BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AD/2022-23/22324-22327]

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

In respect of

Noticee No.	Name of the Noticee	PAN
1.	Edynamics Solutions Limited	AAACE7849N
2.	Mr. Bharat Gupta	ALFPG6480L
3.	Ms. Anita Gupta	AOFPG8504E
4.	Mr. Vikas Saini	BEZPS2003H

Noticees 1 to 4 are hereinafter collectively referred to as "Noticees"

In the matter of Edynamics Solutions Limited

FACTS OF THE CASE IN BRIEF:

1. Edynamics Solutions Limited (hereinafter referred to as "**Noticee 1/ESL**") is a company which had its shares listed on BSE Ltd (hereinafter referred to as "**BSE**"), since June 26, 2013 in the Small and Medium Enterprise (**SME**) Segment. Subsequently, vide BSE notice dated January 04, 2016, the shares of the company migrated from SME platform to the main board platform of BSE. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), conducted an inspection during August 21-28, 2014, of the Merchant Banker

namely, Guiness Corporate Advisors Limited. During the aforementioned inspection, SEBI noticed certain violations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as "**ICDR Regulations**"), relating to issue of securities by ESL handled by the said Merchant Banker.

2. Therefore, proceedings under section 11B of SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**") before learned Whole Time Member (**WTM**), SEBI, were initiated against ESL and its directors for violations of ICDR Regulations. Thereafter, Final Order dated April 22, 2021 was passed against ESL and its directors in the aforementioned proceedings. In the said Final Order, *inter-alia*, the following was stated:

   "*However, it may be appropriate that SEBI may consider initiation of adjudication proceedings against the ESL and the officer in default, in this respect, if deemed fit."*

3. Accordingly, adjudication proceedings in the matter were initiated against Noticees for alleged violations of ICDR Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

4. Vide order dated February 16, 2022, SEBI appointed the undersigned as the Adjudicating Officer under Section 15(I) of SEBI Act and 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, the alleged violations of Regulations 4(2)(d), 4(2)(e), 5, 6, 7, 25, 26, 36, 37,46, 47, 57 and 59 of ICDR Regulations read with Section 27 of SEBI Act by Noticee 1 and its directors, namely, Bharat Gupta ("**Noticee 2**"), Anita Gupta ("**Noticee 3**") and Mr. Vikas Saini (as "**Noticee 4**").

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A common show-cause notice dated May 04, 2022 (hereinafter referred to as '**SCN**') was issued to Noticees under Rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticees and penalty, if any, not be imposed upon them under the provisions of Section 15HB of SEBI Act for the violations alleged to have been committed by them.

6. The allegations against Noticees in the SCN are as under:

a) During the course of investigation, from the examination of e-forms and documents filed by the ESL on the Ministry of Corporate Affairs (hereinafter referred to as "**MCA**") Website and prospectus dated May 30, 2013 filed by ESL with BSE, SEBI observed that Noticee 1 had allotted 69.20 lakhs equity shares at an issue price of Rs. 10/- to forty-nine (49) persons on seven instances and to twenty-two (22) persons in one instance, between April 03, 2013 to April 22, 2013. It was noted that, in total, ESL had allotted equity shares to 365 (nos) allottees aggregating to Rs 6.92 Crores during the aforementioned period. The details of the same are mentioned hereunder:

Sr. No.	Date of allotment of shares	No. of allottees	No. of equity shares allotted.
1.	03/04/2013	49	19,17,000
2.	12/04/2013	49	5,33,500
3.	13/04/2013	49	5,83,000
4.	15/04/2013	49	4,82,000
5.	16/04/2013	49	4,21,500
6.	18/04/2013	49	4,941200
7.	19/04/2013	49	8,20,800
8.	22/04/2013	22	16,68,000
	Total	**365**	**69,20,000**

b) From the details of allottees provided in the prospectus dated May 30 2013, it was observed that the investors were not pre-identified shareholders before the allotment of the shares and each tranche had different set of investors and the total allottees exceeded 200 (nos). It was noted that since the total number of allottees exceeded 49, such offer would qualify as a public issue under the first proviso to Section 67(3) of the Companies Act, 1956.

c) In view of the above, it was alleged that the above issue and allotment of shares was deemed to be a public issue.

d) Since the allotment of equity shares was made in 2013, during which the ICDR Regulations were in force, ESL was under an obligation to comply with the following Regulations of ICDR Regulations:

Regulation 4(2)(d): Making an application to one or more recognised stock exchanges for listing of specified securities

Regulation 4(2)(e): Entering into an agreement with a depository for dematerialization of specified securities.

