BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/UR/2022-23/22234]

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

Equitas Holdings Ltd.

(PAN: AAACU9126C**)**

In the matter of Equitas Small Finance Bank Ltd.

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI"**) while processing the draft scheme of amalgamation of Equitas Holdings Ltd (hereinafter referred to as "**EHL/Noticee**") with Equitas Small Finance Bank Ltd. (hereinafter referred to as "**Transferee Company/ESFBL**") observed violation of provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SEBI SAST Regulations, 2011**") allegedly committed by the Noticee

2. In view of the above, adjudication proceedings were initiated under Section 15A(b) of SEBI Act, 1992 against the Noticee for the aforesaid alleged violations.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer **(**hereinafter referred to as "**AO")** vide Order dated November 11, 2022 under Section 15-I(1) of the SEBI Act and Rule 3 of SEBI(Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") read with Section 19 of the SEBI Act, 1992 to conduct adjudication proceedings into the violations of Regulation 29(2) read with Regulation 29(3) of SEBI SAST Regulations, 2011 alleged to have been committed by the Noticee in the manner specified under Rule 4 of Adjudication Rules read with Section 15-I(1) and (2) of SEBI Act, 1992, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of Adjudication Rules and Section 15A(b) of SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY OF THE NOTICEE AND HEARING

4. Show Cause Notice No. SEBI/EAD-3/BM/UR/25220/2022 dated November 16, 2022 (hereinafter referred to as **"SCN"**) was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against him and why penalty should not be imposed under section 15A(b) of the SEBI Act, 1992, for the aforesaid alleged violations.

5. The allegations levelled against the Noticee are as under:

a. The shares of the transferee company are listed on Bombay Stock Exchange Limited (BSE) and National Stock Exchange of India Limited (NSE).

b. While processing of draft scheme of amalgamation of Noticee with Transferee company and their respective shareholders it was observed that:

   i. As per shareholding pattern for the quarter ended December 2021, Noticee was holding 81.36% shares of ESFBL in promoter category. Further, as per Shareholding pattern filed as on February 21, 2022 said shareholding of Noticee reduced to 74.63%. Thus there was a change of 6.73% in the shareholding of Noticee in ESFBL.

ii. Noticee has not made disclosure with regards to change of 6.73% in its shareholding of Transferee company

iii. Further as per the information available on the website of NSE and BSE it was observed that the Noticee has not filed the disclosure with regard to change in shareholding for more than 2% as stated above, as required under Regulation 29(2) read with 29(3) of SAST Regulations.

c. With regard to the allegation as specified above, Noticee vide email dated June 09, 2022 was advised to furnish the copy of requisite disclosures under Regulation 29(2) submitted to the Stock Exchanges and Target Company along with proof of delivery/acknowledgement issued in this regard or provide comments for not making such disclosures.

d. Noticee vide email dated June 10, 2022 submitted that:

i. Change of 6.73% in shareholding in EHL had arisen on account of further issuance and allotment of 10,26,31,087 number of equity shares by way of Qualified Institutional Placement (QIP) made by ESFBL on February 19, 2022 and same was reported to the Stock Exchanges.

ii. There was no change in the number of shares or voting rights held by the Noticee in ESFBL, therefore requirement of filing disclosures under Regulation 29 of SAST is not attracted.

e. As the change exceeds 2% of total shareholding or voting rights held by the Noticee in the target company, the aforesaid change mandated disclosures under Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011.

f. However, it was observed from the website of NSE and BSE that the Noticee has not filed the disclosure with regard to change in shareholding for more than 2% as stated above, as required under Regulation 29(2) read with 29(30 of SEBI SAST Regulations 2011.

g. Thus it was alleged that, Noticee had not made disclosure with regards to change of 6.73% in its shareholding of Transferee company and has violated Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011.

6. The SCN was duly served on the Noticee via SPAD dated December 02, 2022. The proof of the service is on record. Vide letter dated November 22, 2022, Noticee submitted its reply to the SCN. The submissions made by the Noticee are as summarized below:

a. Noticee submitted that, as on December 31, 2021, it was holding 93,39,43,363 equity shares of Equitas Small Finance Bank Limited ("ESFBL") under the Promoter category constituting 81.36% of the total paid-up capital of ESFBL. On February 19, 2022, ESFBL had further issued and allotted 10,26,31,087 equity shares of Rs.10/- each by way of Qualified Institutions Placement (QIP). Consequent to the above stated corporate action of ESFBL, the shareholding of the Company in ESFBL was reduced to 74.63%. ESFBL had filed the Shareholding Pattern with the National Stock Exchange of India Ltd and BSE Limited on February 21, 2022 in adherence with the Regulation 31 (1) (c) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 towards the change in shareholding as a consequence of the QIP.

