BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/HG/2022-23/21892]

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

In respect of:

Pratik S Patel

(PAN: BZYPP9817N)

In the matter of Edynamics Solutions Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had received a complaint from Mr. Adarsh Dogra alleging receipt of bulk SMS from the sender ids - MD-SMCGLB (on March 2, 2017), HP-EQUTIP, HP-SHRKHN and HP-LKPCAP (during March 3 & 6, 2017) and HP-MONEYC (on April 5, 2017) and recommending purchase of stock of Edynamics Solutions Limited (hereinafter referred to as '**Company/ESL**'). The shares of the company were listed on Bombay Stock Exchange Limited (herein after referred to as '**BSE**').

2. Thereafter, SEBI undertook investigation into the scrip of ESL for the period March 02, 2017 to October 06, 2017. Upon verification of the aforementioned sender ids on www.smsgatewaycenter.com, it was observed that the said sender ids pertain to various Telecom Service Providers (TSPs). It was observed that the SMS were sent during the time periods as mentioned below:

S.No	Sender id	Telephone Service Provider	Location	Time Period
1	MD-SMCGLB	MTNL	Delhi	March 2, 2017
2	HP-EQUTIP	HFCL Infotel Limited	Punjab	March 3 & 6, 2017
3	HP-SHRKHN	HFCL Infotel Limited	Punjab	
4	HP-LKPCAP	HFCL Infotel Limited	Punjab	
5	HP-MONEYC	HFCL Infotel Limited	Punjab	April 5, 2017
6	AD-GINGRU	Bharti Airtel Limited	Delhi	October 5 & 6, 2017
7	AD-MONYMR	Bharti Airtel Limited	Delhi	
8	AD-ICISEC	Bharti Airtel Limited	Delhi	
9	AD-HDFSEC	Bharti Airtel Limited	Delhi	

3. Accordingly, SMS data records and relevant telemarketer / end customer (who sent the bulk SMSs) details were sought from the relevant telecom operator for that particular period when the operator had provided the service to the SMS aggregator. It was observed that apart from Bharti Airtel Limited (hereinafter referred to as "**Airtel**"), the telecom operators submitted that they were unable to retrieve such old records from their system. Airtel, vide its letter and email dated October 10, 2018 and December 04, 2018 provided the details of SMS aggregator who was operating the SMS header that were used for sending the SMSs with respect to ESL. From the abovementioned letter and email of Airtel, it was observed that Web Arrival I Technology (hereinafter referred to as **'WAIT**') was the SMS aggregator. The details of SMS's sent by the WAIT are as follows:

Sr. No.	SMS Header	Number of SMS Delivered	Number of SMSs Undelivered
1	AD-GINGRU	1088039	93479
2	AD-MONYMR	18951	957
3	AD-HDFSEC	179133	16750

4. During the investigation, the Investigating Authority (hereinafter referred to as '**IA**') appointed by SEBI in the matter, called upon Mr. Pratik S Patel, owner of WAIT

(hereinafter referred to as “**Noticee**”) to provide certain information/details. However, it was observed that Noticee had not co-operated during investigation and failed to provide the documents/ information requisitioned by the IA and thereby hampered the process of investigation. Therefore, in view of the above, it was alleged that Noticee has violated section 11(2) (ia) and section 11C (3) of the SEBI Act, 1992 (hereinafter referred to as ‘**SEBI Act**’).

APPOINTMENT OF ADJUDICATING OFFICER

5. Vide order dated March 04, 2021, Shri Amit Pradhan was appointed as Adjudicating Officer (‘**AO**’) under Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘**SEBI Adjudication Rules’**) read with Section 19 of SEBI Act to inquire into and adjudge under the provisions of Section 15A(a) of SEBI Act, the aforesaid alleged violations by Noticee. Since Shri Amit Pradhan was transferred to another department of SEBI, the undersigned was appointed as the AO in the said matter by SEBI vide its order dated June 18, 2021.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A show-cause notice dated March 19, 2021 was issued to Noticee (hereinafter referred to as ‘**SCN**’) in terms of Section 15-I of the SEBI Act read with Rule 4 of SEBI Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon him under the provisions of Section 15A(a) of SEBI Act for the aforesaid violations alleged to have been committed by Noticee.

