and noticee no. 6 (Mr. Rajkumar Sharma), as referred to in para no. 13 of the order impugned, is modified and substituted to Rs. 1,00,000/- in terms of Section 15HB of SEBI Act, 1992 and with this modification the present appeals stand disposed of".* **(emphasis supplied)**

24. The text of the above said Section 15HB of the SEBI Act is reproduced below:

"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."*

Issue III. 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?

25. While determining the quantum of penalty under section 15HB, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:

"Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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."

<u>Factors Considered While Imposing Penalty</u>

26. The material available on record has neither quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee nor the amount of loss, if any, caused to an investor/clients as a result of the default of the Noticee. As regard the repetitive nature of the default, there is nothing on record to show that the nature of the default by the Noticee is repetitive.

27. It is established that the Noticee has not exercised its duty as a merchant banker diligently as required under law in respect of the following allegations:

27.1. In the matter of the IPO of XYZ Ltd.[18] handled by the Noticee as a merchant banker, the Noticee has not exercised due care and diligence in respect of one of the objects of the issue, "Growth initiatives". The amount earmarked for this object was Rs. 50 Crores, which was around 25% of the total gross proceeds from the offer.

27.2. Failed to maintain a separate SDD for its merchant banking activities during the IP.

27.3. Failed to make the requisite 50 status updates in the SI Portal in a timely manner.

28. The non-adherence on the part of the Noticee to the extant Regulations, as brought out in the preceding paragraphs, clearly shows that the Noticee has failed to act with skill, care, and diligence in the conduct of its business as a merchant banker. Being a registered intermediary, the Noticee must uphold a high level of professionalism and take statutory compliance extremely seriously.

29. In a disclosure based regime, disclosures are important and help investors make informed investment decisions. Merchant Bankers play an important role in ensuring the veracity of disclosures made in offer documents. Therefore, Merchant Bankers are entrusted with the obligations of doing due diligence with reference to the disclosures made.

30. It is noted from the replies of the Noticee that it has started maintaining separate SDD software for its merchant banking activities and has also uploaded the requisite status updates to the SI Portal. Thus, it is noted that corrective measures have been taken by the Noticee subsequently.

31. The aforementioned factors have been taken into consideration while adjudging the penalty.

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[18] *Name of the Company has been excised for the sake of confidentiality.*

ORDER

32. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in preceding paragraphs and in the exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty on the Noticee as given in the table below**:**

Table 3

Penal Provision	Penalty Amount
Section 15HB of SEBI Act	Rs. 7,00,000/- (Rupees Seven Lakhs only)

33. I am of the view that the said penalty is commensurate with the lapses/omissions on part of the Noticee.

34. The Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

35. 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 SEBI.

Date: June 28, 2024 **N HARIHARAN**

Place: Mumbai **CHIEF GENERAL MANAGER**

AND ADJUDICATING OFFICER