b. Noticee submitted that as per the provisions of Section 12 (2) of the Banking Regulation Act, 1949 read with RBI Notification dated July 21, 2016, published in the Gazette of India dated September 17, 2016, any shareholder's (including the promoter) voting rights in private sector banks are capped at 26 percent of the total voting rights of all the shareholders of the Banking Company. This cap of 26% has been consistently highlighted by ESFBL as part of "Notes" in its shareholding pattern fillings made to the Exchanges. Hence, the voting rights of the company in ESFBL continue to be at 26% both before and after the QIP and there has been no change in the voting rights of the Company.

c. Noticee drew reference to FAQ No. 73 of the "Frequently Asked Questions on SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011" released by SEBI on March 30, 2022, which reads as under:

"73.If the holding of any shareholder remains the same but the percentage of shareholding or voting rights of the total paid up share capital of the target company changes due to some corporate actions like buyback or preferential allotment, whether the shareholder is required to make disclosure of the change in shareholding disclosure under regulation 29(2) of Takeover Regulations, 2011?

Answer: No. Any change in shareholding or voting rights of a shareholders of a company pursuant to corporate actions like buyback or preferential allotment would not require a disclosure under regulation 29(2) of Takeover Regulations, 2011."

In this regard, Noticee submitted that consequent to the allotment of shares by way of QIP by ESFBL, the percentage of shareholding held by the Company to the total paid up share capital of ESFBL got reduced by 6.73%, however, the shares held by the Company in ESFBL remains the same without any change. Further, Noticee submitted that no fresh allotment of shares was made by ESFBL to the Company and neither the Company has acquired or disposed of shares or voting rights in ESFBL.

Noticee also submitted that on perusal of SEBI's FAQ No. 73 of the "Frequently Asked Questions on SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011", it is clear that any change in shareholding or voting rights of a shareholders of a company consequent to corporate actions would not require a disclosure under regulation 29(2) of the Takeover Regulations, 2011. Hence, the aforesaid change in shareholding percentage does not attract the disclosure under Regulations 29(2) and (3) of the SEBI (SAST) regulations, 2011.

7. Pursuant to issuance of the SCN, in the interest of principles of Natural Justice, Noticee was given hearing on December 05, 2022 vide hearing notice dated November 28, 2022. The hearing was completed on the scheduled day and time. The minutes of the hearing in this regards are on record. During the course of

hearing, the Authorized Representative of the Noticee made some additional submission and he further submitted that he would be filing additional submissions by December 06, 2022. Further the AR was informed that it was final hearing and no further hearings shall be granted. Noticee vide email dated December 06, 2022, submitted its additional submissions, which are as follows:

a. **Intimation of allotment of shares** — Equitas Holdings Limited ("EHL") did not receive any intimation of allotment of shares as no equity shares were purchased or subscribed to by EHL pursuant to the Qualified Institutions Placement ("QIP") of Equitas Small Finance Bank Limited (ESFBL). The Shareholding of EHL in ESFBL before and after the QIP continued to be 93,39,43,363 equity shares of Rs.10/- each.

b. **Acquisition of shares** — EHL did not acquire any additional shares pursuant to the QIP or otherwise of ESFBL and no changes in shareholding of EHL before and after the QIP of ESFBL

c. **Disposal of shares** — EHL did not dispose- off any shares pursuant to the QIP or otherwise and its holdings in ESFBL continues to be the same before and after the QIP.

d. **Voting rights** — Voting rights of EHL did not undergo any change and continues to be capped at 26% both before and after the QIP pursuant to Section 12 of Banking Regulation Act, 1949.

In view of the submissions above, Noticee submitted that, it is evident that no equity shares were acquired or disposed off or allotted to EHL pursuant to the QIP of ESFBL. Further, there was no change in the voting rights of EHL before and after the QIP. Hence, the requirement to disclose under Regulation 29(3) of the SEBI (SAST) Regulations, 2021 does not arise.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the charges levelled against the Noticee, its reply and the documents/material available on record. The issues that arise for consideration in the present case are:

Issue No. I Whether the Noticee by not disclosing its reduction in the shareholding in ESFBL has violated Regulation 29(2) and 29(3) of the SEBI SAST Regulations.

Issue No. II Does the violation, if any, attract monetary penalty under Section 15A(b) of the SEBI Act, 1992?

Issue No. 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, 1992?

9. The relevant provisions of law are reproduced below:

Regulation 29(2)

Any person together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

Regulation 29(3)

The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition or the disposal of shares or voting rights in the target company to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

Issue No. I: Whether the Noticee by not disclosing its reduction in the shareholding in ESFBL has violated Regulation 29(2) and 29(3) of the SEBI SAST Regulations.