7. The allegations levelled against Noticee in the SCN are as under:

    a) During the course of investigation, it was observed that vide summons dated January 20, 2020 and reminder summons dated January 30, 2020, Noticee was called upon to provide the details and Know Your Clients (KYC) documents of SMS sender/end user. However, it was observed that Noticee had not furnished the details and KYC documents of SMS sender/end user and thereby disobeyed the aforesaid summons dated January 20, 2020 and January 30, 2020 issued by IA and repeatedly failed to provide the documents/ information requisitioned by the IA.

b) It was also observed that Noticee was advised that in case he fails to disobey the information requisition vide the aforesaid summons, SEBI may initiate prosecution/adjudication proceedings against him.

c) However, it was observed that Noticee failed to produce/furnish the documents/information sought by IA as required under the SEBI Act and thereby hampered the process of investigation. In view of the above observations, it was alleged that Noticee has violated section 11(2) (ia) and section 11C (3) of the SEBI Act.

8. The SCN was sent to Noticee through Speed Post Acknowledgement Due (herein after referred to as '**SPAD**') on March 19, 2021. However, the SCN sent through SPAD was returned undelivered. Thereafter, the SCN was served on the Noticee through newspaper publication on June 18, 2021 in the newspapers viz. Gujarat Samachar (Gujarati), Divya Bhaskar (Hindi) and Times of India (English). Noticee was given fourteen (14) days' time to make his submissions in respect of the allegations made in the SCN. However, no reply was received from the Noticee.

9. Thereafter, in the interest of natural justice, Noticee was granted an opportunity of personal hearing before the undersigned on June 28, 2022. The notice of hearing was intimated to the Noticee through newspaper publication on June 08, 2022 in Ahmedabad, Gujarat edition of newspapers viz. Sandesh (Gujarati), Gujrat Vaibhav (Hindi) and Times of India (English). However, Noticee did not appear for the hearing on the scheduled date. Therefore, it is observed that Noticee neither submitted his reply nor appeared for the hearing.

10. Considering the fact that sufficient opportunities have been granted to Noticee to represent his case, I am of the view that principles of natural justice have been complied with but Noticee has neither filed any reply nor availed the opportunity of personal hearing despite being granted opportunities for the same. Therefore, it is

presumed that Noticee has nothing to submit, and therefore, in terms of Rule 4(7) of the SEBI Adjudication Rules, the matter can be proceeded ex-parte on the basis of material available on record.

11. In absence of any response from the Noticee to the SCN, I presume that the Noticee has admitted to the charges levelled against him. In this regard, I place reliance on the order of Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**') in the matter of Classic Credit Ltd. v. SEBI [2007] 76 SCL 51 (SAT - MUM) wherein it was, *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*". Similarly, the Hon'ble SAT in the case of Sanjay Kumar Tayal & Ors. v. SEBI (in appeal No. 68/2013) decided on February 11, 2014, also held that *"…appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices*".

12. In view of the aforesaid judgements of the Hon'ble SAT, I find no reason to take a different view and accordingly, I deem it appropriate to proceed against the Noticee ex-parte, based on the material available on record and in absence of any reply from Noticee, I presume that Noticee has admitted to the charges levelled in the SCN.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully examined the material available on record and perused the charges levelled against Noticee. The issues that arise for consideration in the present case are :

    I. Whether the Noticee has violated the provisions of section 11(2) (ia) and Section 11C (3) of SEBI Act?

    II. Does the violation, if established, attract monetary penalty under Section 15A(a) 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 mentioned in section 15J of the SEBI Act?

Issue No.13(I) - Whether the Noticee has violated the provisions of Section 11(2) (ia) and Section 11C (3) of SEBI Act?

14. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticee , which are reproduced below:

SEBI Act, 1992

Functions of Board

11 (2) *Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—*

(ia) *calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;*

Investigation.

11C(3) *The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.*

15. I note from the available record that during the investigation, IA had sought details from Noticee vide summons dated January 20, 2020 issued under Section 11(2)(i) and Section 11C (3) of SEBI Act and the last date to submit the reply was January

29, 2020. The information sought by IA in the aforesaid summons are reproduced hereunder:

a) What is the business model of your company?

b) How do you register the client who want to send bulk SMS's? Please provide the details of procedure followed by your company?

c) What are the documents required for the registration of such client? Please provide the list of acceptable documents.

d) Do you verify the details/documents submitted by the client with ID proof etc.? Whether you maintain the record of the documents submitted by client along with the copy of documents?