Regulation 5: Appointment of Merchant Banker and other intermediaries

Regulation 6(1): Filing of draft offer documents with SEBI, designated stock Exchange and RoC

Regulation 7: Obtaining in-principle approval from recognised stock exchange in which the specified securities are to be listed

Regulation 25 and 26: Satisfy conditions of initial public offer

Regulation 36: In a public issue, the specified securities held by promoters shall be locked-in for a certain period.

Regulation 37: In case of an initial public offer, the entire pre-issue capital held by persons other than promoters shall be locked-in for a period of one year.

Regulation 46: Keeping the public issue open for specified period.

Regulation 47: Pre issue advertisement for public issue.

Regulation 57: Manner of disclosures in the offer document

Regulation 59: Refrain from offering any incentive to any person making application for allotment of specified securities.

e) However, it was observed that ESL failed to comply with aforesaid provisions of ICDR Regulations in respect of its aforementioned issue of equity shares.

f) Further, it was noted that a company cannot act on its own. From the filings with the MCA and prospectus filed with BSE, it was observed that Noticee 4 was appointed as ‘Whole Time Director’ of Noticee 1 since March 25, 2013, through Board Resolution and General Meeting of Members, for a period of five years from April 01, 2013. As per Form 32 filed with MCA on April 01, 2013, it was observed that ESL had appointed Noticee 4 as Executive-Whole Time Director, Noticee 3 as Non- Executive Director and Noticee 2 as Non-Executive Independent Director.

g) It was noted from the Annual Report of ESL for the financial year (FY) 2013-14, filed with BSE Ltd. (BSE), that the Board of Directors met nineteen (19) times out of which eight (8) board meetings were during April 03-22, 2013, i.e. the deemed public issue period. The dates of the board meetings as per the Annual Report were: 01/04/2013,03/04/2013,12/04/2013,13/04/2013,15/04/2013,16/04/2013,18/04/2013,19/04/2013,22/04/2013,26/04/2013,29/04/2013,22/06/2013,17/07/2013,26/08/2013,09/09/2013,30/09/2013,14/11/2013,10/02/2014 and 24/03/2014. Of the above dates 03/04/2013, 12/04/2013, 13/04/2013, 15/04/2013, 16/04/2013, 18/04/2013, 19/04/2013, and 22/04/2013, were the allotment dates for the eight (8) instances of allotment deemed as public issue during April 03-22, 2013.

h) It was also observed from the Annual Report for FY 2013-14, that, Noticee 3, Noticee 4 and Noticee 2 attended eighteen (18), seventeen (17) and fifteen (15) Board Meetings, respectively. It was therefore noted that since there were 19 (nineteen) Board Meetings, Noticee 3 and Noticee 4 would have mostly attended all the Board Meetings including the ones held during April 03-22, 2013. Further, out of nineteen (19) meetings, eight (8) meetings were during the April 03-22, 2013 and it was noted that Noticee 2 would have necessarily attended at least four (4) board meetings held during April 03-22, 2013. Given this fact, it was therefore noted that Noticee 2, Noticee 3 and Noticee 4, attended the respective Board Meetings where the decision and approval with respect to the allotment of the equity share to 49/22 allottees to the tune of three hundred sixty-five (365) allottees during April 03-22, 2013, through eight instances/tranches had taken place and seven out of eight instances of allotment were to forty nine (49) allottees which were deemed public issue. Therefore, it was alleged that Noticee 2, Noticee 3 and Noticee 4 had all the information and knowledge of the nature of allotments deemed as public issue, through the Board process and meeting. Thus, it was noted that Noticees 2, 3 and 4 being directors of the Noticee 1 and having participated in the board meetings at the time of deemed public issue of equity shares by Noticee 1 would also be liable for violation of Regulations 4(2)(d), 4(2)(e), 5, 6, 7, 25, 26, 36, 37,46, 47, 57 and 59 of the ICDR Regulations.

i) In view of the aforementioned observations, it was alleged that Noticees have violated Regulations 4(2)(d), 4(2)(e), 5, 6, 7, 25, 26, 36, 37,46, 47, 57 and 59 of ICDR Regulations read with Section 27 of SEBI Act.

7. The details of delivery of SCN, to Noticees and replies, as received, are as given hereunder:

Noticee No.	**Name of Noticee**	**Mode of Service**	**Status of Delivery**	**Comments**
1	Edynamics Solutions Limited	Speed Post Acknowledgement due (SPAD)	Not delivered	Sent to three addresses of Noticee 1 as available on record including the registered address of Noticee 1 as noted from the website of the ministry of corporate affairs
		Digitally signed email	Delivered	Sent to email address of Noticee 1 as noted from the website of Ministry of Corporate Affairs.
		Affixture	Delivered	Affixed at the 3 address (including registered address of the Company)
		Newspaper publication	Delivered	Published in Hindustan Times (English), Delhi edition, Dainik Jagran (Hindi); Delhi edition on November 10, 2022. No reply received
2	Mr. Bharat Gupta	SPAD	Not delivered	
		Digitally signed email	Delivered	Reply received
3	Ms. Anita Gupta	SPAD	Not delivered	
		By Affixture	delivered	Affixed in the address to which SPAD was sent.
		Paper publication		Published in Hindustan Times (English), Delhi edition, Dainik Jagran (Hindi); Delhi edition on November 10, 2022.No reply received from Noticee 3.
4	Mr. Vikas Saini	SPAD	Not delivered	
		Affixture	Not delivered	
		Digitally signed email	Delivered	