10. I observe that while processing of draft scheme of amalgamation of Noticee ("Transferor Company") with ESFBL. ("Transferee Company") and their respective shareholders, *inter-alia* it was observed as follows:

    i. As per shareholding pattern for the quarter ended December 2021, Noticee was holding 81.36% shares of ESFBL in promoter category. Further, as per Shareholding pattern filed as on February 21, 2022, the said shareholding of the Noticee reduced to 74.63%. Thus there was a change of 6.73% in the shareholding of EHL in ESFBL.

    ii. Noticee was required to make disclosure with regards to change of 6.73% in its shareholding of ESFBL.

    iii. However, as per the information available on the website of NSE and BSE, it was observed that the Noticee has not filed the disclosure with regard to change in shareholding for more than 2% as stated above, as required under Regulation 29(2) read with 29(3) of SAST Regulations. Hence allegedly Noticee violated Regulation 29(2) read with 29(3) of SAST Regulations

11. I note from the submissions made by the Noticee that, as on December 31, 2021, Noticee was holding 93,39,43,363 equity shares of ESFBL under the Promoter category constituting 81.36% of the total paid-up capital of ESFBL. On February 19, 2022, ESFBL had further issued and allotted 10,26,31,087 equity shares of Rs.10/- each by way of Qualified Institutions Placement (QIP). Consequent to the above stated corporate action of ESFBL, the shareholding of the Noticee in ESFBL was reduced to 74.63%. ESFBL had filed the Shareholding Pattern with

the National Stock Exchange of India Ltd and BSE Limited on February 21, 2022 in adherence with the Regulation 31 (1) (c) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 towards the change in shareholding as a consequence of the QIP.

12. Noticee submitted that as per the provisions of Section 12 (2) of the Banking Regulation Act, 1949 read with RBI Notification dated July 21, 2016, published in the Gazette of India dated September 17, 2016, any shareholder's (including the promoter) voting rights in private sector banks are capped at 26 percent of the total voting rights of all the shareholders of the Banking Company. This cap of 26% has been consistently highlighted by ESFBL as part of "Notes" in its shareholding pattern fillings made to the Exchanges. Hence, the voting rights of the company in ESFBL continue to be at 26% both before and after the QIP and there has been no change in the voting rights of the Company. Therefore it can be noted that there was no change in the number of shares or voting rights held by the Noticee in ESFBL as a consequence of the shares allotted through QIP by ESFBL.

13. I note that the change of 6.73% shareholding of Noticee in ESFBL was due to corporate action of preferential allotment by ESFBL of shares. Due to this corporate action of ESFBL, the percentage of shareholding of Noticee in ESFBL though reduced however, its number of shares remained unchanged.

14. In the instant matter, Noticee did not participate in preferential allotment of shares and there was no change in their number of shares held. The percentage decrease in the shareholding of the Noticee was not by any act of theirs but was incidental to the preferential allotment by ESFBL. Confirmation was sought from BSE and NSE whether Noticee made disclosures under Regulation 29(2) of SAST Regulation.

15. In reply BSE submitted " *since change in the percentage of holding of Equitas Holdings Ltd was not due to any transaction (buy/sale) and there is no change in no. of shares held Equitas Holdings ltd, there is no requirement for submitting any disclosure under Regulation 29(2) of SEBI (SAST) Regulations 2011."*

NSE in its reply dated August 12, 2022 submitted interalia , "*Further, request you to take note of the below FAQ's available on the SEBI website (https://www.sebi.gov.in/sebi_data/faqfiles/mar-2022/1648620806406.pdf)*

Q 73. If the holding of any shareholder remains the same but the percentage of shareholding or voting rights of the total paid up share capital of the target company changes due to some corporate actions like buyback or preferential allotment, whether the shareholder is required to make disclosure of the change in shareholding disclosure under regulation 29(2) of Takeover Regulations, 2011?

Response: No. Any change in shareholding or voting rights of a shareholders of a company pursuant to corporate actions like buyback or preferential allotment would not require a disclosure under regulation 29(2) of Takeover Regulations, 2011.

Considering the above facts and the FAQ, we are of the view that disclosure under Regulation 29(2) of SEBI (SAST) Regulations, 2011 may not be required from the promoter in this matter".

16. It is important to understand that the SAST regulations cast the responsibility of disclosure on the entity that has transacted. Where the repercussions are due to actions that have been solely outside his realm of activity for eg. solely due to the corporate action of the listed entity then the thinking has been to keep the responsibility away from the entity as he had no role to play in increasing/ or reducing his shareholding. This thinking of SEBI is clearly mentioned in the FAQ on the SEBI website. The exchanges have also articulated the same reasoning and have mentioned that such instances are not identified as violation. Noticee in its submission has also brought out that it did not acquire any shares pursuant to the QIP by ESFBL. Given this, it is not clear as to why despite such an articulation and practice in public domain the same situation has been held adverse against the Noticee in this specific case.

17. Given all of the above, the articulation of the thinking of SEBI in its FAQ and the practice of the exchanges, I do not find any reason to hold that there has been any violation committed by the Noticee.

18. Further, considering that the alleged violation against the Noticee does not stand established, I note that Issues II and III do not require any consideration.

ORDER

19. In view of the above I dispose of the SCN dated November 16, 2022 without imposing any penalty.

20. 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: December 19, 2022 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**