e) What is the per SMS rate applicable for sending bulk SMS's? How many SMS's were sent using the header AD-GINGRU, AD-HDFSEC and AD-MONYMR w.r.t the scrip ESL during the period October 5&6, 2017? What was the rate charged per SMS for the same?

f) Provide the details of payment received from the client/end user for sending the SMS's w.r.t ESL (format provided).

g) Whether you have obtained KYC documents of sms sender/end user?

h) If yes, provide the copy of all KYC documents submitted by sms sender/end user w.r.t the SMS header AD-GINGRU, AD-HDFSEC and AD-MONYMR w.r.t scrip ESL?

i) Whether the end user was SEBI registered entity? if yes, please provide the copy of his SEBI registration certificate along with the authorization letter and other relevant documents?

16. I note from the available record that the aforesaid summons was served on the Noticee on January 24, 2020. The copy of the delivery status of the aforesaid summons taken from India Post website is available on record. However, I note that IA has stated that Noticee did not reply to the summons.

17. I note from the investigation report that since the Noticee had not submitted the reply to aforesaid summons, another summons dated January 30, 2020 was issued to Noticee and Noticee was provided time till February 06, 2020 to submit the details sought therein. I note from the copy of the delivery status taken from India Post website that the summons was served on the Noticee on February 04, 2020. I find from the records/ Investigation Report that Noticee failed to produce/furnish the documents/information sought by IA through the aforesaid summons.

18. I note that a statutory duty is cast upon Noticee under Section 11(2)(i) and Section 11C (3) of SEBI Act to comply with and to co-operate with the investigation process and to provide the information/records as may be required by the IA. Once information is called for by IA under Section 11(2)(i) and Section 11C (3) of SEBI Act, it necessarily commands performance of duty by the persons/entity who has been called upon to furnish such information failing which it results in violation of Section 11(2)(i) and Section 11C (3) of SEBI Act.

19. From the foregoing observations, I find that Noticee failed to produce/furnish the documents/information sought by IA through the repeated summons. I also note that Noticee has not furnished any reply to the SCN.

20. In view of the above, I conclude that the allegation that Noticee has violated Section 11(2)(i) and Section 11C (3) of SEBI Act stands established.

<u>Issue No.13(II) - Does the violation attract monetary penalty under Section 15A(a) of SEBI Act?</u>

21. 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..….".* Further, Hon'ble SAT, in Appeal No.95/04 vide its order dated August 9, 2004 in Mayfair Paper & Board Pvt. Ltd. V SEBI held that failure to furnish information to the Investigating Authority of SEBI shall attract the penalty prescribed under Section 15A of the SEBI Act. Therefore, in view of the above violations as brought out in the foregoing paragraphs and

placing reliance on the aforementioned judgement, I find that Noticee is liable for monetary penalty under Section 15A (a) of SEBI Act.

22. The text of Section 15A(a) of SEBI Act is reproduced below:

SEBI Act

Section 15A (a) of the SEBI Act: Penalty for failure to furnish information, return, etc.:

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,*

(a) to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees:

Issue No.13(III) - 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?

23. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules, require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely; -

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

24. In the instant matter, it is not possible to quantify the gains made by Noticee or the loss caused to investors as a result of the failure on the part of Noticee to honour the summons. Further, there is nothing on record which shows repetitive nature

of the default by Noticee. However, I note from the Investigation Report that non-submission of information by the Noticee, hampered the investigation and in absence of documents/ information sought from the Noticee, certain specific details in the investigation could not be established and the investigation had to be concluded based on the available information/ documents. Noticee's failure to furnish required information to the Investigating Authority reflects the Noticee's disregard for the investigation process of SEBI. I also observe that on account of non-cooperation by the Noticee, the investigation was hampered and such default needs to be viewed seriously.

ORDER

25. Having considered all the facts and circumstances of the case, the material available on record, 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 SEBI Adjudication Rules, hereby impose a penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on Noticee i.e. Pratik S Patel, under the provisions of Section 15A(a) of SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

26. Noticee 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. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in

27. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

28. 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 Noticee.

29. In terms of the provisions of Rule 6 of the SEBI Adjudication Rules, a copy of this order is being sent to Noticee viz. Pratik S Patel and also to SEBI.

Date: December 07, 2022 **SOMA MAJUMDER**

Place: Mumbai **ADJUDICATING OFFICER**