Noticee No.	Name of Noticee	Mode of Service	Status of Delivery	Comments
		Paper publication	Delivered	Published in Hindustan Times (English) in Delhi edition and Dainik Jagran (Hindi) in Saharanpur edition on November 10, 2022. No reply received from Noticee 4.

8. I note that Noticee 2 filed his reply to SCN vide letter dated June 13, 2022. Thereafter, in the interest of natural justice, opportunities of personal hearing were granted to Noticees. The details regarding the aforementioned hearing opportunity granted to Noticees are as given hereunder:

Noticee No.	Name of Noticee	Hearing Notice(HN) Dated	Mode of Service	Status of Delivery	Date of hearing	Hearing attended or not
1	Edynamics Solutions Limited	August 1 2022	Affixture	yes	September 15, 2022	No
		November 10, 2022	Newspaper Publication [Published in Hindustan Times (English), Delhi edition, Dainik Jagran (Hindi); Delhi edition on November 10, 2022.]	yes	November 14, 2022	No
		December 01, 2022	Digitally signed email	yes	December 08, 2022	No

Noticee No.	Name of Noticee	Hearing Notice(HN) Dated	Mode of Service	Status of Delivery	Date of hearing	Hearing attended or not
2	Mr. Bharat Gupta	October 31, 2022	Digitally signed email	yes	November 10, 2022	Yes
3	Ms. Anita Gupta	August 1 2022	Affixture	yes	September 15, 2022	no
		November 10,2022	Newspaper publication [Published in Hindustan Times (English), Delhi edition, Dainik Jagran (Hindi); Delhi edition on November 10, 2022.]	yes	November 14, 2022	no
4	Mr. Vikas Saini	August 1 2022	Affixture	No	September 15, 2022	no
		November 10,2022	Newspaper publication [Published in Hindustan Times (English) in Delhi edition and Dainik Jagran (Hindi) in Saharanpu	yes	November 14, 2022	no

Noticee No.	Name of Noticee	Hearing Notice(HN) Dated	Mode of Service	Status of Delivery	Date of hearing	Hearing attended or not
			r edition on November 10, 2022.]			
		December 01, 2022	Digitally signed Email	yes	December 08, 2022	no

9. I note that on November 10, 2022 i.e. the scheduled date of hearing, Authorised Representative (AR) of Noticee 2 appeared on behalf of Noticee 2 before the undersigned and reiterated submissions made by Noticee 2 vide his earlier reply dated June 13, 2022.

10. I note that despite the service of SCN and HN in the matter, Noticee 1, Noticee 3 and Noticee 4 have not filed any reply to the SCN nor attended the scheduled hearing. I also note that sufficient opportunity have been granted to the aforementioned Noticees to represent themselves in the matter. However, Noticees 1, 3 and 4 have failed to make any submissions in the instant proceedings. In view of the above, I am compelled to proceed ex parte in the matter against Noticees 1, 3 and 4. In this regard, it is worth mentioning here that it is well settled position of law that if the facts/details of charges are not disputed by the person to whom show cause notice is issued, then, it is presumed that the same are admitted to by him. The Hon'ble Securities Appellate Tribunal (hereafter referred to as "**SAT**") in the matter of Classic Credit Ltd. v/s SEBI [2007] 76 SCL 51 (SAT - MUM), inter-alia, held that:

    "......the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them".

<u>CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS</u>

11. I have carefully perused the charges levelled against Noticees, replies/submissions filed by Noticee 2 and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

Issue No. I: Whether Noticees have violated Regulations 4(2)(d), 4(2)(e), 5, 6, 7, 25, 26, 36, 37,46, 47, 57 and 59 of ICDR Regulations read with Section 27 of SEBI Act.?

Issue No. II: Do the violations, if any, attract monetary penalty under Section 15HB of SEBI Act?

Issue No: III: If the answer to Issue No. II is in affirmative, then what should be the quantum of monetary penalty?

12. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI Act and ICDR Regulations which was in force at the time of impugned transactions, which are reproduced as under:

Relevant provisions of ICDR Regulations

i. *Regulation 4(2)(d): Making an application to one or more recognised stock exchanges for listing of specified securities*
ii. *Regulation 4(2)(e): Entering into an agreement with a depository for dematerialization of specified securities.*
iii. *Regulation 5: Appointment of Merchant Banker and other intermediaries*
iv. *Regulation 6(1): Filing of draft offer documents with SEBI, designated stock Exchange and RoC*
v. *Regulation 7: Obtaining in-principle approval from recognised stock exchange in which the specified securities are to be listed*
vi. *Regulation 25 and 26: Satisfy conditions of initial public offer*
vii. *Regulation 36: In a public issue, the specified securities held by promoters shall be locked-in for a certain period.*
viii. *Regulation 37: In case of an initial public offer, the entire pre-issue capital held by persons other than promoters shall be locked-in for a period of one year.*
ix. *Regulation 46: Keeping the public issue open for specified period.*
x. *Regulation 47: Pre issue advertisement for public issue.*
xi. *Regulation 57: Manner of disclosures in the offer document*

xii. *Regulation 59: Refrain from offering any incentive to any person making application for allotment of specified securities.*

<u>SEBI Act</u>

<u>Regulation 27(1) of SEBI Act:</u>

Offences by companies

27. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence

13. Before proceeding into the merits of the case, I would like to deal with preliminary objection raised by Noticee 2 in his reply to SCN. Noticee 2 has contended that competent authority of SEBI has appointed the undersigned for conducting inquiry and imposing penalty under section 15HA of SEBI Act, whereas the SCN was issued allegedly for imposing penalties under Section 15HB of SEBI Act. In this regard, at the time of hearing, AR of Noticee was informed that inclusion of section 15HA of SEBI Act in the letter communicating the appointment of undersigned as Adjudication Officer in the present matter was a typographical error and SCN had been correctly issued for conducting inquiry and imposing penalties under the provisions of Section 15HB of SEBI Act. In this regard, vide email dated November 10, 2022, a copy of the corrected communique was also provided to Noticee 2.

14. I now proceed to deal with case on merits.

Issue No. I : Whether Noticees have violated Regulations 4(2)(d), 4(2)(e), 5, 6, 7, 25, 26, 36, 37,46, 47, 57 and 59 of ICDR Regulations read with Section 27 of SEBI Act.?

15. In the instant matter, it is an undisputed fact that Noticee 1 had allotted equity shares at an issue price of Rs. 10/- to 365 (nos) allottees aggregating to Rs 6.92 crores between April 03, 2013 to April 22, 2013. The details of the aforementioned allotment as noted from the material available on record are as mentioned hereunder:

Sr. No.	**Date of allotment of shares**	**No. of allottees**	**No. of equity shares allotted.**
1.	03/04/2013	49	19,17,000
2.	12/04/2013	49	5,33,500
3.	13/04/2013	49	5,83,000
4.	15/04/2013	49	4,82,000
5.	16/04/2013	49	4,21,500
6.	18/04/2013	49	4,941200
7.	19/04/2013	49	8,20,800
8.	22/04/2013	22	16,68,000
	Total	**365**	**69,20,000**

16. I note from the table above that Noticee 1 had made an allotment of 69.20 lakhs equity shares to forty-nine (49) persons on seven instances and to twenty-two (22) persons in one instance. Thus, I find that Noticee 1 had made allotments of equity shares in multiple tranches on multiple dates and in each such tranche, allotments were made to 49 or less number of investors. However, on a cumulative basis, Noticee 1 had allotted its equity shares to 365 investors during financial year (FY) 2013-2014.

17. It has been alleged in the SCN that aforementioned issuance of equity shares in the FY 2013-2014 amounted to public issue of securities. In order to determine whether the aforementioned issuance of equity shares amounted to public issue, I find it pertinent to refer to the provisions of Section 67(3) of Companies Act, 1956. I note that section 67(3) of Companies Act, 1956 which states as follows:

"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act

and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

...

(3) No offer or invitation shall be treated as made to the public by virtue of sub- section (1) or sub- section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation …

***Provided** that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:*

***Provided** further that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)."*

18. From the perusal of section 67(3) of Companies Act, 1956, I note that as per first proviso to Section 67(3) Companies Act, 1956, a company making offer of shares/debentures to fifty or more persons would be automatically bound to follow the obligations laid down in the aforesaid Act for making public issue and listing of securities. Thus, considering that Noticee 1 had issued equity shares to 365 investors i.e. to more than 49 people, during FY 2013-2014, I find that Noticee 1 had made a public issue of equity shares in the FY 2013-2014, in terms of the first proviso to Section 67(3) of the Companies Act, 1956.

19. In this context, I place reliance on the decision of the Hon'ble Supreme Court of India in Sahara India Real Estate Corporation Limited & Ors. vs. SEBI [Civil Appeal Nos. 9813 and 9833 of 2011; decided on August 31, 2012 ;(2013) 1 SCC 1], wherein it was held as under:
"...The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Subsection (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ... Resultantly, after 13.12.2000, any offer of securities by a

public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation...

…..I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. …"

20. Further, I also place reliance on the order dated April 28, 2017, of the Hon'ble Securities Appellate Tribunal (SAT) in Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016) which lays down that*, "In terms of Section 67(3) of the Companies Act any issue to '50 persons or more'is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning".*

21. In light of the above and ratios laid down in the aforementioned judgments of Hon'ble Supreme Court and SAT, I find that Noticee 1 had made a public issue of securities in the FY 2013-14.

22. I note that since Noticee 1 had made a public issue of equity shares in the FY 2013-14, it was under an obligation to comply with the requisite provisions of ICDR Regulations. In this regard, I note that the following provisions ICDR Regulations were required to be complied with by Noticee 1:

    i. Regulation 4(2)(d): Making an application to one or more recognised stock exchanges for listing of specified securities

    ii. Regulation 4(2)(e): Entering into an agreement with a depository for dematerialization of specified securities.

    iii. Regulation 5: Appointment of Merchant Banker and other intermediaries

    iv. Regulation 6(1): Filing of draft offer documents with SEBI, designated stock Exchange and RoC

    v. Regulation 7: Obtaining in-principle approval from recognised stock exchange in which the specified securities are to be listed

vi. Regulation 25 and 26: Satisfy conditions of initial public offer

vii. Regulation 36: In a public issue, the specified securities held by promoters shall be locked-in for a certain period.

viii. Regulation 37: In case of an initial public offer, the entire pre-issue capital held by persons other than promoters shall be locked-in for a period of one year.

ix. Regulation 46: Keeping the public issue open for specified period.

x. Regulation 47: Pre issue advertisement for public issue.

xi. Regulation 57: Manner of disclosures in the offer document

xiii. Regulation 59: Refrain from offering any incentive to any person making application for allotment of specified securities.

23. However, I note from SEBI's examination report that Noticee 1 had not complied with aforesaid provisions of ICDR Regulations in respect of its aforementioned public issue of equity shares during FY 2013-14.

24. In light of the above observations, I find that the allegation in the SCN that Noticee 1 has violated Regulations 4(2)(d), 4(2)(e), 5, 6, 7, 25, 26, 36, 37,46, 47, 57 and 59 of ICDR Regulations stands established.

25. The SCN has alleged that Noticees 2, 3 and 4, the directors of Noticee 1, during the relevant period was also responsible for the aforementioned violation committed by Noticee 1.

26. I note from the material available on record, the following details regarding directorship of Noticees 2, 3 and 4 in Noticee 1:

Sr.No.	**Name of the Entity**	**Date of appointment**
1	Ms. Anita Gupta (Promoter and Non-Executive Director)	05/11/2011
2	Shri. Vikas Saini (Promoter and Executive Director)	08/11/2011
3	Shri Bharat Gupta (Independent Director)	22/06/2012

27. I note from the filings made by Company with Ministry of Corporate Affairs (MCA) that Noticee 4 was appointed as 'Whole Time Director' of Noticee 1 since March 25, 2013, through Board Resolution and General Meeting of Members, for a period of five years from April 01, 2013. From perusal of Form 32 filed with MCA on April 01, 2013 by Noticee 1, I note that ESL had appointed Noticee 4 as Executive-Whole Time Director, Noticee 3 as Non- Executive Director and Noticee 2 as Non-Executive Independent Director.

28. With regard to the allegations against him in the SCN, Noticee 2 has contended that he never knew that he was appointed as director of Noticee 1 until receipt of show cause notice from SEBI. Noticee 2 has also contended that his appointment as director was secured through fraud committed by Noticee 1. In support of his aforementioned contention, Noticee 2 has placed on record, a copy of Form 32 along with his consent letter for appointment as director in Noticee 1 ["**consent letter**"] as obtained from website of MCA.

29. With regard to the above contention of Noticee 2, I note that from perusal of the aforementioned consent letter that the aforesaid letter dated June 22, 2012 contained the name and signature of Noticee 2, name of his parent, his Director Identification Number (DIN) and his address, but the name of the company for which Noticee 2 has consented to act as director was not mentioned in the consent letter i.e. it is left blank. I note that Noticee 2 in his aforementioned submissions has not disputed the signature affixed in the aforementioned consent letter and neither has he alleged that signature affixed in the aforementioned letter was a forged. I also note that details like his address, DIN etc. were hand written on the consent letter. In this regard, I find that Noticee 2 has also not disputed the authenticity of his hand writing or the aforementioned details given in the consent letter. Thus, I find that Noticee 2 himself has given consent on a blank consent letter i.e. he has given a blanket consent for directorships, for which he cannot absolve himself and fix the blame on the company at this stage. In this context, I find it pertinent to place reliance on the decision of Hon'ble Securities Appellate Tribunal (SAT) in Dhananjay Kumar v SEBI (Appeal No. 316 of 2022; Date of Decision: June 28, 2022), wherein Hon'ble SAT has held as under:

> *"The appellant admits that he opened the trading account and in good faith gave the relevant details, blank cheque books to one Mr. Avinash Kumar Rai who allegedly made fraudulent transactions from his saving bank account. Be that as it may, the fact remains that at the end of the day the appellant is responsible for such act*."

30. In light of the above and placing reliance on the aforesaid judgment of Hon'ble SAT, I am of the view that he alone is responsible signing on such blank consent forms and thus, I am not inclined to accept the contention of Noticee 2 that his appointment as an independent director was obtained through fraud.

31. Noticee 2 further has contended that he had filed a police complaint with regard to his appointment as an Independent Director by Noticee 1. Noticee 2 in his submissions has further contended that he was never served any notice of board meeting by Noticee 1 and he was not involved in the workings of Noticee 1 and he had never attended any of the board meetings of Noticee 1 including the board meetings held during April 03, 2013 to April 22, 2013. Noticee 2 has also contended that he was not paid any sitting fee by Noticee 1. Noticee 2 thus contended that he was not aware of the allotment of shares made by Noticee 1 during the period April 03, 2013 and April 22, 2013.

32. From the perusal of the aforementioned police complaint dated October 31, 2020 filed by Noticee 2 with Thane Sector-24, Noida Gautham Budhanagar police station, I note that the same is lacking in details regarding the fraud that Noticee 2 is alleging has been perpetrated by Noticee 1. Moreover, I note that Noticee 2 has not submitted any copy of any First Information Report (**FIR**) registered by the police with regard to the aforementioned complaint filed by him. In absence of any FIR registered in the matter, I am not inclined to accept the complaint filed by Noticee 2 as an evidence of proper legal action taken by Noticee 2 with regard to his purported fraudulent appointment as independent director in Noticee 1.

33. Further, I note that in the aforementioned police compliant, Noticee 2 has stated that he came to know about his fraudulent appointment as independent director of Noticee 1 only on September 2020. In this regard, I note that Noticee 2, in his reply to the SCN, has made several contradictory statements regarding his appointment as independent director of Noticee 1. Though in his police complaint, he had stated that he came to know about his appointment as director in September, 2020, he had in fact already resigned from the company on August 10, 2020. In his reply to SCN, Noticee 2 has however contended that he came to know about his appointment as director of Noticee 1 on September 21, 2018, on receipt of show cause notice issued by Learned WTM, SEBI in the parallel proceedings in

the matter initiated under Section 11B of SEBI Act. However, I note from the Final Order dated April 22, 2021 that during the investigation in the matter, information was sought by SEBI from Noticees by sending letters through BSE and BSE through its letter dated May 09, 2017 informed that SEBI's letters to Noticees could not be delivered except to Noticee 2 who had stated that he had already resigned from Noticee 1. From the aforesaid records, I find that as per Noticee 2's own reply to BSE, even in the year 2017, he knew that he was a director in Noticee 1. Therefore, it is clear that he was well aware of the fact that he was appointed director of the company in 2012 and continued as a director till the date of cessation on August 10, 2020. Therefore, I find no merit in the contention of Noticee 2 that he was not aware of the appointment of director of Noticee 1 until the receipt of Show Cause Notice from SEBI.

34. Further, I note that even during proceedings under Section 11B of the SEBI Act before Learned WTM, SEBI in matter involving same issue, apart from stating that he had resigned from Noticee 1, no contention regarding his fraudulent appointment as director by Noticee 1 was raised by Noticee 2 in the said proceedings.

35. I note that Noticee 2 has also contended that SEBI lacked in investigation as it never inspected minutes book and attendance register of Noticee 1 so as to confirm whether Noticee 1 had attended the board meetings or not. In this regard, I note from the Annual Report of Noticee 1 for FY 2013-14, filed with BSE that Noticee 2 is shown to have attended fifteen (15) Board Meetings of Noticee 1 in the said FY. I note that although no evidence of the minutes of the board meeting have been placed on record, Noticee 2 also has failed to demonstrate that he had taken any proper legal recourse regarding such falsification of records in the Annual Report by Noticee 1. It is also very surprising that the police complaint was filed by him at a very belated stage, which appears to be a sham. Therefore, I am not incline to accept this contention of Noticee 2.

36. In support of his contention that no sitting fees was paid to Noticee 2 by the company and thus he had not attended any board meetings of Noticee 1, Noticee 2 has enclosed copies of his bank statement with only two banks. i.e., Kotak Mahindra Bank from January 01, 2012 to December 31, 2020 and ICICI Bank from January 23, 2019 to March 31, 2019. I note that bank statement of ICICI Bank is for the period outside the purview of investigation and therefore cannot be accepted. Although perusal of the bank statement of Kotak Mahindra

Bank does not indicate any money received by Noticee from the company, on the basis of a mere bank statement, I am unable to come to a definite conclusion regarding the aforesaid contention of Noticee 2 since the burden of proof rests on Noticee 2 to establish that he had not received any sitting fees from the company. In any case, as noted earlier, Noticee 2 has not taken any proper legal recourse in this regard. Therefore, I am not able to accept the aforementioned contention of Noticee 2.

37. Therefore, in absence of evidence of any proper legal recourse taken by Noticee 2 against Noticee 1 and also considering contradictory statements made by Noticee 2 regarding his appointment as director of Noticee 1, I am not inclined to accept the contention of Noticee 2 that he was no aware of being the director of Noticee 1 during the relevant period and he had not received any notices of board meetings and had not attended any board meetings of Noticee 1. Thus, I conclude that Noticee 2 was director of Noticee 1 from June 22, 2012 till his resignation in August 10, 2020 and had attended board meetings as reported in the Annual Report of Noticee 1 for FY 2013-14.

38. I note from the Annual Report of Noticee 1 for FY 2013-14 that the Board of Directors met nineteen (19) times of which eight (8) Board Meeting were during April 03-22, 2013, i.e. the deemed public issue period. The dates of the Board meetings as per the Annual Report are: 01/04/2013,03/04/2013,12/04/2013,13/04/2013,15/04/2013,16/04/2013,18/04/2013,19/04/2013,22/04/2013,26/04/2013,29/04/2013,22/06/2013,17/07/2013,26/08/2013,09/09/2013,30/09/2013,14/11/2013,10/02/2014 and 24/03/2014. Of the above dates 03/04/2013, 12/04/2013, 13/04/2013, 15/04/2013, 16/04/2013, 18/04/2013, 19/04/2013, and 22/04/2013, were the allotment dates for the eight (8) instances of allotment made during April 03-22, 2013.

39. As noted earlier, Noticee 2 is shown to have attended fifteen (15) Board Meetings in the FY 2013-14. I note that out of nineteen (19) meetings in FY 2013-14, eight (8) meetings were held during the period April 03-22, 2013, when the allotment of shares by Noticee 1, took place. Considering that Noticee 2 attended 15 meetings in the aforementioned FY, he would have necessarily attended at least four (4) board meetings held during April 03-22, 2013. Given this fact, I therefore note that Noticee 2, attended the Board Meetings where the decision with respect to the allotment of the equity share to impugned three hundred sixty-five (365) allottees through eight instances/tranches was approved. In view of the above

analysis, I find that impugned allotment of shares to (365) allotees by Noticee 1 was done with the knowledge and approval of Noticee 2.

40. With regard to the involvement of Noticee 3 and Noticee 4 in the public issue of securities made by Noticee 1, I note from the Annual Report for FY 2013-14, that Noticees 3 and 4 attended eighteen (18) and seventeen (17) Board Meetings, respectively. It is therefore noted that since there were 19 (nineteen) Board Meetings conducted by Noticee 1 in FY 2013-14, Noticee 3 and Noticee 4 would have necessarily attended at least seven (7) and six (6) of Board Meetings respectively, held during April 03-22, 2013. Given this fact, I therefore note that Noticee 2, Noticee 3 and Noticee 4, attended the respective Board Meetings where the decision with respect to the allotment of the equity shares to the tune of three hundred sixty-five (365) allotees was approved.

41. Since Noticees 2, 3 and 4 were involved in the decision of allotment of the equity share to three hundred sixty-five (365) allottees during investigation period, I find that the aforementioned Noticees are also responsible for violations of provisions of ICDR Regulations committed by Noticee 1. In this regard, I find that the SCN has invoked Section 27(1) of SEBI Act with respect to violations committed by Noticees 2, 3 and 4. In this regard, I find it pertinent to refer Section 27(1) of SEBI Act, the text of which is given as under:

Regulation 27(1) of SEBI Act: -Offences by companies.

27. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

42. I note that during the investigation period, Section 27(1) of SEBI Act provided for vicarious liability of certain persons who were in charge of and were responsible to the company where an offence is committed by a company, but it did not provide for vicarious liability in respect of civil liability of the company. However, after amendment made to Section 27(1) of

SEBI Act, which came into with effect from March 08, 2019 by the Finance Act, 2018, the word "offence" has been replaced with the word "contravention" in Section 27(1)of the SEBI Act .Therefore, I am of the view that Section 27(1) of the SEBI Act, as it existed at the relevant time, did not create any vicarious liability of directors, i.e., Noticees 2 to 4 for the violations of ICDR Regulations committed by Noticee 1. In this regard, I place reliance on the order passed by Ld. Whole time Member of SEBI in the matter of K-Life style & Industries Limited dated December 21, 2021, wherein it was held that, *"....... I note that during the relevant period (i.e. investigation period), Section 27 provided for the vicarious liability of certain persons who were in charge of and was responsible to the company where the offence is committed by a company. Section 27 at that time did not provide for the vicarious liability in respect of the civil liability of the company arising out of the violations committed by such company. However, after amendments made to Section 27 with effect from March 08, 2019, by the Finance Act, 2018, vicarious liability for civil liability of the company has been introduced by replacing the word "offence" with the word "contravention" in Section 27 of the SEBI Act, 1992. Therefore, Section 27 of the SEBI Act, 1992 does not create any vicarious liability of Noticee nos. 2, 3, 5 and 7 for the alleged violations committed by K-Lifestyle during the investigation period, with reference to PFUTP Regulation, 2003 or LODR Regulations for which proceedings under Sections 11, 11(4), 11A, 11B(1) and Section 12 A(1) of SCRA, 1956 or monetary penalty has been proposed, which are civil in nature.*"

43. In view of the above, and placing reliance on the aforesaid order, I find that vicarious liability under Section 27 (1) of SEBI Act, as prevailing at the relevant time, cannot be fastened on Noticees 2 to 4 by virtue of their holding directorship in Noticee 1. Nevertheless, I am of view that due to the active involvement of the aforementioned Noticees in the public issue of securities made by Noticee 1 in FY 2013-14 as noted in the preceding paragraphs, Noticees 2 to 4 cannot escape their liability for the violations of ICDR Regulations committed by Noticee 1. Therefore, I find that Noticee 2 to 4 are responsible for violation of Regulations 4(2)(d), 4(2)(e), 5, 6, 7, 25, 26, 36, 37,46, 47, 57 and 59 of ICDR Regulations by Noticee 1. In view of the aforementioned observations, I find that allegation in the SCN that Noticees have violated Regulations 4(2)(d), 4(2)(e), 5, 6, 7, 25, 26, 36, 37,46, 47, 57 and 59 of ICDR Regulations stands established.

Issue No. II : Do the violations, if any, attract monetary penalty under Section 15HB of SEBI Act?

44. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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......".*

45. Therefore, for the above violations, as brought out in the foregoing paragraphs, I find that Noticees would be liable for monetary penalty under Section 15HB of the SEBI Act. The text of Section 15HB of the SEBI Act is reproduced below:

SEBI Act

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 may extend to one crore rupees.

Issue No.I II:- What should be the quantum of monetary penalty?

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

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 15J *- While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation- For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

47. In view of the charges established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act, stated as above. In the instant case, I note that the material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, and suffered by the investors as a result of the default by Noticees. I also note that no prior defaults of similar nature by Noticees are available on record. Nevertheless, I find that non-compliance with various provisions of ICDR Regulations when raising money from the public threatens the integrity of the securities market and is detrimental to investors' interests and deserves an appropriate penalty.

48. I note that Noticee 2 was an independent director of Noticee 1. I also note from his reply to SCN (supported by income tax returns) that Noticee 2 has stated that he belongs to lower income class. Further, I observe that vide the Final Order dated April 22, 2021, Noticees were restrained from accessing the securities market by issuing prospectus, offer document or advertisement soliciting money from public and further restrained and prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly in whatsoever manner for a period of one year from the date of the aforementioned Order. Noticees 2, 3 and 4 were also restrained from associating themselves with any other listed public company or any public company which intends to raise money from the public or any intermediary registered with SEBI for a period of one year from the date of the aforementioned Order. I also observe that the case pertains to the FY 2013-2014 i.e. it is 8-9 years old. The aforementioned factors can, therefore, be considered as mitigating circumstances when assessing the penalties to be levied.

ORDER

49. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee 2 and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose following penalties on Noticees: -

Sr.	**Name of Noticees**	**Penalty imposed**	**Penalty under**
1.	Edynamics Solutions Limited	Rs. 5,00,000/- (Rupees Five Lakh Only)	Section 15HB of SEBI Act.
2.	Mr. Bharat Gupta	Rs. 1,00,000/- (Rupees One Lakh Only)	
3.	Ms. Anita Gupta	Rs. 3,00,000/-(Rupees Three Lakh Only)	
4.	Mr. Vikas Saini	Rs. 3,00,000/- (Rupees Three Lakh Only)	

50. Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through 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.

51. Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department - DRA-6), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051." Noticees shall also provide the following details while forwarding DD / payment information:

a) Name and PAN of the Noticee
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

52. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticees.

53. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticees and also to SEBI.

Place: Mumbai **SOMA MAJUMDER**

Date: December 21, 2022 **ADJUDICATING OFFICER**